House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 26

HOUSE BILL 2025

AN ACT

AMENDING SECTIONS 32-900, 32-922.02, 32-924 AND 32-925, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 8, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-934; RELATING TO THE BOARD OF CHIROPRACTIC EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-900, Arizona Revised Statutes, is amended to read:

32-900. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of chiropractic examiners.

2. "Certification" means that a doctor of chiropractic has been certified by the board in a specialty of chiropractic as provided by law.

3. "Chiropractic assistant" means an unlicensed person who has completed an educational training program approved by the board, who assists in basic health care duties in the practice of chiropractic under the supervision of a doctor of chiropractic and who performs delegated duties commensurate with the chiropractic assistant's education and training but who does not evaluate, interpret, design or modify established treatment programs of chiropractic care or violate any statute.

4. "Doctor of chiropractic" means a natural person who holds a license to practice chiropractic pursuant to this chapter.

5. "License" means a license to practice chiropractic.

6. "PHYSICAL MEDICINE MODALITIES" MEANS ANY PHYSICAL AGENT APPLIED TO PRODUCE THERAPEUTIC CHANGE TO BIOLOGIC TISSUES, INCLUDING THERMAL, ACOUSTIC, NONINVASIVE LIGHT, MECHANICAL OR ELECTRIC ENERGY, HOT OR COLD PACKS, ULTRASOUND, GALVANISM, MICROWAVE, DIATHERMY AND ELECTRICAL STIMULATION.

7. "THERAPEUTIC PROCEDURES" MEANS THE APPLICATION OF CLINICAL SKILLS AND SERVICES, INCLUDING THERAPEUTIC EXERCISE, THERAPEUTIC ACTIVITIES, MANUAL THERAPY TECHNIQUES, MASSAGE AND STRUCTURAL SUPPORTS, TO IMPROVE A PATIENT'S NEUROMUSCULOSKELETAL CONDITION.

Sec. 2. Section 32-922.02, Arizona Revised Statutes, is amended to read:

32-922.02. Specialties; certification; fees

A. In order to practice a chiropractic specialty a licensee shall be certified in that specialty by the board.

B. An applicant who wishes to be certified to perform acupuncture shall submit the following to the board:

1. Documentation of successful completion of a minimum of one hundred hours of study in acupuncture at an accredited chiropractic college or postgraduate study with an instructor on the active or postgraduate staff of an accredited chiropractic college.

2. A complete application as prescribed by the board.

3. Documentation of having passed a board approved acupuncture examination.

C. An applicant who wishes to be certified to perform ~~physiotherapy~~ PHYSICAL MEDICINE MODALITIES AND THERAPEUTIC PROCEDURES shall submit the following to the board:

1. A complete application as prescribed by the board.

2. Documentation of successful completion of a minimum of one hundred twenty hours of study in ~~physiotherapy~~ PHYSICAL MEDICINE MODALITIES AND THERAPEUTIC PROCEDURES at an accredited chiropractic college or postgraduate study with an instructor on the active or postgraduate staff of an accredited chiropractic college.

3. Documentation of having passed an examination in ~~physiotherapy~~ PHYSICAL MEDICINE MODALITIES AND THERAPEUTIC PROCEDURES that is approved by the board.

D. The board shall issue a certificate to any applicant who meets the requirements of this section, who correctly answers at least seventy-five per cent of all questions asked on the specialty examination and who pays a certificate fee of one hundred dollars.

E. On making application, the applicant shall pay to the executive director of the board a nonrefundable fee of one hundred dollars. The board shall keep a register of all applicants and the result of each examination.

F. A CHIROPRACTOR WHO IS CERTIFIED IN A SPECIALTY PURSUANT TO SUBSECTION C BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION IS DEEMED TO BE CERTIFIED IN PHYSICAL MEDICINE MODALITIES AND THERAPEUTIC PROCEDURES.

Sec. 3. Section 32-924, Arizona Revised Statutes, is amended to read:

32-924. <u>Grounds for disciplinary action; hearing; civil penalty; definition</u>

A. The following are grounds for disciplinary action, regardless of where they occur:

1. Employment of fraud or deception in securing a license.

2. Practicing chiropractic under a false or assumed name.

3. Impersonating another practitioner.

4. Habitual use of alcohol, narcotics or stimulants to the extent of incapacitating the licensee for the performance of professional duties.

5. Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession.

6. Conviction of a misdemeanor involving moral turpitude or of a felony.

7. Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

8. Representing that a manifestly incurable condition can be permanently cured, or that a curable condition can be cured within a stated time, if this is not true.

9. Offering, undertaking or agreeing to cure or treat a condition by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board on demand the means, method, device or instrumentality used in the treatment of a condition.

11. Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

12. Acting or assuming to act as a member of the board if this is not true.

13. Advertising in a false, deceptive or misleading manner.

14. ~~Refusal, revocation or suspension of~~ HAVING HAD a license REFUSED, REVOKED OR SUSPENDED by any other state or country, unless it can be shown that the action was not taken for reasons that relate to the ability to safely and skillfully practice chiropractic or to any act of unprofessional conduct.

15. Any conduct or practice contrary to recognized standards in chiropractic or any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public or any conduct, practice or condition that impairs the ability of the licensee to safely and skillfully practice chiropractic.

16. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter or any board order.

17. Failing to sign the physician's name, wherever required, in any capacity as "chiropractic doctor", "chiropractic physician" or "doctor of chiropractic" or failing to use and affix the initials "D.C." after the physician's name.

18. Failing to place or cause to be placed the word or words "chiropractic", "chiropractor", "chiropractic doctor" or "chiropractic physician" in any sign or advertising media.

19. Using ~~physiotherapy~~ PHYSICAL MEDICINE MODALITIES AND THERAPEUTIC PROCEDURES without passing an examination in that subject and without being certified in that specialty by the board.

20. Using acupuncture without passing an examination in that subject and without being certified in that specialty by the board.

21. Engaging in sexual intercourse or oral sexual contact with a patient in the course of treatment.

22. Billing or otherwise charging a patient or third party payor for services, appliances, tests, equipment, an x-ray examination or other procedures not actually provided.

23. Intentionally misrepresenting to or omitting a material fact from the patient or third party payor concerning charges, services, appliances, tests, equipment, an x-ray examination or other procedures offered or provided.

24. Advertising chiropractic services, appliances, tests, equipment, x-ray examinations or other procedures for a specified price without also specifying the services, procedures or items included in the advertised price.

25. Advertising chiropractic services, appliances, tests, equipment, x-ray examinations or other procedures as free without also disclosing what services or items are included in the advertised service or item.

26. Billing or charging a patient or third party payor a higher price than the advertised price in effect at the time the services, appliances, tests, equipment, x-ray examinations or other procedures were provided.

27. Advertising a specialty or procedure that requires a separate examination or certificate of specialty, unless the licensee has satisfied the applicable requirements of this chapter.

28. Solicitation by the licensee or by the licensee's compensated agent of any person who is not previously known by the licensee or the licensee's agent, and who at the time of the solicitation is vulnerable to undue influence, including any person known to have experienced any of the following within the last fifteen days:

(a) Involvement in a motor vehicle accident.

(b) Involvement in a work-related accident.

(c) Injury by, or as the result of actions of, another person.

B. The board on its own motion or on receipt of a complaint may investigate any information that appears to show that a doctor of chiropractic is or may be in violation of this chapter or board rules or is or may be mentally or physically unable to safely engage in the practice of chiropractic. The board shall notify the licensee as to the content of the complaint as soon as is reasonable. Any person who reports or provides information to the board in good faith is not subject to civil damages as a result of that action.

C. The board may require a licensee under investigation pursuant to this section to be interviewed by the board or its representatives. The board may require a licensee who is under investigation pursuant to this section to undergo, at the licensee's expense, any combination of medical, physical or mental examinations that the board finds necessary to determine the licensee's competence.

D. If the board finds based on the information it receives under subsections B and C that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board takes this action it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the licensee, it may take any of the following actions:

1. Dismiss the complaint if in the board's opinion the information is without merit or does not warrant sanction of the licensee.

2. Issue an advisory letter. An advisory letter is a nondisciplinary action and is a public document.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment. Failure to complete a nondisciplinary order requiring continuing education is a violation of subsection A, paragraph 16.

F. The board may request a formal interview with the licensee concerned. At a formal interview the board may receive and consider pertinent documents and sworn statements of persons who may be called as witnesses in a formal hearing. Legal counsel may be present and participate in the formal interview. If the licensee refuses the request or if the licensee accepts the request and the results of the interview indicate suspension or revocation of the license may be in order, the board shall issue a complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after the formal interview, the board finds that the information provided pursuant to this section is true but is not of sufficient seriousness to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint if in the board's opinion the information is without merit or does not warrant sanction of the licensee.

2. Issue an advisory letter. An advisory letter is a nondisciplinary action and is a public document.

3. Issue an order to cease and desist.

4. Issue a letter of concern.

5. Issue an order of censure. An order of censure is an official action against the licensee and may include a requirement for restitution of fees to a patient resulting from a violation of this chapter or board rules.

6. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Any costs incidental to the terms of probation are at the licensee's own expense. Probation may include restrictions on the licensee's license to practice chiropractic.

7. Impose a civil penalty of not more than one thousand dollars for each violation of this chapter.

8. Refuse to renew a license.

9. Issue a disciplinary or nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the charge is of such magnitude as to warrant suspension or revocation of the license, the board shall immediately initiate formal revocation or suspension proceedings pursuant to title 41, chapter 6, article 10. The board shall notify a licensee of a complaint and hearing by certified mail addressed to the licensee's last known address on record in

the board's files. The notice of a complaint and hearing is effective on the date of its deposit in the mail. The board shall hold a formal hearing within one hundred eighty days after that date.

H. If the licensee wishes to be present at the formal hearing in person or by representation, or both, the licensee shall file with the board an answer to the charges in the complaint. The answer shall be in writing, verified under oath and filed within twenty days after service of the complaint.

I. Any licensee who, after a hearing, is found to be in violation of this chapter or board rules or is found to be mentally or physically unable to safely engage in the practice of chiropractic is subject to any combination of those disciplinary actions identified in subsection F or suspension or revocation of the license. In addition, the board may order the licensee to pay restitution or all costs incurred in the course of the investigation and formal hearing in the matter, or both.

J. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

K. The board may accept the surrender of an active license from a licensee who admits in writing to having violated this chapter or board rules.

L. For the purposes of this section, "solicitation" includes contact in person, by telephone, telegraph or telefacsimile or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient.

Sec. 4. Section 32-925, Arizona Revised Statutes, is amended to read:

32-925. Practice of chiropractic; limitations

A. A doctor of chiropractic is a portal of entry health care provider who engages in the practice of health care that includes:

1. The diagnosis and correction of subluxations, functional vertebral or articular dysarthrosis or neuromuscular skeletal disorders for the restoration and maintenance of health.

2. Physical and clinical examinations, diagnostic x-rays and clinical laboratory procedures that are limited to urine collection, finger pricks or venipuncture in order to determine the propriety of a regimen of chiropractic care or to form a basis for referral of patients to other licensed health care professionals, or both.

3. Treatment by:

(a) PHYSICAL MEDICINE MODALITIES, THERAPEUTIC PROCEDURES AND adjustment of the spine or bodily articulations. ~~and those~~

(b) Procedures ~~preparatory and complementary to the adjustment including physiotherapy~~ related to the correction of subluxations ~~or~~ AND NEUROMUSCULAR SKELETAL DISORDERS.

(c) PRESCRIPTION OF orthopedic supports. ~~of the spine and~~

(d) Acupuncture.

B. A doctor of chiropractic licensed under this chapter shall not prescribe or administer medicine or drugs, perform surgery or practice obstetrics.

Sec. 5. Title 32, chapter 8, article 2, Arizona Revised Statutes, is amended by adding section 32-934, to read:

32-934. Business entities; medical records protocol; exemptions; violation; classification

A. A BUSINESS ENTITY MAY NOT OFFER CHIROPRACTIC SERVICES PURSUANT TO THIS CHAPTER UNLESS THE BUSINESS ENTITY ESTABLISHES A WRITTEN PROTOCOL FOR THE SECURE STORAGE, TRANSFER AND ACCESS OF THE MEDICAL RECORDS OF THE BUSINESS ENTITY'S PATIENTS. THIS PROTOCOL MUST INCLUDE, AT A MINIMUM, PROCEDURES FOR:

1. NOTIFYING PATIENTS OF THE FUTURE LOCATIONS OF THEIR RECORDS IF THE BUSINESS ENTITY TERMINATES OR SELLS THE PRACTICE.

2. DISPOSING OF UNCLAIMED MEDICAL RECORDS.

3. THE TIMELY RESPONSE TO REQUESTS BY PATIENTS FOR COPIES OF THEIR RECORDS.

B. THIS SECTION DOES NOT APPLY TO:

1. A FACILITY OWNED BY A PERSON WHO IS LICENSED PURSUANT TO THIS CHAPTER.

2. A SOLE PROPRIETORSHIP OR PARTNERSHIP THAT CONSISTS OF PERSONS WHO ARE LICENSED PURSUANT TO THIS CHAPTER.

3. A PROFESSIONAL CORPORATION OR PROFESSIONAL LIMITED LIABILITY COMPANY, THE SHARES OF WHICH ARE OWNED BY PERSONS WHO ARE LICENSED PURSUANT TO THIS CHAPTER.

4. AN ADMINISTRATOR OR EXECUTOR OF THE ESTATE OF A DECEASED DOCTOR OF CHIROPRACTIC OR A PERSON WHO IS LEGALLY AUTHORIZED TO ACT FOR A DOCTOR OF CHIROPRACTIC WHO HAS BEEN ADJUDICATED TO BE MENTALLY INCOMPETENT FOR NOT MORE THAN ONE YEAR AFTER THE DATE OF THE DOCTOR OF CHIROPRACTIC'S DEATH OR INCAPACITATION.

5. A HEALTH CARE INSTITUTION THAT IS LICENSED PURSUANT TO TITLE 36.

C. A BUSINESS ENTITY THAT OFFERS CHIROPRACTIC SERVICES PURSUANT TO THIS CHAPTER WITHOUT COMPLYING WITH THE REQUIREMENTS OF THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.

Passed the House March 3, 2010

by the following vote: 56 Ayes,

4 Nays, 0 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 1, 2010

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

President of the Senate

Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

5th day of April, 2010

at 2:36 o'clock P. M.

Secretary to the Governor

Approved this 9th day of

April

at 10:30 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 9th day of April, 2010

at 12:09 o'clock P. M.

Secretary of State

H.B. 2025