

House Engrossed Senate Bill

FILED

**MICHELE REAGAN
SECRETARY OF STATE**

State of Arizona
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2017

CHAPTER 191

SENATE BILL 1452

AN ACT

AMENDING SECTIONS 32-1263.01, 32-1263.02, 32-1451.03, 32-2943 AND 32-3214, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 32, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-3222, 32-3223, 32-3224 AND 32-3225; AMENDING SECTION 32-3281, ARIZONA REVISED STATUTES; RELATING TO HEALTH PROFESSION REGULATORY BOARDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1263.01, Arizona Revised Statutes, is amended
3 to read:

4 32-1263.01. Types of disciplinary action; letter of concern;
5 judicial review; notice; removal of notice;
6 violation; classification

7 A. The board may take any one or a combination of the following
8 disciplinary actions against any person licensed under this chapter:

9 1. Revocation of license to practice.

10 2. Suspension of license to practice.

11 3. Entering a decree of censure, which may require that restitution
12 be made to an aggrieved party.

13 4. Issuance of an order fixing a period and terms of probation best
14 adapted to protect the public health and safety and to rehabilitate the
15 licensed person. The order fixing a period and terms of probation may
16 require that restitution be made to the aggrieved party.

17 5. Imposition of an administrative penalty in an amount not to
18 exceed two thousand dollars for each violation of this chapter or rules
19 adopted under this chapter.

20 6. Imposition of a requirement for restitution of fees to the
21 aggrieved party.

22 7. Imposition of restrictions on the scope of practice.

23 8. Imposition of peer review and professional education
24 requirements.

25 9. Imposition of community service.

26 B. The board may issue a letter of concern if a licensee's
27 continuing practices may cause the board to take disciplinary action. The
28 board may also issue a nondisciplinary order requiring the licensee to
29 complete a prescribed number of hours of continuing education in an area
30 or areas prescribed by the board to provide the licensee with the
31 necessary understanding of current developments, skills, procedures or
32 treatment.

33 C. Failure to comply with any order of the board, including an
34 order of censure or probation, is cause for suspension or revocation of a
35 license.

36 D. ~~Notwithstanding section 32-3214, subsection B, beginning~~
37 ~~September 1, 2015, All disciplinary and FINAL nondisciplinary actions or~~
38 ~~orders, NOT INCLUDING LETTERS OF CONCERN OR ADVISORY LETTERS, issued by~~
39 ~~the board against a licensee or certificate holder shall be posted to that~~
40 ~~licensee~~ LICENSEE'S or certificate holder's profile on the board's
41 website. FOR THE PURPOSES OF THIS SUBSECTION, ONLY FINAL NONDISCIPLINARY
42 ACTIONS AND ORDERS THAT ARE ISSUED AFTER THE EFFECTIVE DATE OF THIS
43 AMENDMENT TO THIS SECTION SHALL BE POSTED.

1 E. Except as provided in section 41-1092.08, subsection H, final
2 decisions of the board are subject to judicial review pursuant to title
3 12, chapter 7, article 6.

4 F. If the STATE board OF DENTAL EXAMINERS acts to modify any
5 dentist's ~~prescription writing~~ PRESCRIPTION-WRITING privileges, it shall
6 immediately notify the ARIZONA state board of pharmacy of the
7 modification.

8 G. The board may post a notice of its suspension or revocation of a
9 license at the licensee's place of business. This notice shall remain
10 posted for sixty days. A person who removes this notice without board or
11 court authority before that time is guilty of a class 3 misdemeanor.

12 H. A licensee or certificate holder shall respond in writing to the
13 board within twenty days after A notice of hearing is served. A licensee
14 who fails to answer the charges in a complaint and notice of hearing
15 issued pursuant to this article and title 41, chapter 6, article 10 is
16 deemed to admit the acts charged in the complaint, and the board may
17 revoke or suspend the license without a hearing.

18 Sec. 2. Section 32-1263.02, Arizona Revised Statutes, is amended to
19 read:

20 32-1263.02. Investigation and adjudication of complaints;
21 disciplinary action; civil penalty; immunity;
22 subpoena authority; definitions

23 A. The board on its motion, or the executive director if delegated
24 by the board, may investigate any evidence that appears to show the
25 existence of any of the causes or grounds for disciplinary action as
26 provided in section 32-1263. The board may investigate any complaint that
27 alleges the existence of any of the causes or grounds for disciplinary
28 action as provided in section 32-1263. The board shall not act on ITS OWN
29 MOTION OR ON a complaint RECEIVED BY THE BOARD if the allegation of
30 unprofessional conduct, unethical conduct or any other violation of this
31 chapter AGAINST A PROFESSIONAL WHO HOLDS AN ARIZONA LICENSE occurred more
32 than ~~six~~ FOUR years before the complaint is received by the board. The
33 ~~six-year~~ FOUR-YEAR time limitation does not apply to:

34 1. Medical malpractice settlements or judgments OR ALLEGATIONS OF
35 SEXUAL MISCONDUCT OR IF AN INCIDENT OR OCCURRENCE INVOLVED A FELONY,
36 DIVERSION OF A CONTROLLED SUBSTANCE OR IMPAIRMENT WHILE PRACTICING BY THE
37 LICENSEE.

38 2. A BOARD'S CONSIDERATION OF THE SPECIFIC UNPROFESSIONAL CONDUCT
39 RELATED TO A LICENSEE'S FAILURE TO DISCLOSE CONDUCT OR A VIOLATION AS
40 REQUIRED BY LAW.

41 B. At the request of the complainant, the board shall not disclose
42 to the respondent the complainant name unless the information is essential
43 to proceedings conducted pursuant to this article.

44 ~~B.~~ C. The board or its designees shall conduct necessary
45 investigations, including interviews between representatives of the board

1 and the licensee with respect to any information obtained by or filed with
2 the board under subsection A of this section. The results of the
3 investigation conducted by a designee shall be forwarded to the board for
4 its review.

5 ~~C.~~ D. If, based on the information it receives under subsection A
6 of this section, the board finds that the public health, safety or welfare
7 imperatively requires emergency action and incorporates a finding to that
8 effect in its order, the board may order a summary suspension of the
9 respondent's license pursuant to section 41-1092.11 pending proceedings
10 for revocation or other action.

11 ~~D.~~ E. If a complaint refers to quality of care, the patient may be
12 referred for a clinical evaluation at the discretion of the board.

13 ~~E.~~ F. If, after completing its investigation, the board finds that
14 the information provided pursuant to subsection A of this section is
15 insufficient to merit disciplinary action against the licensee, the board
16 may take any of the following actions:

17 1. Dismiss the complaint.

18 2. Issue a nondisciplinary letter of concern to the licensee.

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

23 4. Assess a nondisciplinary civil penalty in an amount not to
24 exceed five hundred dollars if the complaint involves ~~a~~ THE licensee's
25 failure to respond to a board subpoena.

26 ~~F.~~ G. If, after completing its investigation, the board finds that
27 the information provided pursuant to subsection A of this section is
28 sufficient to merit disciplinary action against the licensee, the board
29 may request that the licensee participate in a formal interview before the
30 board. If the licensee refuses or accepts the invitation for a formal
31 interview and the results indicate that grounds may exist for revocation
32 or suspension, the board shall issue a formal complaint and order that a
33 hearing be held pursuant to title 41, chapter 6, article 10. If, after
34 completing a formal interview, the board finds that the protection of the
35 public requires emergency action, it may order a summary suspension of the
36 license pursuant to section 41-1092.11 pending formal revocation
37 proceedings or other action authorized by this section.

38 ~~G.~~ H. If, after completing a formal interview, the board finds
39 that the information provided under subsection A of this section is
40 insufficient to merit suspension or revocation of the license, it may take
41 any of the following actions:

42 1. Dismiss the complaint.

43 2. Order disciplinary action pursuant to section 32-1263.01,
44 subsection A.

1 3. Enter into a consent agreement with the licensee for
2 disciplinary action.

3 4. Order nondisciplinary continuing education pursuant to section
4 32-1263.01, subsection B.

5 5. Issue a nondisciplinary letter of concern to the licensee.

6 ~~H.~~ I. A copy of the board's order issued pursuant to this section
7 shall be given to the complainant and to the licensee. Pursuant to title
8 41, chapter 6, article 10, the licensee may petition for rehearing or
9 review.

10 ~~I.~~ J. Any person who in good faith makes a report or complaint as
11 provided in this section to the board or to any person or committee acting
12 on behalf of the board is not subject to liability for civil damages as a
13 result of the report.

14 ~~J.~~ K. The board, through its president or the president's
15 designee, may issue subpoenas to compel the attendance of witnesses and
16 the production of documents and may administer oaths, take testimony and
17 receive exhibits in evidence in connection with an investigation initiated
18 by the board or a complaint filed with the board. In case of disobedience
19 to a subpoena, the board may invoke the aid of any court of this state in
20 requiring the attendance and testimony of witnesses and the production of
21 documentary evidence.

22 ~~K.~~ L. Patient records, including clinical records, medical
23 reports, laboratory statements and reports, files, films, reports or oral
24 statements relating to diagnostic findings or treatment of patients, any
25 information from which a patient or a patient's family may be identified
26 or information received and records kept by the board as a result of the
27 investigation procedures taken pursuant to this chapter, are not available
28 to the public.

29 ~~L.~~ M. The board may charge the costs of formal hearings conducted
30 pursuant to title 41, chapter 6, article 10 to a licensee it finds to be
31 in violation of this chapter.

32 ~~M.~~ N. The board may accept the surrender of an active license from
33 a licensee who is subject to a board investigation and who admits in
34 writing to any of the following:

- 35 1. Being unable to safely engage in the practice of dentistry.
36 2. Having committed an act of unprofessional conduct.
37 3. Having violated this chapter or a board rule.

38 ~~N.~~ O. In determining the appropriate disciplinary action under
39 this section, the board may consider any previous nondisciplinary and
40 disciplinary actions against a licensee.

41 ~~O.~~ P. If a licensee WHO IS currently providing dental services for
42 a registered business entity believes that the registered business entity
43 has engaged in unethical conduct as defined pursuant to section 32-1263,
44 subsection D, paragraph 16, the licensee must do both of the following
45 before filing a complaint with the board:

1 The board shall post this policy on the board's website where a person
2 would submit a complaint online.

3 C. The board shall not open an investigation if identifying
4 information regarding the complainant is not provided.

5 Sec. 4. Section 32-2943, Arizona Revised Statutes, is amended to
6 read:

7 32-2943. Complaints; statute of limitations

8 The board may not act on ITS OWN MOTION OR ON any complaint RECEIVED
9 BY THE BOARD in which an allegation of unprofessional conduct or any other
10 violation of this chapter AGAINST A PROFESSIONAL WHO HOLDS AN ARIZONA
11 LICENSE occurred more than ~~seven~~ FOUR years before the complaint is
12 received by the board. This time limitation does not apply to:

13 1. Medical malpractice settlements or judgments OR ALLEGATIONS OF
14 SEXUAL MISCONDUCT OR IF AN INCIDENT OR OCCURRENCE INVOLVED A FELONY,
15 DIVERSION OF A CONTROLLED SUBSTANCE OR IMPAIRMENT WHILE PRACTICING BY THE
16 LICENSEE.

17 2. A BOARD'S CONSIDERATION OF THE SPECIFIC UNPROFESSIONAL CONDUCT
18 RELATED TO A LICENSEE'S FAILURE TO DISCLOSE CONDUCT OR A VIOLATION AS
19 REQUIRED BY LAW.

20 Sec. 5. Section 32-3214, Arizona Revised Statutes, is amended to
21 read:

22 32-3214. Board actions; public access to records; website;
23 compliance deadline

24 A. If a health profession regulatory board dismisses a complaint,
25 the record of that complaint is available to that regulatory board and the
26 public pursuant to section 39-121 but may not appear on the board's
27 website. For the purposes of this subsection, "dismisses a complaint"
28 means that a board does not issue a disciplinary or nondisciplinary order
29 or action against a licensee or certificate holder. A PENDING COMPLAINT
30 OR INVESTIGATION MAY NOT BE DISCLOSED TO THE PUBLIC.

31 ~~B. If a health profession regulatory board issues a nondisciplinary~~
32 ~~order or action against a licensee or certificate holder, the record of~~
33 ~~the nondisciplinary order or action is available to that board and the~~
34 ~~public pursuant to section 39-121, but may not appear on the board's~~
35 ~~website, except that a practice limitation or restriction, and~~
36 ~~documentation relating to that action, may appear on the board's website.~~

37 B. ALL DISCIPLINARY ACTIONS AGAINST A LICENSEE OR CERTIFICATE
38 HOLDER SHALL BE AVAILABLE ON THE HEALTH PROFESSION REGULATORY BOARD'S
39 WEBSITE. AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, IF A
40 HEALTH PROFESSION REGULATORY BOARD ISSUES A FINAL NONDISCIPLINARY ORDER OR
41 ACTION, THE RECORD OF THE FINAL NONDISCIPLINARY ORDER OR ACTION SHALL BE
42 MADE AVAILABLE ON THE BOARD'S WEBSITE FOR FIVE YEARS. LETTERS OF CONCERN
43 AND ADVISORY LETTERS MAY NOT BE MADE AVAILABLE ON THE WEBSITE BUT A COPY
44 OF SUCH LETTERS ARE AVAILABLE TO THE PUBLIC PURSUANT TO SECTION 39-121 AND
45 SHALL BE PROVIDED TO ANY PERSON ON REQUEST.

1 C. If a health profession regulatory board maintains a website, the
2 board must display on its website a statement that a person may obtain
3 additional public records related to any licensee or certificate
4 holder, including dismissed complaints and nondisciplinary actions and
5 orders, by contacting the board directly.

6 D. This section does not prohibit a health profession regulatory
7 board from conducting its authorized duties in a public meeting.

8 E. Subsections A and B of this section do not apply to meeting
9 minutes and notices kept by the board in accordance with the public
10 meeting requirements of title 38, chapter 3, article 3.1.

11 F. A health profession regulatory board must comply with the
12 requirements of this section on or before January 1, ~~2012~~ 2018.

13 Sec. 6. Title 32, chapter 32, article 1, Arizona Revised Statutes,
14 is amended by adding sections 32-3222, 32-3223, 32-3224 and 32-3225, to
15 read:

16 32-3222. Health profession regulatory boards; terms of
17 members; board meeting recordings; employment
18 opportunities; websites

19 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE AND EXCEPT AS
20 PROVIDED IN THIS SUBSECTION, A MEMBER OF A HEALTH PROFESSION REGULATORY
21 BOARD IS NOT ELIGIBLE FOR REAPPOINTMENT TO THAT BOARD ONCE THE PERSON HAS
22 BEEN APPOINTED FOR TWO FULL TERMS, IN ADDITION TO ANY TIME SERVED ON THE
23 BOARD TO FILL A VACANCY. A PERSON MAY BE REAPPOINTED TO A HEALTH
24 PROFESSION REGULATORY BOARD ONCE THE PERSON HAS NOT BEEN ON THE BOARD FOR
25 A PERIOD OF AT LEAST TWO FULL TERMS. THIS SUBSECTION APPLIES TO THE STATE
26 BOARD OF DENTAL EXAMINERS, THE ARIZONA MEDICAL BOARD, THE ARIZONA STATE
27 BOARD OF NURSING AND THE ARIZONA STATE BOARD OF PHARMACY. A BOARD MEMBER
28 WHO IS SERVING ON AN AFFECTED BOARD ON THE EFFECTIVE DATE OF THIS SECTION
29 MAY COMPLETE ANY TERM TO WHICH THE MEMBER HAS BEEN APPOINTED REGARDLESS OF
30 THE NUMBER OF TERMS THE MEMBER HAS SERVED.

31 B. EACH HEALTH PROFESSION REGULATORY BOARD SHALL MAKE A DIGITAL
32 RECORDING OF ALL OPEN MEETINGS OF THE BOARD AND SHALL MAINTAIN THESE
33 RECORDINGS FOR THREE YEARS AFTER THE DATE OF THE RECORDING. THE HEALTH
34 PROFESSION REGULATORY BOARD, WITHIN FIVE BUSINESS DAYS AFTER THE BOARD
35 MEETING THAT IS THE SUBJECT OF THE RECORDING, SHALL EITHER:

36 1. POST THE DIGITAL RECORDING ON THE BOARD'S WEBSITE.

37 2. POST A NOTICE ON THE BOARD'S WEBSITE OF THE AVAILABILITY OF THE
38 DIGITAL RECORDING.

39 C. EACH HEALTH PROFESSION REGULATORY BOARD SHALL PROVIDE ON THE
40 BOARD'S WEBSITE A LIST OF ALL BOARD-SPECIFIC CONTRACT EMPLOYMENT
41 OPPORTUNITIES AND A LINK TO THE STATE PROCUREMENT OFFICE TO APPLY FOR
42 THOSE POSITIONS.

1 32-3223. Health profession regulatory boards; nondisciplinary
2 confidential monitoring programs

3 A. EACH HEALTH PROFESSION REGULATORY BOARD MAY ESTABLISH A
4 NONDISCIPLINARY CONFIDENTIAL PROGRAM, INCLUDING ENROLLMENT CRITERIA FOR
5 PARTICIPATION IN THE PROGRAM, FOR THE MONITORING OF A LICENSEE OR
6 CERTIFICATE HOLDER WHO HAS BEEN REPORTED TO OR WHO VOLUNTARILY REPORTS TO
7 THE LICENSEE'S OR CERTIFICATE HOLDER'S REGULATORY BOARD AND WHO MAY BE
8 CHEMICALLY DEPENDENT OR HAVE A SUBSTANCE MISUSE HISTORY OR WHO MAY HAVE A
9 MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL OR BEHAVIORAL HEALTH DISORDER THAT MAY
10 IMPACT THE LICENSEE'S OR CERTIFICATE HOLDER'S ABILITY TO SAFELY PRACTICE
11 OR PERFORM HEALTH CARE TASKS.

12 B. A PROGRAM ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION
13 MAY INCLUDE EDUCATION, INTERVENTION, THERAPEUTIC TREATMENT AND
14 POSTTREATMENT MONITORING AND SUPPORT. THE LICENSEE OR CERTIFICATE HOLDER
15 IS RESPONSIBLE FOR THE COSTS ASSOCIATED WITH ANY TREATMENT, REHABILITATION
16 OR MONITORING UNDER A PROGRAM ESTABLISHED PURSUANT TO SUBSECTION A OF THIS
17 SECTION. THE HEALTH PROFESSION REGULATORY BOARD AND THE LICENSEE OR
18 CERTIFICATE HOLDER MAY AGREE TO ENTER INTO A NONDISCIPLINARY CONFIDENTIAL
19 STIPULATED AGREEMENT FOR PARTICIPATION IN A PROGRAM ESTABLISHED PURSUANT
20 TO SUBSECTION A OF THIS SECTION.

21 C. THE BOARD MAY TAKE FURTHER ACTION IF THE LICENSEE OR CERTIFICATE
22 HOLDER REFUSES TO ENTER INTO A NONDISCIPLINARY CONFIDENTIAL STIPULATED
23 AGREEMENT WITH THE BOARD OR FAILS TO COMPLY WITH THE AGREEMENT'S TERMS.
24 THE CONFIDENTIALITY REQUIREMENTS OF THIS SECTION DO NOT APPLY IF THE
25 LICENSEE OR CERTIFICATE HOLDER DOES NOT COMPLY WITH THE STIPULATED
26 AGREEMENT.

27 32-3224. Complaints; time limitation on filing

28 NOTWITHSTANDING ANY TIME LIMITATION TO THE CONTRARY IN THIS TITLE, A
29 HEALTH PROFESSION REGULATORY BOARD MAY NOT ACT ON ITS OWN MOTION OR ON ANY
30 COMPLAINT RECEIVED BY THE BOARD IN WHICH AN ALLEGATION OF UNPROFESSIONAL
31 CONDUCT OR ANY OTHER VIOLATION OF THE CHAPTER THAT APPLIES TO A
32 PROFESSIONAL WHO HOLDS AN ARIZONA LICENSE OR CERTIFICATE OCCURRED MORE
33 THAN FOUR YEARS BEFORE THE COMPLAINT IS RECEIVED BY THE BOARD. THIS TIME
34 LIMITATION DOES NOT APPLY TO:

35 1. MEDICAL MALPRACTICE SETTLEMENTS OR JUDGMENTS OR ALLEGATIONS OF
36 SEXUAL MISCONDUCT OR IF SUCH INCIDENT OR OCCURRENCE INVOLVED A FELONY,
37 DIVERSION OF A CONTROLLED SUBSTANCE OR IMPAIRMENT WHILE PRACTICING BY THE
38 LICENSEE OR CERTIFICATE HOLDER.

39 2. A BOARD'S CONSIDERATION OF THE SPECIFIC UNPROFESSIONAL CONDUCT
40 RELATED TO A LICENSEE'S OR CERTIFICATE HOLDER'S FAILURE TO DISCLOSE
41 CONDUCT OR A VIOLATION AS REQUIRED BY LAW.

42 32-3225. Types of disciplinary action; reimbursement

43 IN ADDITION TO ANY OTHER DISCIPLINARY ACTIONS THAT MAY BE TAKEN, A
44 HEALTH PROFESSION REGULATORY BOARD MAY IMPOSE A REQUIREMENT FOR A
45 REIMBURSEMENT OF FEES PAID TO A LICENSEE OR CERTIFICATE HOLDER BY OR ON

1 BEHALF OF THE PATIENT, IF REQUESTED BY THE PATIENT ON A COMPLAINT FORM
2 PRESCRIBED BY THE BOARD.

3 Sec. 7. Section 32-3281, Arizona Revised Statutes, is amended to
4 read:

5 32-3281. Disciplinary action; investigations; hearings; civil
6 penalty; timely complaints; burden of proof

7 A. The board, on its own motion or on a complaint, may investigate
8 any evidence that appears to show that a licensee is or may be
9 incompetent, is or may be guilty of unprofessional conduct or is or may be
10 mentally or physically unable to safely engage in the practice of
11 behavioral health. As part of its investigation, the board may hold an
12 investigational meeting pursuant to this chapter. Any person may, and a
13 licensee and any entity licensed by the office of behavioral health
14 licensure shall, report to the board any information that would cause a
15 reasonable licensee to believe that another licensee is guilty of
16 unprofessional conduct or is physically or mentally unable to provide
17 behavioral health services competently or safely. Any person or entity
18 that reports or provides information to the board in good faith is not
19 subject to an action for civil damages. It is an act of unprofessional
20 conduct for any licensee to fail to report as required by this section.
21 The board shall report to the office of behavioral health licensure in the
22 department of health services any entity licensed by the office of
23 behavioral health licensure that fails to report as required by this
24 section. For complaints related to conduct that is inconsistent with
25 professional standards or ethics, scope of practice or standard of care,
26 the board may consult with one or more licensed or retired behavioral
27 health professionals of the same profession as the licensee to review
28 complaints and make recommendations to the board.

29 B. On determination of reasonable cause, the board shall require,
30 at the licensee's own expense, any combination of mental, physical or
31 psychological examinations, assessments or skills evaluations necessary to
32 determine the licensee's competence or ability to safely engage in the
33 practice of behavioral health and conduct necessary investigations,
34 including investigational interviews between representatives of the board
35 and the licensee, to fully inform ~~itself~~ THE BOARD with respect to any
36 information filed with the board under subsection A of this section.
37 These examinations may include biological fluid testing. The board may
38 require the licensee, at the licensee's expense, to undergo assessment by
39 a rehabilitative, retraining or assessment program approved by the board.

40 C. If the board finds, based on the information received pursuant
41 to subsection A or B of this section, that the public health, safety or
42 welfare imperatively requires emergency action, and incorporates a finding
43 to that effect in its order, the board may restrict, limit or order a
44 summary suspension of a license pending proceedings for revocation or
45 other action. If the board takes action pursuant to this subsection, it

1 must also serve the licensee with a written notice that states the charges
2 and that the licensee is entitled to a formal hearing before the board or
3 an administrative law judge within sixty days.

4 D. If after completing an investigation the board finds that the
5 information provided is not of sufficient seriousness to merit
6 disciplinary action against the licensee, the board shall either:

7 1. Dismiss the complaint if, in the opinion of the board, the
8 complaint is without merit.

9 2. File a letter of concern and dismiss the complaint. The
10 licensee may file a written response with the board within thirty days
11 after the licensee receives the letter of concern.

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

16 E. A complaint dismissed by the board pursuant to subsection D,
17 paragraph 1 of this section is not a complaint of unprofessional conduct
18 and shall not be disclosed by the board as a complaint on the licensee's
19 complaint history.

20 F. If after completing its investigation the board believes that
21 the information is or may be true, the board may enter into a consent
22 agreement with the licensee to limit or restrict the licensee's practice
23 or to rehabilitate the licensee, protect the public and ensure the
24 licensee's ability to safely engage in the practice of behavioral health.
25 A consent agreement may also require the licensee to successfully complete
26 a board approved rehabilitative, retraining or assessment program.

27 G. If the board finds that the information provided pursuant to
28 subsection A of this section is or may be true, the board may request a
29 formal interview with the licensee. If the licensee refuses the
30 invitation for a formal interview or accepts and the results indicate that
31 grounds may exist for revocation or suspension of the licensee's license
32 for more than twelve months, the board shall issue a formal complaint and
33 order that a hearing be held pursuant to title 41, chapter 6, article 10.
34 If after completing a formal interview the board finds that the protection
35 of the public requires emergency action, the board may order a summary
36 suspension of the licensee's license pending formal revocation proceedings
37 or other action authorized by this section.

38 H. If after completing the formal interview the board finds the
39 information provided is not of sufficient seriousness to merit suspension
40 for more than twelve months or revocation of the license, the board may
41 take the following actions:

42 1. Dismiss if, in the opinion of the board, the information is
43 without merit.

1 2. File a letter of concern and dismiss the complaint. The
2 licensee may file a written response with the board within thirty days
3 after the licensee receives the letter of concern.

4 3. Issue a decree of censure. A decree of censure is an official
5 action against the licensee's license and may include a requirement for
6 restitution of fees to a client resulting from violations of this chapter
7 or rules adopted pursuant to this chapter.

8 4. Fix a period and terms of probation best adapted to protect the
9 public health and safety and rehabilitate or educate the licensee
10 concerned. Probation may include temporary suspension not to exceed
11 twelve months, restriction of the licensee's license to practice
12 behavioral health, a requirement for restitution of fees to a client or
13 education or rehabilitation at the licensee's own expense. If a licensee
14 fails to comply with the terms of probation, the board shall serve the
15 licensee with a written notice that states that the licensee is subject to
16 a formal hearing based on the information considered by the board at the
17 formal interview and any other acts or conduct alleged to be in violation
18 of this chapter or rules adopted by the board pursuant to this chapter,
19 including noncompliance with the terms of probation or a consent
20 agreement.

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

25 I. If the board finds that the information provided in subsection A
26 or G of this section warrants suspension or revocation of a license issued
27 under this chapter, the board shall initiate formal proceedings pursuant
28 to title 41, chapter 6, article 10.

29 J. In a formal interview pursuant to subsection G of this section
30 or in a hearing pursuant to subsection I of this section, the board in
31 addition to any other action may impose a civil penalty not to exceed one
32 thousand dollars for each violation of this chapter or a rule adopted
33 under this chapter.

34 K. A letter of concern is a public document.

35 L. A licensee who after a formal hearing is found by the board to
36 be guilty of unprofessional conduct, to be mentally or physically unable
37 to safely engage in the practice of behavioral health or to be
38 professionally incompetent is subject to censure, probation as provided in
39 this section, suspension of license or revocation of license or any
40 combination of these, including a stay of action, and for a period of time
41 or permanently and under conditions as the board deems appropriate for the
42 protection of the public health and safety and just in the circumstance.
43 The board may charge all costs incurred in the course of the investigation
44 and formal hearing to the licensee it finds is in violation of this
45 chapter. The board shall deposit, pursuant to sections 35-146 and 35-147,

1 monies collected pursuant to this subsection in the board of behavioral
2 health examiners fund established by section 32-3254.

3 M. If the board during the course of any investigation determines
4 that a criminal violation may have occurred involving the delivery of
5 behavioral health services, the board shall make the evidence of
6 violations available to the appropriate criminal justice agency for its
7 consideration.

8 N. The board shall deposit, pursuant to sections 35-146 and 35-147,
9 all monies collected from civil penalties paid pursuant to this chapter in
10 the state general fund.

11 O. Notice of a complaint and hearing is effective by a true copy of
12 the notice being sent by certified mail to the licensee's last known
13 address of record in the board's files. Notice of the complaint and
14 hearing is complete on the date of its deposit in the mail.

15 P. In determining the appropriate disciplinary action under this
16 section, the board shall consider all previous nondisciplinary and
17 disciplinary actions against a licensee.

18 Q. The board may defer action with regard to an impaired licensee
19 who voluntarily signs an agreement, in a form satisfactory to the board,
20 agreeing to practice restrictions and treatment and monitoring programs
21 deemed necessary by the board to protect the public health and safety. A
22 licensee who is impaired and who does not agree to enter into an agreement
23 with the board is subject to other action as provided pursuant to this
24 chapter.

25 R. Subject to an order duly entered by the board, a person whose
26 license to practice behavioral health has been suspended or restricted
27 pursuant to this chapter, whether voluntarily or by action of the board,
28 may at reasonable intervals apply to the board for reinstatement of the
29 license. The person shall submit the application in writing and in the
30 form prescribed by the board. After conducting an investigation and
31 hearing, the board may grant or deny the application or modify the
32 original finding to reflect any circumstances that have changed
33 sufficiently to warrant modification. The board may require the applicant
34 to pass an examination or complete board imposed continuing education
35 requirements or may impose any other sanctions the board deems appropriate
36 for reentry into the practice of behavioral health.

37 S. A person whose license is revoked, suspended or not renewed must
38 return the license to the offices of the board within ten days after
39 notice of that action.

40 T. The board may enforce a civil penalty imposed pursuant to this
41 section in the superior court in Maricopa county.

42 U. For complaints being brought before the full board, the
43 information released to the public regarding an ongoing investigation must
44 clearly indicate that the investigation is a pending complaint and must
45 include the following statement:

1 Pending complaints represent unproven allegations. On
2 investigation, many complaints are found to be without merit
3 or not of sufficient seriousness to merit disciplinary action
4 against the licensee and are dismissed.

5 V. The board shall not act on ITS OWN MOTION OR ON any complaint
6 RECEIVED BY THE BOARD in which an allegation of unprofessional conduct or
7 any other violation of this chapter AGAINST A PROFESSIONAL WHO HOLDS AN
8 ARIZONA LICENSE occurred more than ~~seven~~ FOUR years before the complaint
9 is received by the board. The time limitation does not apply to:

10 1. Malpractice settlements or judgments OR ALLEGATIONS OF SEXUAL
11 MISCONDUCT OR IF AN INCIDENT OR OCCURRENCE INVOLVED A FELONY, DIVERSION OF
12 A CONTROLLED SUBSTANCE OR IMPAIRMENT WHILE PRACTICING BY THE LICENSEE.

13 2. A BOARD'S CONSIDERATION OF THE SPECIFIC UNPROFESSIONAL CONDUCT
14 RELATED TO A LICENSEE'S FAILURE TO DISCLOSE CONDUCT OR A VIOLATION AS
15 REQUIRED BY LAW.

16 W. The board shall not open an investigation if identifying
17 information regarding the complainant is not provided.

18 X. Except for disciplinary matters prescribed by section 32-3251,
19 paragraph 16, subdivision (v), the board has the burden of proof by clear
20 and convincing evidence for disciplinary matters brought pursuant to this
21 chapter.

22 Sec. 8. Applicability

23 The time limitation specified in sections 32-1263.02, 32-1451.03,
24 32-2943 and 32-3281, Arizona Revised Statutes, as amended by this act, and
25 section 32-3224, Arizona Revised Statutes, as added by this act, applies
26 to complaints filed with a health profession regulatory board on or after
27 January 1, 2018.

28 Sec. 9. Effective date

29 This act is effective from and after December 31, 2017.

APPROVED BY THE GOVERNOR APRIL 24, 2017.

FILED IN IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2017.

Passed the House April 17, 2017,

Passed the Senate March 6, 2017,

by the following vote: 58 April 17 Ayes,

by the following vote: 30 Ayes,

0 Nays, 1 Not Voting
vacant

0 Nays, 0 Not Voting

[Signature]
Speaker of the House
[Signature]
Chief Clerk of the House

[Signature]
President of the Senate
[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1452

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 2017

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Steven B. Yarbrough
President of the Senate

Susann Owens
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

19th day of April, 2017

at 11:15 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 24th day of

April, 2017

at 9:56 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 24 day of April, 2017

at 12:26 o'clock P. M.

[Signature]
Secretary of State