

Senate Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 132

SENATE BILL 1010

AN ACT

AMENDING SECTION 32-1664, ARIZONA REVISED STATUTES; RELATING TO NURSING
REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1664, Arizona Revised Statutes, is amended to
3 read:

4 32-1664. Investigation; hearing; notice

5 A. In connection with an investigation, the board or its duly
6 authorized agents or employees may obtain any documents, reports, records,
7 papers, books and materials, including hospital records, medical staff
8 records and medical staff review committee records, or any other physical
9 evidence that indicates that a person or regulated party may have violated
10 this chapter or a rule adopted pursuant to this chapter:

11 1. By entering the premises, at any reasonable time, and inspecting
12 and copying materials in the possession of a regulated party ~~and that relates~~
13 RELATE to nursing competence, unprofessional conduct or mental or physical
14 ability of a licensee to safely practice nursing.

15 2. By issuing a subpoena under the board's seal to require the
16 attendance and testimony of witnesses or to demand the production for
17 examination or copying of documents or any other physical evidence. Within
18 five days after a person is served with a subpoena that person may petition
19 the board to revoke, limit or modify the subpoena. The board shall do so if
20 in its opinion the evidence required does not relate to unlawful practices
21 covered by this chapter, is not relevant to the charge that is the subject
22 matter of the hearing or investigation or does not describe with sufficient
23 particularity the physical evidence whose production is required.

24 3. By submitting a written request for the information.

25 4. In the case of an applicant's or a regulated party's personal
26 medical records, as defined in section 12-2291, by any means permitted by
27 this section if the board either:

28 (a) Obtains from the applicant or regulated party, or the health care
29 decision maker of the applicant or regulated party, a written authorization
30 that satisfies the requirements of title 12, chapter 13, article 7.1.

31 (b) Reasonably believes that the records relate to information already
32 in the board's possession regarding the competence, unprofessional conduct or
33 mental or physical ability of the applicant or regulated party as it pertains
34 to safe practice. If the board adopts a substantive policy statement
35 pursuant to section 41-1091, it may authorize the executive director, or a
36 designee in the absence of the executive director, to make the determination
37 of reasonable belief.

38 B. A regulated party and a health care institution as defined in
39 section 36-401 shall, and any other person may, report to the board any
40 information the licensee, certificate holder, health care institution or
41 individual may have that appears to show that a regulated party or applicant
42 is, was or may be a threat to the public health or safety.

43 C. The board retains jurisdiction to proceed with an investigation or
44 a disciplinary proceeding against a regulated party whose license or

1 certificate expired not more than five years before the board initiates the
2 investigation.

3 D. Any regulated party, health care institution or other person that
4 reports or provides information to the board in good faith is not subject to
5 civil liability. If requested the board shall not disclose the name of the
6 reporter unless the information is essential to proceedings conducted
7 pursuant to this section.

8 E. Any regulated party or person who is subject to an investigation
9 may obtain representation by counsel.

10 F. On determination of reasonable cause the board, OR IF DELEGATED BY
11 THE BOARD THE EXECUTIVE DIRECTOR, may require a licensee ~~or~~, certificate
12 holder OR APPLICANT to undergo AT THE EXPENSE OF THE LICENSEE, CERTIFICATE
13 HOLDER OR APPLICANT any combination of mental, physical or psychological
14 examinations, ASSESSMENTS or skills evaluations necessary to determine the
15 person's competence or ability to practice safely. These examinations may
16 include bodily fluid testing AND OTHER EXAMINATIONS KNOWN TO DETECT THE
17 PRESENCE OF ALCOHOL OR DRUGS. IF THE EXECUTIVE DIRECTOR ORDERS THE LICENSEE,
18 APPLICANT OR CERTIFICATE HOLDER TO UNDERTAKE AN EXAMINATION, ASSESSMENT OR
19 EVALUATION PURSUANT TO THIS SUBSECTION, AND THE LICENSEE, CERTIFICATE HOLDER
20 OR APPLICANT FAILS TO AFFIRM TO THE BOARD IN WRITING WITHIN FIFTEEN DAYS
21 AFTER RECEIPT OF THE NOTICE OF THE ORDER THAT THE LICENSEE, CERTIFICATE
22 HOLDER OR APPLICANT INTENDS TO COMPLY WITH THE ORDER, THE EXECUTIVE DIRECTOR
23 SHALL REFER THE MATTER TO THE BOARD TO PERMIT THE BOARD TO DETERMINE WHETHER
24 TO ISSUE AN ORDER PURSUANT TO THIS SUBSECTION. AT EACH REGULAR MEETING OF
25 THE BOARD THE EXECUTIVE DIRECTOR SHALL REPORT TO THE BOARD DATA CONCERNING
26 ORDERS ISSUED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS SUBSECTION SINCE THE
27 LAST REGULAR MEETING OF THE BOARD AND ANY OTHER DATA REQUESTED BY THE BOARD.

28 G. If after completing its investigation the board finds that the
29 information provided pursuant to this section is not of sufficient
30 seriousness to merit disciplinary action against the regulated party or
31 applicant, it may take either of the following actions:

32 1. Dismiss if in the opinion of the board the information is without
33 merit.

34 2. File a letter of concern if in the opinion of the board there is
35 insufficient evidence to support disciplinary action against the regulated
36 party or applicant but sufficient evidence for the board to notify the
37 regulated party or applicant of its concern.

38 H. Except as provided pursuant to section 32-1663, subsection F and
39 subsection I of this section, if the investigation in the opinion of the
40 board reveals reasonable grounds to support the charge, the regulated party
41 is entitled to an administrative hearing pursuant to title 41, chapter 6,
42 article 10. If notice of the hearing is served by certified mail, service is
43 complete on the date the notice is placed in the mail.

1 I. A regulated party shall respond in writing to the board within
2 thirty days after notice of the hearing is served as prescribed in subsection
3 H of this section. The board may consider a regulated party's failure to
4 respond within this time as an admission by default to the allegations stated
5 in the complaint. The board may then take disciplinary actions allowed by
6 this chapter without conducting a hearing.

7 J. An administrative law judge or a panel of board members may conduct
8 hearings pursuant to this section.

9 K. In any matters pending before it, the board may issue subpoenas
10 under its seal to compel the attendance of witnesses.

11 L. Patient records, including clinical records, medical reports,
12 laboratory statements and reports, any file, film, other report or oral
13 statement relating to diagnostic findings or treatment of patients, any
14 information from which a patient or a patient's family might be identified or
15 information received and records kept by the board as a result of the
16 investigation procedure outlined in this chapter are not available to the
17 public and are not subject to discovery in civil or criminal proceedings.

18 M. Hospital records, medical staff records, medical staff review
19 committee records, testimony concerning these records and proceedings related
20 to the creation of these records shall not be available to the public. They
21 shall be kept confidential by the board and shall be subject to the same
22 provisions concerning discovery and use in legal actions as are the original
23 records in the possession and control of hospitals, their medical staffs and
24 their medical staff review committees. The board shall use these records and
25 testimony during the course of investigations and proceedings pursuant to
26 this chapter.

27 N. If the regulated party is found to have committed an act of
28 unprofessional conduct or to have violated this chapter or a rule adopted
29 pursuant to this chapter, the board may take disciplinary action.

30 O. The board may subsequently issue a denied license or certificate
31 and may reissue a revoked or voluntarily surrendered license or certificate.

32 P. On application by the board to any superior court judge, a person
33 who without just cause fails to comply with a subpoena issued pursuant to
34 this section may be ordered by the judge to comply with the subpoena and
35 punished by the court for failing to comply. Subpoenas shall be served by
36 regular or certified mail or in the manner required by the Arizona rules of
37 civil procedure.

38 Q. The board may share investigative information that is confidential
39 under subsections L and M of this section with other state, federal and
40 international health care agencies and with state, federal and international
41 law enforcement authorities if the recipient is subject to confidentiality
42 requirements similar to those established by this section. A disclosure made
43 by the board pursuant to this subsection is not a waiver of the
44 confidentiality requirements established by this section.

APPROVED BY THE GOVERNOR MARCH 29, 2012.

FILED IN THE OFFICE OF THE ~~SECRETARY~~³ OF STATE MARCH 29, 2012.

Passed the House March 26, 2012

Passed the Senate February 28, 2012

by the following vote: 54 Ayes,

by the following vote: 22 Ayes,

1 Nays, 5 Not Voting

8 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28 day of March, 2012,

at 10:20 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 29th day of

March, 2012.

at 11:04 o'clock A M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 29th day of March, 2012,

at 4:58 o'clock P M.

[Signature]
Secretary of State

S.B. 1010