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House Engrossed

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

# HOUSE BILL 2025

AN ACT

AMENDING SECTIONS 32-1401, 32-1405, 32-1451 AND 32-1452, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 13, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1452.01; RELATING TO THE ARIZONA MEDICAL BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

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

2 Section 1. Section 32-1401, Arizona Revised Statutes, is amended to  
3 read:

4 32-1401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Active license" means a valid and existing license to practice  
7 medicine.

8 2. "Adequate records" means legible medical records containing, at a  
9 minimum, sufficient information to identify the patient, support the  
10 diagnosis, justify the treatment, accurately document the results, indicate  
11 advice and cautionary warnings provided to the patient and provide sufficient  
12 information for another practitioner to assume continuity of the patient's  
13 care at any point in the course of treatment.

14 3. "Advisory letter" means a nondisciplinary letter to notify a  
15 licensee that either:

16 (a) While there is insufficient evidence to support disciplinary  
17 action the board believes that continuation of the activities that led to the  
18 investigation may result in further board action against the licensee.

19 (b) The violation is a minor or technical violation that is not of  
20 sufficient merit to warrant disciplinary action.

21 (c) While the licensee has demonstrated substantial compliance through  
22 rehabilitation or remediation that has mitigated the need for disciplinary  
23 action, the board believes that repetition of the activities that led to the  
24 investigation may result in further board action against the licensee.

25 4. "Approved hospital internship, residency or clinical fellowship  
26 program" means a program at a hospital that at the time the training occurred  
27 was legally incorporated and that had a program that was approved for  
28 internship, fellowship or residency training by the accreditation council for  
29 graduate medical education, the association of American medical colleges, the  
30 royal college of physicians and surgeons of Canada or any similar body in the  
31 United States or Canada approved by the board whose function is that of  
32 approving hospitals for internship, fellowship or residency training.

33 5. "Approved school of medicine" means any school or college offering  
34 a course of study that, on successful completion, results in the degree of  
35 doctor of medicine and whose course of study has been approved or accredited  
36 by an educational or professional association, recognized by the board,  
37 including the association of American medical colleges, the association of  
38 Canadian medical colleges or the American medical association.

39 6. "Board" means the Arizona medical board.

40 7. "Completed application" means that the applicant has supplied all  
41 required fees, information and correspondence requested by the board on forms  
42 and in a manner acceptable to the board.

43 8. "Direct supervision" means that a physician, physician assistant  
44 licensed pursuant to chapter 25 of this title or nurse practitioner certified  
45 pursuant to chapter 15 of this title is within the same room or office suite

1 as the medical assistant in order to be available for consultation regarding  
2 those tasks the medical assistant performs pursuant to section 32-1456.

3 9. "Dispense" means the delivery by a doctor of medicine of a  
4 prescription drug or device to a patient, except for samples packaged for  
5 individual use by licensed manufacturers or repackagers of drugs, and  
6 includes the prescribing, administering, packaging, labeling and security  
7 necessary to prepare and safeguard the drug or device for delivery.

8 10. "Doctor of medicine" means a natural person holding a license,  
9 registration or permit to practice medicine pursuant to this chapter.

10 11. "Full-time faculty member" means a physician employed full time as  
11 a faculty member while holding the academic position of assistant professor  
12 or a higher position at an approved school of medicine.

13 12. "Health care institution" means any facility as defined in section  
14 36-401, any person authorized to transact disability insurance, as defined in  
15 title 20, chapter 6, article 4 or 5, any person who is issued a certificate  
16 of authority pursuant to title 20, chapter 4, article 9 or any other  
17 partnership, association or corporation that provides health care to  
18 consumers.

19 13. "Immediate family" means the spouse, natural or adopted children,  
20 father, mother, brothers and sisters of the doctor and the natural or adopted  
21 children, father, mother, brothers and sisters of the doctor's spouse.

22 14. "Letter of reprimand" means a disciplinary letter that is issued by  
23 the board and that informs the physician that the physician's conduct  
24 violates state or federal law and may require the board to monitor the  
25 physician.

26 15. "Limit" means **TAKING** a nondisciplinary action that alters the  
27 physician's practice or professional activities if the board determines that  
28 there is evidence that the physician is or may be mentally or physically  
29 unable to safely engage in the practice of medicine.

30 16. "Medical assistant" means an unlicensed person who meets the  
31 requirements of section 32-1456, has completed an education program approved  
32 by the board, assists in a medical practice under the supervision of a doctor  
33 of medicine, physician assistant or nurse practitioner and performs delegated  
34 procedures commensurate with the assistant's education and training but does  
35 not diagnose, interpret, design or modify established treatment programs or  
36 perform any functions that would violate any statute applicable to the  
37 practice of medicine.

38 17. "Medical peer review" means:

39 (a) The participation by a doctor of medicine in the review and  
40 evaluation of the medical management of a patient and the use of resources  
41 for patient care.

42 (b) Activities relating to a health care institution's decision to  
43 grant or continue privileges to practice at that institution.

44 18. "Medically incompetent" means a person who the board determines is  
45 incompetent based on a variety of factors including:

1 (a) A lack of sufficient medical knowledge or skills, or both, to a  
2 degree likely to endanger the health of patients.

3 (b) When considered with other indications of medical incompetence,  
4 failing to obtain a scaled score of at least seventy-five per cent on the  
5 written special purpose licensing examination ~~administered by the board~~.

6 19. "Medicine" means allopathic medicine as practiced by the recipient  
7 of a degree of doctor of medicine.

8 20. "OFFICE BASED SURGERY" MEANS A MEDICAL PROCEDURE CONDUCTED IN A  
9 PHYSICIAN'S OFFICE OR OTHER OUTPATIENT SETTING THAT IS NOT PART OF A LICENSED  
10 HOSPITAL OR LICENSED AMBULATORY SURGICAL CENTER.

11 ~~20-~~ 21. "Physician" means a doctor of medicine licensed pursuant to  
12 this chapter.

13 ~~21-~~ 22. "Practice of medicine" means the diagnosis, the treatment or  
14 the correction of or the attempt or the holding of oneself out as being able  
15 to diagnose, treat or correct any and all human diseases, injuries, ailments,  
16 infirmities, deformities, physical or mental, real or imaginary, by any  
17 means, methods, devices or instrumentalities, except as the same may be among  
18 the acts or persons not affected by this chapter. The practice of medicine  
19 includes the practice of medicine alone or the practice of surgery alone, or  
20 both.

21 ~~22-~~ 23. "Restrict" means TAKING a disciplinary action that alters the  
22 physician's practice or professional activities if the board determines that  
23 there is evidence that the physician is or may be medically incompetent or  
24 guilty of unprofessional conduct.

25 ~~23-~~ 24. "Special purpose licensing examination" means an examination  
26 developed by the national board of medical examiners on behalf of the  
27 federation of state medical boards for use by state licensing boards to test  
28 the basic medical competence of physicians who are applying for licensure and  
29 who have been in practice for a considerable period of time in another  
30 jurisdiction and to determine the competence of a physician under  
31 investigation by a state licensing board.

32 ~~24-~~ 25. "Teaching hospital's accredited graduate medical education  
33 program" means that the hospital is incorporated and has an internship,  
34 fellowship or residency training program that is accredited by the  
35 accreditation council for graduate medical education, the American medical  
36 association, the association of American medical colleges, the royal college  
37 of physicians and surgeons of Canada or a similar body in the United States  
38 or Canada approved by the board whose function is that of approving hospitals  
39 for internship, fellowship or residency training.

40 ~~25-~~ 26. "Teaching license" means a valid license to practice medicine  
41 as a full-time faculty member of an approved school of medicine or a teaching  
42 hospital's accredited graduate medical education program.

43 ~~26-~~ 27. "Unprofessional conduct" includes the following, whether  
44 occurring in this state or elsewhere:

- 1 (a) Violating any federal or state laws, ~~or~~ rules ~~and~~ OR regulations  
2 applicable to the practice of medicine.
- 3 (b) Intentionally disclosing a professional secret or intentionally  
4 disclosing a privileged communication except as either act may otherwise be  
5 required by law.
- 6 (c) False, fraudulent, deceptive or misleading advertising by a doctor  
7 of medicine or the doctor's staff, employer or representative.
- 8 (d) Committing a felony, whether or not involving moral turpitude, or  
9 a misdemeanor involving moral turpitude. In either case, conviction by any  
10 court of competent jurisdiction or a plea of no contest is conclusive  
11 evidence of the commission.
- 12 (e) Failing or refusing to maintain adequate records on a patient.
- 13 (f) Habitual intemperance in the use of alcohol or habitual substance  
14 abuse.
- 15 (g) Using controlled substances except if prescribed by another  
16 physician for use during a prescribed course of treatment.
- 17 (h) Prescribing or dispensing controlled substances to members of the  
18 physician's immediate family.
- 19 (i) Prescribing, dispensing or administering schedule II controlled  
20 substances as defined in section 36-2513 including amphetamines and similar  
21 schedule II sympathomimetic drugs in the treatment of exogenous obesity for a  
22 period in excess of thirty days in any one year, or the non-therapeutic use  
23 of injectable amphetamines.
- 24 (j) Prescribing, dispensing or administering any controlled substance  
25 or prescription-only drug for other than accepted therapeutic purposes.
- 26 (k) Signing a blank, undated or predated prescription form.
- 27 (l) Conduct that the board determines is gross malpractice, repeated  
28 malpractice or any malpractice resulting in the death of a patient.
- 29 (m) Representing that a manifestly incurable disease or infirmity can  
30 be permanently cured, or that any disease, ailment or infirmity can be cured  
31 by a secret method, procedure, treatment, medicine or device, if such is not  
32 the fact.
- 33 (n) Refusing to divulge to the board on demand the means, method,  
34 procedure, modality of treatment or medicine used in the treatment of a  
35 disease, injury, ailment or infirmity.
- 36 (o) Action that is taken against a doctor of medicine by another  
37 licensing or regulatory jurisdiction due to that doctor's mental or physical  
38 inability to engage safely in the practice of medicine, the doctor's medical  
39 incompetence or for unprofessional conduct as defined by that jurisdiction  
40 and that corresponds directly or indirectly to an act of unprofessional  
41 conduct prescribed by this paragraph. The action taken may include refusing,  
42 denying, revoking or suspending a license by that jurisdiction or a  
43 surrendering of a license to that jurisdiction, otherwise limiting,  
44 restricting or monitoring a licensee by that jurisdiction or placing a  
45 licensee on probation by that jurisdiction.

1 (p) Sanctions imposed by an agency of the federal government,  
2 including restricting, suspending, limiting or removing a person from the  
3 practice of medicine or restricting that person's ability to obtain financial  
4 remuneration.

5 (q) Any conduct or practice that is or might be harmful or dangerous  
6 to the health of the patient or the public.

7 (r) Violating a formal order, probation, consent agreement or  
8 stipulation issued or entered into by the board or its executive director  
9 under ~~the provisions of~~ this chapter.

10 (s) Violating or attempting to violate, directly or indirectly, or  
11 assisting in or abetting the violation of or conspiring to violate any  
12 provision of this chapter.

13 (t) Knowingly making any false or fraudulent statement, written or  
14 oral, in connection with the practice of medicine or if applying for  
15 privileges or renewing an application for privileges at a health care  
16 institution.

17 (u) Charging a fee for services not rendered or dividing a  
18 professional fee for patient referrals among health care providers or health  
19 care institutions or between these providers and institutions or a  
20 contractual arrangement that has the same effect.

21 (v) Obtaining a fee by fraud, deceit or misrepresentation.

22 (w) Charging or collecting a clearly excessive fee. In determining if  
23 a fee is clearly excessive, the board shall consider the fee or range of fees  
24 customarily charged in the state for similar services in light of modifying  
25 factors such as the time required, the complexity of the service and the  
26 skill requisite to perform the service properly. This subdivision does not  
27 apply if there is a clear written contract for a fixed fee between the  
28 physician and the patient that has been entered into before the provision of  
29 service.

30 (x) Fetal experiments conducted in violation of section 36-2302.

31 (y) The use of experimental forms of diagnosis and treatment without  
32 adequate informed patient consent, and without conforming to generally  
33 accepted experimental criteria, including protocols, detailed records,  
34 periodic analysis of results and periodic review by a medical peer review  
35 committee as approved by the federal food and drug administration or its  
36 successor agency.

37 (z) Engaging in sexual conduct with a current patient or with a former  
38 patient within six months after the last medical consultation unless the  
39 patient was the licensee's spouse at the time of the contact or, immediately  
40 preceding the physician-patient relationship, was in a dating or engagement  
41 relationship with the licensee. For the purposes of this subdivision,  
42 "sexual conduct" includes:

43 (i) Engaging in or soliciting sexual relationships, whether consensual  
44 or nonconsensual.

- 1           (ii) Making sexual advances, requesting sexual favors or engaging in  
2 any other verbal conduct or physical contact of a sexual nature.
- 3           (iii) Intentionally viewing a completely or partially disrobed patient  
4 in the course of treatment if the viewing is not related to patient diagnosis  
5 or treatment under current practice standards.
- 6           (aa) Procuring or attempting to procure a license to practice medicine  
7 or a license renewal by fraud, by misrepresentation or by knowingly taking  
8 advantage of the mistake of another person or an agency.
- 9           (bb) Representing or holding oneself out as being a medical specialist  
10 when such is not the fact.
- 11           (cc) Maintaining a professional connection with or lending one's name  
12 to enhance or continue the activities of an illegal practitioner of medicine.
- 13           (dd) Failing to furnish information in a timely manner to the board or  
14 the board's investigators or representatives if legally requested by the  
15 board.
- 16           (ee) Failing to allow properly authorized board personnel on demand to  
17 examine and have access to documents, reports and records maintained by the  
18 physician that relate to the physician's medical practice or medically  
19 related activities.
- 20           (ff) Knowingly failing to disclose to a patient on a form that is  
21 prescribed by the board and that is dated and signed by the patient or  
22 guardian acknowledging that the patient or guardian has read and understands  
23 that the doctor has a direct financial interest in a separate diagnostic or  
24 treatment agency or in nonroutine goods or services that the patient is being  
25 prescribed and if the prescribed treatment, goods or services are available  
26 on a competitive basis. This subdivision does not apply to a referral by one  
27 doctor of medicine to another doctor of medicine within a group of doctors of  
28 medicine practicing together.
- 29           (gg) Using chelation therapy in the treatment of arteriosclerosis or  
30 as any other form of therapy, with the exception of treatment of heavy metal  
31 poisoning, without:
- 32           (i) Adequate informed patient consent.
- 33           (ii) Conforming to generally accepted experimental criteria, including  
34 protocols, detailed records, periodic analysis of results and periodic review  
35 by a medical peer review committee.
- 36           (iii) Approval by the federal food and drug administration or its  
37 successor agency.
- 38           (hh) Prescribing, dispensing or administering anabolic-androgenic  
39 steroids to a person for other than therapeutic purposes.
- 40           (ii) Lack of or inappropriate direction, collaboration or direct  
41 supervision of a medical assistant or a licensed, certified or registered  
42 health care provider employed by, supervised by or assigned to the physician.
- 43           (jj) Knowingly making a false or misleading statement to the board or  
44 on a form required by the board or in a written correspondence, including  
45 attachments, with the board.

- 1 (kk) Failing to dispense drugs and devices in compliance with article  
2 6 of this chapter.
- 3 (ll) Conduct that the board determines is gross negligence, repeated  
4 negligence or negligence resulting in harm to or the death of a patient.
- 5 (mm) The representation by a doctor of medicine or the doctor's staff,  
6 employer or representative that the doctor is boarded or board certified if  
7 this is not true or the standing is not current or without supplying the full  
8 name of the specific agency, organization or entity granting this standing.
- 9 (nn) Refusing to submit to a body fluid examination **OR ANY OTHER**  
10 **EXAMINATION KNOWN TO DETECT THE PRESENCE OF ALCOHOL OR OTHER DRUGS** as  
11 required by the board pursuant to section 32-1452 or pursuant to a board  
12 investigation into a doctor of medicine's alleged substance abuse.
- 13 (oo) Failing to report in writing to the Arizona medical board or the  
14 Arizona regulatory board of physician assistants any evidence that a doctor  
15 of medicine or a physician assistant is or may be medically incompetent,  
16 guilty of unprofessional conduct or mentally or physically unable to safely  
17 practice medicine or to perform as a physician assistant.
- 18 (pp) The failure of a physician who is the chief executive officer,  
19 the medical director or the medical chief of staff of a health care  
20 institution to report in writing to the board that the hospital privileges of  
21 a doctor of medicine have been denied, revoked, suspended, supervised or  
22 limited because of actions by the doctor that appear to show that the doctor  
23 is or may be medically incompetent, is or may be guilty of unprofessional  
24 conduct or is or may be unable to engage safely in the practice of medicine.
- 25 (qq) Representing oneself to be a current member of the board, its  
26 staff or a board medical consultant if this is not true.
- 27 (rr) Failing to make patient medical records in the physician's  
28 possession promptly available to a physician assistant, a nurse practitioner,  
29 a person licensed pursuant to this chapter or a podiatrist, chiropractor,  
30 naturopathic physician, osteopathic physician or homeopathic physician  
31 licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper  
32 authorization to do so from the patient, a minor patient's parent, the  
33 patient's legal guardian or the patient's authorized representative or  
34 failing to comply with title 12, chapter 13, article 7.1.
- 35 (ss) Prescribing, dispensing or furnishing a prescription medication  
36 or a prescription-only device as defined in section 32-1901 to a person  
37 unless the licensee first conducts a physical examination of that person or  
38 has previously established a doctor-patient relationship. This subdivision  
39 does not apply to:
- 40 (i) A physician who provides temporary patient supervision on behalf  
41 of the patient's regular treating licensed health care professional.
- 42 (ii) Emergency medical situations as defined in section 41-1831.
- 43 (iii) Prescriptions written to prepare a patient for a medical  
44 examination.

1 (iv) Prescriptions written or prescription medications issued for use  
2 by a county or tribal public health department for immunization programs,  
3 emergency treatment, in response to an infectious disease investigation,  
4 public health emergency, infectious disease outbreak or act of bioterrorism.  
5 For the purposes of this item, "bioterrorism" has the same meaning ~~as~~  
6 prescribed in section 36-781.

7 (tt) PERFORMING OFFICE BASED SURGERY USING INTRAVENOUS SEDATION IN  
8 VIOLATION OF BOARD RULES.

9 (uu) PRACTICING MEDICINE UNDER A FALSE OR ASSUMED NAME IN THIS STATE.  
10 Sec. 2. Section 32-1405, Arizona Revised Statutes, is amended to read:  
11 32-1405. Executive director; compensation; duties; appeal to  
12 the board

13 A. The board shall appoint an executive director who shall serve at  
14 the pleasure of the board. The executive director shall not be a board  
15 member, except that the board may authorize the executive director to  
16 represent the board and to vote on behalf of the board at meetings of the  
17 federation of state medical boards of the United States.

18 B. The executive director is eligible to receive compensation set by  
19 the board within the range determined under section 38-611.

20 C. The executive director or the executive director's designee shall:  
21 1. Employ, evaluate, dismiss, discipline and direct professional,  
22 clerical, technical, investigative and administrative personnel necessary to  
23 carry on the work of the board.

24 2. Set compensation for board employees within the range determined  
25 under section 38-611.

26 3. As directed by the board, prepare and submit recommendations for  
27 amendments to the medical practice act for consideration by the legislature.

28 4. Appoint and employ medical consultants and agents necessary to  
29 conduct investigations, gather information and perform those duties the  
30 executive director determines are necessary and appropriate to enforce this  
31 chapter.

32 5. Issue licenses, registrations and permits to applicants who meet  
33 the requirements of this chapter.

34 6. Manage the board's offices.

35 7. Prepare minutes, records, reports, registries, directories, books  
36 and newsletters and record all board transactions and orders.

37 8. Collect all monies due and payable to the board.

38 9. Pay all bills for authorized expenditures of the board and its  
39 staff.

40 10. Prepare an annual budget.

41 11. Submit a copy of the budget each year to the governor, the speaker  
42 of the house of representatives and the president of the senate.

43 12. Initiate an investigation if evidence appears to demonstrate that a  
44 physician may be engaged in unprofessional conduct or may be medically  
45 incompetent or mentally or physically unable to safely practice medicine.

- 1           13. Issue subpoenas if necessary to compel the attendance and testimony  
2 of witnesses and the production of books, records, documents and other  
3 evidence.
- 4           14. Provide assistance to the attorney general in preparing and sign  
5 and execute disciplinary orders, rehabilitative orders and notices of  
6 hearings as directed by the board.
- 7           15. Enter into contracts for goods and services pursuant to title 41,  
8 chapter 23 that are necessary to carry out board policies and directives.
- 9           16. Execute board directives.
- 10          17. Manage and supervise the operation of the ARIZONA regulatory board  
11 of physician assistants.
- 12          18. Issue licenses to physician assistant applicants who meet the  
13 requirements of chapter 25 of this title.
- 14          19. Represent the board with the federal government, other states or  
15 jurisdictions of the United States, this state, political subdivisions of  
16 this state, the news media and the public.
- 17          20. On behalf of the ARIZONA MEDICAL board, enter into stipulated  
18 agreements with persons under the jurisdiction of either the ARIZONA MEDICAL  
19 board or the ARIZONA regulatory board of physician assistants for the  
20 treatment, rehabilitation and monitoring of chemical substance abuse or  
21 misuse.
- 22          21. Review all complaints filed pursuant to section 32-1451. If  
23 delegated by the board, the executive director may also dismiss a complaint  
24 if the complaint is without merit.
- 25          22. If delegated by the board, directly refer cases to a formal  
26 hearing.
- 27          23. If delegated by the board, close cases resolved through mediation.
- 28          24. If delegated by the board, issue advisory letters.
- 29          25. If delegated by the board, enter into a consent agreement if there  
30 is evidence of danger to the public health and safety.
- 31          26. If delegated by the board, grant uncontested requests for inactive  
32 status and cancellation of a license pursuant to sections 32-1431 and  
33 32-1433.
- 34          27. If delegated by the board, refer cases to the board for a formal  
35 interview.
- 36          28. Perform all other administrative, licensing or regulatory duties  
37 required by the board.
- 38          D. Medical consultants and agents appointed pursuant to subsection C,  
39 paragraph 4 of this section are eligible to receive compensation determined  
40 by the executive director in an amount not to exceed two hundred dollars for  
41 each day of service.
- 42          E. A person who is aggrieved by an action taken by the executive  
43 director may request the board to review that action by filing with the board  
44 a written request within thirty days after that person is notified of the  
45 executive director's action by personal delivery or, ~~certified mail~~ IF THE

1 NOTIFICATION IS MAILED to that person's last known residence or place of  
2 business, WITHIN THIRTY-FIVE DAYS AFTER THE DATE ON THE NOTIFICATION. At the  
3 next regular board meeting, the board shall review the executive director's  
4 action. On review, the board shall approve, modify or reject the executive  
5 director's action.

6 Sec. 3. Section 32-1451, Arizona Revised Statutes, is amended to read:  
7 32-1451. Grounds for disciplinary action; duty to report;  
8 immunity; proceedings; board action; notice  
9 requirements

10 A. The board on its own motion may investigate any evidence that  
11 appears to show that a doctor of medicine is or may be medically incompetent,  
12 is or may be guilty of unprofessional conduct or is or may be mentally or  
13 physically unable safely to engage in the practice of medicine. On written  
14 request of a complainant, the board shall review a complaint that has been  
15 administratively closed by the executive director and take any action it  
16 deems appropriate. Any person may, and a doctor of medicine, the Arizona  
17 medical association, a component county society of that association and any  
18 health care institution shall, report to the board any information that  
19 appears to show that a doctor of medicine is or may be medically incompetent,  
20 is or may be guilty of unprofessional conduct or is or may be mentally or  
21 physically unable safely to engage in the practice of medicine. The board or  
22 the executive director shall notify the doctor as to the content of the  
23 complaint as soon as reasonable. Any person or entity that reports or  
24 provides information to the board in good faith is not subject to an action  
25 for civil damages. If requested, the board shall not disclose the name of a  
26 person who supplies information regarding a licensee's drug or alcohol  
27 impairment. It is an act of unprofessional conduct for any doctor of  
28 medicine to fail to report as required by this section. The board shall  
29 report any health care institution that fails to report as required by this  
30 section to that institution's licensing agency.

31 B. The chief executive officer, the medical director or the medical  
32 chief of staff of a health care institution shall inform the board if the  
33 privileges of a doctor to practice in that health care institution are  
34 denied, revoked, suspended or limited because of actions by the doctor that  
35 appear to show that the doctor is or may be medically incompetent, is or may  
36 be guilty of unprofessional conduct or is or may be mentally or physically  
37 unable to safely engage in the practice of medicine, along with a general  
38 statement of the reasons, including patient chart numbers, that led the  
39 health care institution to take the action. The chief executive officer, the  
40 medical director or the medical chief of staff of a health care institution  
41 shall inform the board if a doctor under investigation resigns or if a doctor  
42 resigns in lieu of disciplinary action by the health care institution.  
43 Notification shall include a general statement of the reasons for the  
44 resignation, including patient chart numbers. The board shall inform all  
45 appropriate health care institutions in this state as defined in section

1 36-401 and the Arizona health care cost containment system administration of  
2 a resignation, denial, revocation, suspension or limitation, and the general  
3 reason for that action, without divulging the name of the reporting health  
4 care institution. A person who reports information in good faith pursuant to  
5 this subsection is not subject to civil liability.

6 C. The board or, if delegated by the board, the executive director  
7 shall require any combination of mental, physical or oral or written medical  
8 competency examinations and conduct necessary investigations, including  
9 investigational interviews between representatives of the board and the  
10 doctor to fully inform itself with respect to any information filed with the  
11 board under subsection A of this section. These examinations may include  
12 biological fluid testing AND OTHER EXAMINATIONS KNOWN TO DETECT THE PRESENCE  
13 OF ALCOHOL OR OTHER DRUGS. The board or, if delegated by the board, the  
14 executive director may require the doctor, at the doctor's expense, to  
15 undergo assessment by a board approved rehabilitative, retraining or  
16 assessment program.

17 D. If the board finds, based on the information it receives under  
18 subsections A and B of this section, that the public health, safety or  
19 welfare imperatively requires emergency action, and incorporates a finding to  
20 that effect in its order, the board may restrict a license or order a summary  
21 suspension of a license pending proceedings for revocation or other action.  
22 If the board takes action pursuant to this subsection it shall also serve the  
23 licensee with a written notice that states the charges and that the licensee  
24 is entitled to a formal hearing before the board or an administrative law  
25 judge within sixty days.

26 E. If, after completing its investigation, the board finds that the  
27 information provided pursuant to subsection A of this section is not of  
28 sufficient seriousness to merit disciplinary action against the license of  
29 the doctor, the board or a board committee may take any of the following  
30 actions:

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

33 2. File an advisory letter. The licensee may file a written response  
34 with the board within thirty days after receiving the advisory letter.

35 F. If the board finds that it can take rehabilitative or disciplinary  
36 action without the presence of the doctor at a formal interview it may enter  
37 into a consent agreement with the doctor to limit or restrict the doctor's  
38 practice or to rehabilitate the doctor in order to protect the public and  
39 ensure the doctor's ability to safely engage in the practice of  
40 medicine. The board may also require the doctor to successfully complete a  
41 board approved rehabilitative, retraining or assessment program at the  
42 doctor's own expense.

43 G. The board shall not disclose the name of the person who provided  
44 information regarding a licensee's drug or alcohol impairment or the name of  
45 the person who files a complaint if that person requests anonymity.

1           H. If after completing its investigation the board believes that the  
2 information is or may be true, it may request a formal interview with the  
3 doctor. If the doctor refuses the invitation for a formal interview or  
4 accepts and the results indicate that grounds may exist for revocation or  
5 suspension of the doctor's license for more than twelve months, the board  
6 shall issue a formal complaint and order that a hearing be held pursuant to  
7 title 41, chapter 6, article 10. If after completing a formal interview the  
8 board finds that the protection of the public requires emergency action, it  
9 may order a summary suspension of the license pending formal revocation  
10 proceedings or other action authorized by this section.

11           I. If after completing the formal interview the board finds the  
12 information provided under subsection A of this section is not of sufficient  
13 seriousness to merit suspension for more than twelve months or revocation of  
14 the license, it may take the following actions:

15           1. Dismiss if, in the opinion of the board, the complaint is without  
16 merit.

17           2. File an advisory letter. The licensee may file a written response  
18 with the board within thirty days after the licensee receives the advisory  
19 letter.

20           3. Enter into an agreement with the doctor to restrict or limit the  
21 doctor's practice or professional activities or to rehabilitate, retrain or  
22 assess the doctor in order to protect the public and ensure the doctor's  
23 ability to safely engage in the practice of medicine. The board may also  
24 require the doctor to successfully complete a board approved rehabilitative,  
25 retraining or assessment program at the doctor's own expense pursuant to  
26 subsection F of this section.

27           4. File a letter of reprimand.

28           5. Issue a decree of censure. A decree of censure is an official  
29 action against the doctor's license and may include a requirement for  
30 restitution of fees to a patient resulting from violations of this chapter or  
31 rules adopted under this chapter.

32           6. Fix a period and terms of probation best adapted to protect the  
33 public health and safety and rehabilitate or educate the doctor concerned.  
34 Probation may include temporary suspension for not to exceed twelve months,  
35 restriction of the doctor's license to practice medicine, a requirement for  
36 restitution of fees to a patient or education or rehabilitation at the  
37 licensee's own expense. If a licensee fails to comply with the terms of  
38 probation, the board shall serve the licensee with a written notice that  
39 states that the licensee is subject to a formal hearing based on the  
40 information considered by the board at the formal interview and any other  
41 acts or conduct alleged to be in violation of this chapter or rules adopted  
42 by the board pursuant to this chapter including noncompliance with the term  
43 of probation, a consent agreement or a stipulated agreement. A licensee  
44 shall pay the costs associated with probation monitoring each year during  
45 which the licensee is on probation. The board may adjust this amount on an

1 annual basis. The board may allow a licensee to make payments on an  
2 installment plan if a financial hardship occurs. A licensee who does not pay  
3 these costs within thirty days after the due date prescribed by the board  
4 violates the terms of probation.

5 J. If the board finds that the information provided in subsection A of  
6 this section warrants suspension or revocation of a license issued under this  
7 chapter, it shall initiate formal proceedings pursuant to title 41, chapter  
8 6, article 10.

9 K. In a formal interview pursuant to subsection H of this section or  
10 in a hearing pursuant to subsection J of this section, the board in addition  
11 to any other action may impose a civil penalty in the amount of not less than  
12 one thousand dollars nor more than ten thousand dollars for each violation of  
13 this chapter or a rule adopted under this chapter.

14 L. An advisory letter is a public document.

15 M. Any doctor of medicine who after a formal hearing is found by the  
16 board to be guilty of unprofessional conduct, to be mentally or physically  
17 unable safely to engage in the practice of medicine or to be medically  
18 incompetent is subject to censure, probation as provided in this section,  
19 suspension of license or revocation of license or any combination of these,  
20 including a stay of action, and for a period of time or permanently and under  
21 conditions as the board deems appropriate for the protection of the public  
22 health and safety and just in the circumstance. The board may charge the  
23 costs of formal hearings to the licensee who it finds to be in violation of  
24 this chapter.

25 N. If the board acts to modify any doctor of medicine's prescription  
26 writing privileges the board shall immediately notify the state board of  
27 pharmacy of the modification.

28 O. If the board, during the course of any investigation, determines  
29 that a criminal violation may have occurred involving the delivery of health  
30 care, it shall make the evidence of violations available to the appropriate  
31 criminal justice agency for its consideration.

32 P. The board may divide into review committees of not less than three  
33 members including a public member. The committees shall review complaints  
34 not dismissed by the executive director and may take the following actions:

35 1. Dismiss the complaint if a committee determines that the complaint  
36 is without merit.

37 2. Issue an advisory letter. The licensee may file a written response  
38 with the board within thirty days after the licensee receives the advisory  
39 letter.

40 3. Conduct a formal interview pursuant to subsection H of this  
41 section. This includes initiating formal proceedings pursuant to  
42 subsection J of this section and imposing civil penalties pursuant to  
43 subsection K of this section.

44 4. Refer the matter for further review by the full board.

1 Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all  
2 monies collected from civil penalties paid pursuant to this chapter in the  
3 state general fund.

4 R. Notice of a complaint and hearing is effective by a true copy of it  
5 being sent by certified mail to the doctor's last known address of record in  
6 the board's files. Notice of the complaint and hearing is complete on the  
7 date of its deposit in the mail. The board shall begin a formal hearing  
8 within one hundred twenty days of that date.

9 S. A physician who submits an independent medical examination pursuant  
10 to an order by a court is not subject to a complaint for unprofessional  
11 conduct unless a complaint is made or referred by a court to the board. For  
12 purposes of this subsection, "independent medical examination" means a  
13 professional analysis of medical status based on a person's past and present  
14 physical and psychiatric history and conducted by a licensee or group of  
15 licensees on a contract basis for a court.

16 T. The board may accept the surrender of an active license from a  
17 person who admits in writing to any of the following:

- 18 1. Being unable to safely engage in the practice of medicine.
- 19 2. Having committed an act of unprofessional conduct.
- 20 3. Having violated this chapter or a board rule.

21 U. In determining the appropriate disciplinary action under this  
22 section, the board shall consider all previous nondisciplinary and  
23 disciplinary actions against a licensee.

24 Sec. 4. Section 32-1452, Arizona Revised Statutes, is amended to read:  
25 32-1452. Substance abuse treatment and rehabilitation program;  
26 private contract; funding

27 A. The board may establish a confidential program for the treatment  
28 and rehabilitation of doctors of medicine and physician assistants who are  
29 impaired by alcohol or drug abuse. This program shall include education,  
30 intervention, therapeutic treatment and posttreatment monitoring and support.

31 B. The board may contract with other organizations to operate the  
32 program established pursuant to subsection A of this section. A contract  
33 with a private organization shall include the following requirements:

- 34 1. Periodic reports to the board regarding treatment program activity.
- 35 2. Release to the board on demand of all treatment records.
- 36 3. Quarterly reports to the board regarding each doctor's diagnosis

37 and prognosis and the recommendations for continuing care, treatment and  
38 supervision.

39 4. Immediate reporting to the board of the name of an impaired doctor  
40 who the treating organization believes to be misusing chemical substances.

41 5. Reports to the board, as soon as possible, of the name of a doctor  
42 who refuses to submit to treatment or whose impairment is not substantially  
43 alleviated through treatment.

44 C. The board may allocate an amount of not to exceed forty dollars  
45 from each fee it collects from the biennial renewal of active licenses

1 pursuant to section 32-1436 for the operation of the program established by  
2 this section.

3 D. A doctor of medicine who is impaired by alcohol or drug abuse shall  
4 agree to enter into a stipulation order with the board or the doctor shall be  
5 placed on probation or shall be subject to other action as provided by law.

6 E. In order to determine that a doctor of medicine who has been placed  
7 on probationary order or who has entered into a stipulation order pursuant to  
8 this section is not impaired by drugs or alcohol after that order is no  
9 longer in effect, the board or its designee may require the doctor of  
10 medicine to submit to body fluid examinations **AND OTHER EXAMINATIONS KNOWN TO**  
11 **DETECT THE PRESENCE OF ALCOHOL OR OTHER DRUGS** at any time within five  
12 consecutive years following termination of the probationary or stipulated  
13 order.

14 F. A doctor of medicine who is impaired by alcohol or drug abuse and  
15 who was under a board stipulation or probationary order that is no longer in  
16 effect shall request the board to place the doctor's license on inactive  
17 status with cause. If the doctor fails to do this the board shall summarily  
18 suspend the license pursuant to section 32-1451, subsection D. In order to  
19 reactivate the license the doctor shall successfully complete a long-term  
20 care residential or inpatient hospital treatment program, or both, and shall  
21 meet the applicable requirements of section 32-1431, subsection D. After the  
22 doctor completes treatment the board shall determine if it should refer the  
23 matter for a formal hearing for the purpose of suspending or revoking the  
24 license or to place the doctor on probation for a minimum of five years with  
25 restrictions necessary to assure the public's safety.

26 G. The board shall revoke the license of a doctor of medicine if that  
27 doctor is impaired by alcohol or drug abuse and was previously placed on  
28 probation pursuant to subsection F of this section and the probation is no  
29 longer in effect. The board may accept the surrender of the license if the  
30 doctor admits in writing to being impaired by alcohol or drug abuse.

31 H. An evaluator, teacher, supervisor or volunteer in the board's  
32 substance abuse treatment and rehabilitation program who acts in good faith  
33 within the scope of that program is not subject to civil liability, including  
34 malpractice liability, for the actions of a doctor who is attending the  
35 program pursuant to board action.

36 Sec. 5. Title 32, chapter 13, article 3, Arizona Revised Statutes, is  
37 amended by adding section 32-1452.01, to read:

38 **32-1452.01. Mental, behavioral and physical health evaluation**  
39 **and treatment program; private contract; funding**

40 **A. THE BOARD MAY ESTABLISH A CONFIDENTIAL PROGRAM FOR THE EVALUATION,**  
41 **TREATMENT AND MONITORING OF PERSONS LICENSED PURSUANT TO THIS CHAPTER AND**  
42 **CHAPTER 25 OF THIS TITLE WHO HAVE MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL OR**  
43 **BEHAVIORAL HEALTH DISORDERS THAT MAY IMPACT A LICENSEE'S ABILITY TO SAFELY**  
44 **PRACTICE MEDICINE OR PERFORM HEALTHCARE TASKS. THE PROGRAM SHALL INCLUDE**

1 EDUCATION, INTERVENTION, THERAPEUTIC TREATMENT AND POSTTREATMENT MONITORING  
2 AND SUPPORT.

3 B. A LICENSEE WHO HAS A MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL OR  
4 BEHAVIORAL HEALTH DISORDER DESCRIBED IN SUBSECTION A OF THIS SECTION WHO  
5 VOLUNTARILY REPORTS THAT DISORDER TO THAT LICENSEE'S BOARD AND WHO HAS NOT  
6 COMMITTED A STATUTORY VIOLATION UNDER THIS CHAPTER OR CHAPTER 25 OF THIS  
7 TITLE MAY AGREE TO ENTER INTO A CONFIDENTIAL CONSENT AGREEMENT FOR  
8 PARTICIPATION IN A PROGRAM ESTABLISHED PURSUANT TO THIS SECTION.

9 C. A LICENSEE WHO HAS A MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL OR  
10 BEHAVIORAL HEALTH DISORDER DESCRIBED IN SUBSECTION A OF THIS SECTION WHO IS  
11 REPORTED TO THAT LICENSEE'S BOARD BY A PEER REVIEW COMMITTEE, HOSPITAL  
12 MEDICAL STAFF, HEALTH PLAN OR OTHER HEALTH CARE PRACTITIONER OR HEALTH CARE  
13 ENTITY AND WHO HAS NOT COMMITTED A STATUTORY VIOLATION UNDER THIS CHAPTER OR  
14 CHAPTER 25 OF THIS TITLE MAY AGREE TO ENTER INTO A CONFIDENTIAL CONSENT  
15 AGREEMENT FOR PARTICIPATION IN A PROGRAM ESTABLISHED PURSUANT TO THIS  
16 SECTION.

17 D. THE BOARD MAY CONTRACT WITH OTHER ORGANIZATIONS TO OPERATE A  
18 PROGRAM ESTABLISHED PURSUANT TO THIS SECTION. A CONTRACT WITH A PRIVATE  
19 ORGANIZATION MUST INCLUDE THE FOLLOWING REQUIREMENTS:

20 1. PERIODIC REPORTS TO THE BOARD REGARDING TREATMENT PROGRAM ACTIVITY.

21 2. RELEASE TO THE BOARD ON DEMAND OF ALL TREATMENT RECORDS.

22 3. QUARTERLY REPORTS TO THE BOARD REGARDING EACH PARTICIPANT'S  
23 DIAGNOSIS AND PROGNOSIS AND THE RECOMMENDATIONS FOR CONTINUING CARE,  
24 TREATMENT AND SUPERVISION.

25 4. IMMEDIATE REPORTING TO THE ARIZONA MEDICAL BOARD OF THE NAME OF A  
26 LICENSEE WHO THE TREATING ORGANIZATION BELIEVES IS INCAPABLE OF SAFELY  
27 PRACTICING MEDICINE OR PERFORMING HEALTHCARE TASKS. IF THE LICENSEE IS A  
28 PHYSICIAN ASSISTANT, THE ARIZONA MEDICAL BOARD SHALL IMMEDIATELY REPORT THIS  
29 INFORMATION TO THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS.

30 E. AN EVALUATOR, TEACHER, SUPERVISOR OR VOLUNTEER IN A PROGRAM  
31 ESTABLISHED PURSUANT TO THIS SECTION WHO ACTS IN GOOD FAITH WITHIN THE SCOPE  
32 OF THAT PROGRAM IS NOT SUBJECT TO CIVIL LIABILITY, INCLUDING MALPRACTICE  
33 LIABILITY, FOR THE ACTIONS OF A LICENSEE WHO IS ATTENDING THE PROGRAM  
34 PURSUANT TO BOARD ACTION.