

REFERENCE TITLE: osteopathic board

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

# HB 2187

Introduced by  
Representative Barto

AN ACT

AMENDING SECTIONS 32-1802, 32-1803, 32-1825 AND 32-1854, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1802, Arizona Revised Statutes, is amended to  
3 read:

4 32-1802. Meetings; organization; compensation; committees

5 A. The board shall hold an annual meeting during the month of January  
6 each year in the Phoenix metropolitan area and may hold other meetings at  
7 times and places determined by a majority of the board on notice to each  
8 member and the general public pursuant to title 38, chapter 3, article 3.1.  
9 A majority of the members of the board constitutes a quorum, and a majority  
10 vote of a quorum present at any meeting governs all board actions.

11 B. At each annual meeting the board shall select from among its  
12 membership a president and vice-president who shall serve until their  
13 successors are chosen. If either of these offices becomes vacant before the  
14 annual meeting, the board may elect a replacement at any other board meeting.

15 C. Members of the board are eligible to receive compensation in the  
16 amount of two hundred fifty dollars for each day of actual service in the  
17 business of the board and reimbursement of all expenses necessarily and  
18 properly incurred in attending meetings of the board.

19 D. Board members, the executive director, permanent or temporary board  
20 personnel, board consultants, **COMMITTEE MEMBERS** and professional medical  
21 investigators are immune from civil liability for any act they do in good  
22 faith to implement this chapter.

23 **E. TO CARRY OUT THE FUNCTIONS OF THE BOARD, THE BOARD PRESIDENT MAY**  
24 **ESTABLISH COMMITTEES AND DEFINE COMMITTEE DUTIES. THE PRESIDENT SHALL NAME**  
25 **AT LEAST ONE BOARD MEMBER TO EACH COMMITTEE THE PRESIDENT ESTABLISHES.**

26 Sec. 2. Section 32-1803, Arizona Revised Statutes, is amended to read:

27 32-1803. Powers and duties

28 A. The board shall:

29 1. Protect the public from unlawful, incompetent, unqualified,  
30 impaired and unprofessional practitioners of osteopathic medicine.

31 2. Issue licenses, conduct hearings, place physicians on probation,  
32 revoke or suspend licenses, enter into stipulated orders, issue letters of  
33 concern or decrees of censure and administer and enforce this chapter.

34 3. Maintain a record of its acts and proceedings, including the  
35 issuance, denial, renewal, suspension or revocation of licenses to practice  
36 according to this chapter. The board shall delete records of complaints only  
37 as follows:

38 (a) If the board dismisses a complaint, the board shall delete the  
39 public record of the complaint five years after it dismissed the complaint.

40 (b) If the board has issued a letter of concern but has taken no  
41 further action on the complaint, the board shall delete the public record of  
42 the complaint five years after it issued the letter of concern.

43 (c) If the board has required additional continuing medical education  
44 pursuant to section 32-1855 but has not taken further action, the board shall  
45 delete the public record of the complaint five years after the person  
46 satisfies this requirement.

1           4. Maintain a public directory of all osteopathic physicians and  
2 surgeons who are or were licensed pursuant to this chapter that includes:  
3           (a) The name of the physician.  
4           (b) The physician's current or last known address of record.  
5           (c) The date and number of the license issued to the physician  
6 pursuant to this chapter.  
7           (d) The date the license is scheduled to expire if not renewed or the  
8 date the license expired or was revoked, suspended or canceled.  
9           (e) Any disciplinary actions taken against the physician by the board.  
10          (f) Letters of concern, remedial continuing medical education ordered  
11 and dismissals of complaints against the physician until deleted from the  
12 public record pursuant to paragraph 3 of this subsection.  
13          (g) The number of malpractice claims paid by award or by settlement on  
14 behalf of the physician in the last ten years of practice in this state or in  
15 another state.  
16          5. Adopt rules regarding the regulation and the qualifications of  
17 medical assistants.  
18          6. Discipline and rehabilitate osteopathic physicians.  
19          B. The public records of the board are open to inspection at all times  
20 during office hours.  
21          C. The board may:  
22            1. Adopt rules necessary or proper for the administration of this  
23 chapter.  
24            2. Appoint one of its members to the jurisdiction arbitration panel  
25 pursuant to section 32-2907, subsection B.  
26            3. Accept and spend federal monies and private grants, gifts,  
27 contributions and devises. These monies do not revert to the state general  
28 fund at the end of a fiscal year.  
29            4. **DEVELOP AND PUBLISH ADVISORY OPINIONS AND STANDARDS GOVERNING THE**  
30 **PROFESSION.**  
31          D. The board shall adopt and use a seal, the imprint of which,  
32 together with the signature of either the president, vice-president or  
33 executive director, is evidence of its official acts.  
34          E. In conducting investigations pursuant to this chapter the board may  
35 receive and review confidential internal staff reports relating to complaints  
36 and malpractice claims.  
37          F. The board may make available to academic and research organizations  
38 public records regarding statistical information on doctors of osteopathic  
39 medicine and applicants for licensure.  
40          Sec. 3. Section 32-1825, Arizona Revised Statutes, is amended to read:  
41          32-1825. **Renewal of licenses; continuing medical education;**  
42            **failure to renew; penalty; reinstatement**  
43          A. Except as provided in section 32-4301, each licensee shall renew  
44 the license every other year on or before ~~January 1~~ **DECEMBER 31** on an  
45 application form approved by the board. At least sixty days before that  
46 renewal date the executive director shall notify each licensee of this

1 requirement. ~~The executive director shall send this notification~~ by first  
2 class mail ~~SENT to the licensee at~~ the licensee's address ~~OF RECORD~~.

3 B. With the application prescribed pursuant to subsection A of this  
4 section, the licensee shall furnish to the executive director a statement of  
5 having ~~attended before the license renewal date educational programs,~~  
6 ~~approved by the board, totaling at least twenty clock hours during each of~~  
7 ~~the two preceding years, and~~ COMPLIED WITH THE CONTINUING MEDICAL EDUCATION  
8 REQUIREMENTS AS PRESCRIBED BY THE BOARD BY RULE, a statement that the  
9 licensee reported any conduct that may constitute unprofessional conduct in  
10 this state or elsewhere. ~~The application must also include~~ AND the  
11 prescribed renewal fee. The executive director shall then issue a renewal  
12 receipt to the licensee. The board may require a licensee to submit  
13 documentation of continuing medical education.

14 ~~C. The board shall not renew the license of a licensee who does not~~  
15 ~~fully document the licensee's compliance with the continuing education~~  
16 ~~requirements of subsection B of this section unless that person receives a~~  
17 ~~waiver of those requirements. The board may waive the continuing education~~  
18 ~~requirements of subsection B of this section for a particular period if it is~~  
19 ~~satisfied that the licensee's noncompliance was due to the licensee's~~  
20 ~~disability, military service or absence from the United States or to other~~  
21 ~~circumstances beyond the control of the licensee. If a licensee fails to~~  
22 ~~attend the required number of clock hours for reasons other than those~~  
23 ~~specified in this subsection, the board may grant an extension until May 1 of~~  
24 ~~that year for the licensee to comply.~~

25 C. THE BOARD OR THE EXECUTIVE DIRECTOR MAY INITIATE AN INVESTIGATION  
26 OF UNPROFESSIONAL CONDUCT BASED ON INFORMATION PROVIDED ON A RENEWAL  
27 APPLICATION.

28 D. ~~Unless the board grants an extension pursuant to subsection C of~~  
29 ~~this section,~~ A licensee who fails to renew the license within ~~thirty days~~  
30 ONE MONTH after the renewal date shall pay a penalty fee and a reimbursement  
31 fee in addition to the prescribed renewal fee. Except as provided in  
32 sections 32-3202 and 32-4301, a license expires if a person does not renew  
33 the license within four months after the renewal date. A person who  
34 practices osteopathic medicine after that time is in violation of this  
35 chapter.

36 E. A person whose license ~~expires~~ HAS EXPIRED may reapply for a  
37 license pursuant to ~~this chapter~~ SECTION 32-1822.

38 Sec. 4. Section 32-1854, Arizona Revised Statutes, is amended to read:  
39 32-1854. Definition of unprofessional conduct

40 For the purposes of this chapter, "unprofessional conduct" includes the  
41 following acts, whether occurring in this state or elsewhere:

42 1. Wilfully betraying a professional secret or wilfully violating a  
43 privileged communication except as either of these may otherwise be required  
44 by law. This paragraph does not prevent members of the board from exchanging  
45 information with the licensing and disciplinary boards of other states,  
46 territories or districts of the United States or with foreign countries or

- 1 with osteopathic medical organizations located in this state or in any state,  
2 district or territory of this country or in any foreign country.
- 3 2. Committing a felony, whether or not involving moral turpitude, or a  
4 misdemeanor involving moral turpitude. In either case conviction by any  
5 court of competent jurisdiction is conclusive evidence of the commission.
- 6 3. Practicing medicine while under the influence of alcohol, narcotic  
7 or hypnotic drugs or any substance that impairs or may impair the licensee's  
8 ability to safely and skillfully practice medicine.
- 9 4. Being diagnosed by a physician licensed under this chapter or  
10 chapter 13 of this title or a psychologist licensed under chapter 19.1 of  
11 this title as excessively or illegally using alcohol or a controlled  
12 substance.
- 13 5. Prescribing, dispensing or administering controlled substances or  
14 prescription-only drugs for other than accepted therapeutic purposes.
- 15 6. Engaging in the practice of medicine in a manner that harms or may  
16 harm a patient or that the board determines falls below the community  
17 standard.
- 18 7. Impersonating another physician.
- 19 8. Acting or assuming to act as a member of the board if this is not  
20 true.
- 21 9. Procuring, renewing or attempting to procure or renew a license to  
22 practice osteopathic medicine by fraud or misrepresentation.
- 23 10. Having professional connection with or lending one's name to an  
24 illegal practitioner of osteopathic medicine or any of the other healing  
25 arts.
- 26 11. Representing that a manifestly incurable disease, injury, ailment  
27 or infirmity can be permanently cured or that a curable disease, injury,  
28 ailment or infirmity can be cured within a stated time, if this is not true.
- 29 12. Failing to reasonably disclose and inform the patient or the  
30 patient's representative of the method, device or instrumentality the  
31 licensee uses to treat the patient's disease, injury, ailment or infirmity.
- 32 13. Refusing to divulge to the board on demand the means, method,  
33 device or instrumentality used in the treatment of a disease, injury, ailment  
34 or infirmity.
- 35 14. Charging a fee for services not rendered or dividing a professional  
36 fee for patient referrals. This paragraph does not apply to payments from a  
37 medical researcher to a physician in connection with identifying and  
38 monitoring patients for clinical trial regulated by the United States food  
39 and drug administration.
- 40 15. Knowingly making any false or fraudulent statement, written or  
41 oral, in connection with the practice of medicine or when applying for or  
42 renewing privileges at a health care institution or a health care program.
- 43 16. Advertising in a false, deceptive or misleading manner.
- 44 17. Representing or claiming to be an osteopathic medical specialist if  
45 the physician has not satisfied the applicable requirements of this chapter  
46 or board rules.

1           18. The denial of or disciplinary action against a license by any other  
2 state, territory, district or country, unless it can be shown that this  
3 occurred for reasons that did not relate to the person's ability to safely  
4 and skillfully practice osteopathic medicine or to any act of unprofessional  
5 conduct as provided in this section.

6           19. Any conduct or practice contrary to recognized standards of ethics  
7 of the osteopathic medical profession.

8           20. Violating or attempting to violate, directly or indirectly, or  
9 assisting in or abetting the violation of or conspiring to violate any of the  
10 provisions of this chapter.

11           21. Failing or refusing to establish and maintain adequate records on a  
12 patient as follows:

13           (a) If the patient is an adult, for at least seven years after the  
14 last date the licensee provided the patient with medical or health care  
15 services.

16           (b) If the patient is a child, either for at least three years after  
17 the child's eighteenth birthday or for at least seven years after the last  
18 date the licensee provided that patient with medical or health care services,  
19 whichever date occurs first.

20           (c) If the patient dies before the expiration of the dates prescribed  
21 in subdivision (a) or (b) of this paragraph, for at least three years after  
22 the patient's death.

23           22. Using controlled substances or prescription-only drugs unless they  
24 are provided by a medical practitioner, as defined in section 32-1901, as  
25 part of a lawful course of treatment.

26           23. Prescribing controlled substances to members of one's immediate  
27 family unless there is no other physician available within fifty miles to  
28 treat a member of the family and an emergency exists.

29           24. Nontherapeutic use of injectable amphetamines.

30           25. Violating a formal order, probation or a stipulation issued by the  
31 board under this chapter.

32           26. Charging or collecting an inappropriate fee. This paragraph does  
33 not apply to a fee that is fixed in a written contract between the physician  
34 and the patient and entered into before treatment begins.

35           27. Using experimental forms of therapy without adequate informed  
36 patient consent or without conforming to generally accepted criteria and  
37 complying with federal and state statutes and regulations governing  
38 experimental therapies.

39           28. Failing to make patient medical records in the physician's  
40 possession promptly available to a physician assistant, a nurse practitioner,  
41 a person licensed pursuant to this chapter or a podiatrist, chiropractor,  
42 naturopathic physician, physician or homeopathic physician licensed under  
43 chapter 7, 8, 13, 14 or 29 of this title on receipt of proper authorization  
44 to do so from the patient, a minor patient's parent, the patient's legal  
45 guardian or the patient's authorized representative or failing to comply with  
46 title 12, chapter 13, article 7.1.

1           29. Failing to allow properly authorized board personnel to have, on  
2 presentation of a subpoena, access to any documents, reports or records that  
3 are maintained by the physician and that relate to the physician's medical  
4 practice or medically related activities pursuant to section 32-1855.01.

5           30. Signing a blank, undated or predated prescription form.

6           31. Obtaining a fee by fraud, deceit or misrepresentation.

7           32. Failing to report to the board an osteopathic physician and surgeon  
8 who is or may be guilty of unprofessional conduct or is or may be mentally or  
9 physically unable safely to engage in the practice of medicine.

10          33. Referring a patient to a diagnostic or treatment facility or  
11 prescribing goods and services without disclosing that the physician has a  
12 direct pecuniary interest in the facility, goods or services to which the  
13 patient has been referred or prescribed. This paragraph does not apply to a  
14 referral by one physician to another physician within a group of physicians  
15 practicing together.

16          34. Lack of or inappropriate direction, collaboration or supervision of  
17 a licensed, certified or registered health care provider or office personnel  
18 employed by or assigned to the physician in the medical care of patients.

19          35. Violating a federal law, a state law or a rule applicable to the  
20 practice of medicine.

21          36. Prescribing or dispensing controlled substances or  
22 prescription-only medications without establishing and maintaining adequate  
23 patient records.

24          37. Failing to dispense drugs and devices in compliance with article 4  
25 of this chapter.

26          38. Any conduct or practice that endangers a patient's or the public's  
27 health or may reasonably be expected to do so.

28          39. Any conduct or practice that impairs the licensee's ability to  
29 safely and skillfully practice medicine or that may reasonably be expected to  
30 do so.

31          40. With the exception of heavy metal poisoning, using chelation  
32 therapy in the treatment of arteriosclerosis or as any other form of therapy  
33 without adequate informed patient consent and without conforming to generally  
34 accepted experimental criteria, including protocols, detailed records,  
35 periodic analysis of results and periodic review by a medical peer review  
36 committee.

37          41. Prescribing, dispensing or administering anabolic-androgenic  
38 steroids to a person for other than therapeutic purposes.

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

45           (a) Engaging in or soliciting sexual relationships, whether consensual  
46 or nonconsensual.

1 (b) Making sexual advances, requesting sexual favors or engaging in  
2 any other verbal conduct or physical conduct of a sexual nature.

3 43. Fetal experiments conducted in violation of section 36-2302.

4 44. Conduct that the board determines constitutes gross negligence,  
5 repeated negligence or negligence that results in harm or death of a patient.

6 45. Conduct in the practice of medicine that evidences moral unfitness  
7 to practice medicine.

8 46. Engaging in disruptive or abusive behavior in a professional  
9 setting.

10 47. Failing to disclose to a patient that the licensee has a direct  
11 financial interest in a prescribed treatment, good or service if the  
12 treatment, good or service is available on a competitive basis. This  
13 paragraph does not apply to a referral by one licensee to another licensee  
14 within a group of licensees who practice together. A licensee meets the  
15 disclosure requirements of this paragraph if all of the following are true:

16 (a) The licensee makes the disclosure on a form prescribed by the  
17 board.

18 (b) The patient or the patient's guardian or parent acknowledges by  
19 signing the form that the licensee has disclosed the licensee's direct  
20 financial interest.

21 48. Prescribing, dispensing or furnishing a prescription medication or  
22 a prescription-only device to a person if the licensee has not conducted a  
23 physical examination of that person or has not previously established a  
24 physician-patient relationship. This paragraph does not apply to emergencies  
25 or to prescriptions written or antimicrobials dispensed to a contact as  
26 defined in section 36-661 who is believed to have had significant exposure  
27 risk as defined in section 36-661 with another person who has been diagnosed  
28 with a communicable disease as defined in section 36-661 by the prescribing  
29 or dispensing physician.

30 49. If a licensee provides medical care by computer, failing to  
31 disclose the licensee's license number and the board's address and telephone  
32 number.

33 50. FAILING TO COMPLETE CONTINUING MEDICAL EDUCATION REQUIREMENTS AS  
34 PRESCRIBED BY THE BOARD BY RULE.

35 Sec. 5. Arizona board of osteopathic examiners in medicine and  
36 surgery; licensure renewal

37 Notwithstanding section 32-1825, Arizona Revised Statutes, as amended  
38 by this act, the Arizona board of osteopathic examiners in medicine and  
39 surgery may require selected licensees whose renewal date is December 31,  
40 2011 to renew for a one-year period, after which the selected licensees shall  
41 resume renewing every other year. The board shall prorate the license  
42 renewal fee for the selected licensees accordingly.