

REFERENCE TITLE: **medical board; investigations; due process**

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

## **HB 2669**

Introduced by  
Representatives Heinz, Ash, Cajero Bedford, Young Wright, Senators Aboud,  
Allen C: Representatives Campbell CL, Garcia M, Senator Melvin

**AN ACT**

**AMENDING SECTIONS 32-1401 AND 32-1451, ARIZONA REVISED STATUTES; RELATING TO  
THE ARIZONA MEDICAL BOARD.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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  
18 the 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.

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

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

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

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

10           20. "Office based surgery" means a medical procedure conducted in a  
11 physician's office or other outpatient setting that is not part of a licensed  
12 hospital or licensed ambulatory surgical center.

13           21. "Physician" means a doctor of medicine licensed pursuant to this  
14 chapter.

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

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

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

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

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

44           27. "Unprofessional conduct" includes the following, whether occurring  
45 in this state or elsewhere:

- 1 (a) Violating any federal or state laws, rules 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 this is not  
32 true.
- 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 or the doctor's  
39 medical incompetence or for unprofessional conduct as defined by that  
40 jurisdiction and that corresponds directly or indirectly to an act of  
41 unprofessional conduct prescribed by this paragraph. The action taken may  
42 include refusing, denying, revoking or suspending a license by that  
43 jurisdiction or a surrendering of a license to that jurisdiction, otherwise  
44 limiting, restricting or monitoring a licensee by that jurisdiction or  
45 placing a 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 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. This subdivision does not  
21 apply to payments from a medical researcher to a physician in connection with  
22 identifying and monitoring patients for a clinical trial regulated by the  
23 United States food and drug administration.

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

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

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

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

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

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

1 (jj) Knowingly making a false or misleading statement to the board or  
2 on a form required by the board or in a written correspondence, including  
3 attachments, with the board.

4 (kk) Failing to dispense drugs and devices in compliance with article  
5 6 of this chapter.

6 (ll) Conduct that the board determines is gross negligence, repeated  
7 negligence or negligence resulting in harm to or the death of a patient.

8 (mm) The representation by a doctor of medicine or the doctor's staff,  
9 employer or representative that the doctor is boarded or board certified if  
10 this is not true or the standing is not current or without supplying the full  
11 name of the specific agency, organization or entity granting this standing.

12 (nn) Refusing to submit to a body fluid examination or any other  
13 examination known to detect the presence of alcohol or other drugs as  
14 required by the board pursuant to section 32-1452 or pursuant to a board  
15 investigation into a doctor of medicine's alleged substance abuse.

16 (oo) Failing to report in writing to the Arizona medical board or the  
17 Arizona regulatory board of physician assistants any evidence that a doctor  
18 of medicine or a physician assistant is or may be medically incompetent,  
19 guilty of unprofessional conduct or mentally or physically unable to safely  
20 practice medicine or to perform as a physician assistant.

21 (pp) The failure of a physician who is the chief executive officer,  
22 the medical director or the medical chief of staff of a health care  
23 institution to report in writing to the board that the hospital privileges of  
24 a doctor of medicine have been denied, revoked, suspended, supervised or  
25 limited because of actions by the doctor that appear to show that the doctor  
26 is or may be medically incompetent, is or may be guilty of unprofessional  
27 conduct or is or may be unable to engage safely in the practice of medicine.

28 (qq) Claiming to be a current member of the board, its staff or a  
29 board medical consultant if this is not true.

30 (rr) Failing to make patient medical records in the physician's  
31 possession promptly available to a physician assistant, a nurse practitioner,  
32 a person licensed pursuant to this chapter or a podiatrist, chiropractor,  
33 naturopathic physician, osteopathic physician or homeopathic physician  
34 licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper  
35 authorization to do so from the patient, a minor patient's parent, the  
36 patient's legal guardian or the patient's authorized representative or  
37 failing to comply with title 12, chapter 13, article 7.1.

38 (ss) Prescribing, dispensing or furnishing a prescription medication  
39 or a prescription-only device as defined in section 32-1901 to a person  
40 unless the licensee first conducts a physical examination of that person or  
41 has previously established a doctor-patient relationship. This subdivision  
42 does not apply to:

43 (i) A physician who provides temporary patient supervision on behalf  
44 of the patient's regular treating licensed health care professional.

45 (ii) Emergency medical situations as defined in section 41-1831.

1 (iii) Prescriptions written to prepare a patient for a medical  
2 examination.

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

9 (v) Prescriptions written or antimicrobials dispensed to a contact as  
10 defined in section 36-661 who is believed to have had significant exposure  
11 risk as defined in section 36-661 with another person who has been diagnosed  
12 with a communicable disease as defined in section 36-661 by the prescribing  
13 or dispensing physician.

14 (tt) Performing office based surgery using sedation in violation of  
15 board rules.

16 (uu) Practicing medicine under a false or assumed name in this state.

17 Sec. 2. Section 32-1451, Arizona Revised Statutes, is amended to read:

18 32-1451. Grounds for disciplinary action; duty to report;  
19 immunity; proceedings; board action; notice and due  
20 process requirements; final administrative decisions

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

42 B. The chief executive officer, the medical director or the medical  
43 chief of staff of a health care institution shall inform the board if the  
44 privileges of a doctor to practice in that health care institution are  
45 denied, revoked, suspended or limited because of actions by the doctor that

1 appear to show that the doctor is or may be medically incompetent, is or may  
2 be guilty of unprofessional conduct or is or may be mentally or physically  
3 unable to safely engage in the practice of medicine, along with a general  
4 statement of the reasons, including patient chart numbers, that led the  
5 health care institution to take the action. The chief executive officer, the  
6 medical director or the medical chief of staff of a health care institution  
7 shall inform the board if a doctor under investigation resigns or if a doctor  
8 resigns in lieu of disciplinary action by the health care institution.  
9 Notification shall include a general statement of the reasons for the  
10 resignation, including patient chart numbers. The board shall inform all  
11 appropriate health care institutions in this state as defined in section  
12 36-401 and the Arizona health care cost containment system administration of  
13 a resignation, denial, revocation, suspension or limitation, and the general  
14 reason for that action, without divulging the name of the reporting health  
15 care institution. A person who reports information in good faith pursuant to  
16 this subsection is not subject to civil liability.

17 C. The board or, if delegated by the board, the executive director  
18 shall require, at the doctor's expense, any combination of mental, physical  
19 or oral or written medical competency examinations and conduct necessary  
20 investigations, including investigational interviews between representatives  
21 of the board and the doctor to fully inform itself with respect to any  
22 information filed with the board under subsection A of this section. These  
23 examinations may include biological fluid testing and other examinations  
24 known to detect the presence of alcohol or other drugs. The board or, if  
25 delegated by the board, the executive director may require the doctor, at the  
26 doctor's expense, to undergo assessment by a board approved rehabilitative,  
27 retraining or assessment program. ~~Nothing in~~ This subsection ~~creates~~ DOES  
28 NOT ESTABLISH a cause of action against any person, facility or program that  
29 conducts an assessment, examination or investigation in good faith pursuant  
30 to this subsection.

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

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

- 1           1. Dismiss if, in the opinion of the board, the information is without  
2 merit.
- 3           2. Require the licensee to complete designated continuing medical  
4 education courses.
- 5           3. File an advisory letter. The licensee may file a written response  
6 with the board within thirty days after receiving the advisory letter.
- 7           F. If the board finds that it can take rehabilitative or disciplinary  
8 action without the presence of the doctor at a formal interview, it may enter  
9 into a consent agreement with the doctor to limit or restrict the doctor's  
10 practice or to rehabilitate the doctor in order to protect the public and  
11 ensure the doctor's ability to safely engage in the practice of medicine.  
12 The board may also require the doctor to successfully complete a board  
13 approved rehabilitative, retraining or assessment program at the doctor's own  
14 expense.
- 15           G. The board shall not disclose the name of the person who provided  
16 information regarding a licensee's drug or alcohol impairment or the name of  
17 the person who files a complaint if that person requests anonymity.
- 18           H. If after completing its investigation the board believes that the  
19 information is or may be true, it may request a formal interview with the  
20 doctor. If the doctor refuses the invitation for a formal interview or  
21 accepts and the results indicate that grounds may exist for revocation or  
22 suspension of the doctor's license for more than twelve months, the board  
23 shall issue a formal complaint and order that a hearing be held pursuant to  
24 title 41, chapter 6, article 10. If after completing a formal interview the  
25 board finds that the protection of the public requires emergency action, it  
26 may order a summary suspension of the license pending formal revocation  
27 proceedings or other action authorized by this section.
- 28           I. If after completing the formal interview the board finds the  
29 information provided under subsection A of this section is not of sufficient  
30 seriousness to merit suspension for more than twelve months or revocation of  
31 the license, it may take the following actions:
- 32           1. Dismiss if, in the opinion of the board, the complaint is without  
33 merit.
- 34           2. Require the licensee to complete designated continuing medical  
35 education courses.
- 36           3. File an advisory letter. The licensee may file a written response  
37 with the board within thirty days after the licensee receives the advisory  
38 letter.
- 39           4. Enter into an agreement with the doctor to restrict or limit the  
40 doctor's practice or professional activities or to rehabilitate, retrain or  
41 assess the doctor in order to protect the public and ensure the doctor's  
42 ability to safely engage in the practice of medicine. The board may also  
43 require the doctor to successfully complete a board approved rehabilitative,  
44 retraining or assessment program at the doctor's own expense pursuant to  
45 subsection F of this section.

1           5. File a letter of reprimand.

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

6           7. Fix a period and terms of probation best adapted to protect the  
7 public health and safety and rehabilitate or educate the doctor  
8 concerned. Probation may include temporary suspension for not to exceed  
9 twelve months, restriction of the doctor's license to practice medicine, a  
10 requirement for restitution of fees to a patient or education or  
11 rehabilitation at the licensee's own expense. If a licensee fails to comply  
12 with the terms of probation, the board shall serve the licensee with a  
13 written notice that states that the licensee is subject to a formal hearing  
14 based on the information considered by the board at the formal interview and  
15 any other acts or conduct alleged to be in violation of this chapter or rules  
16 adopted by the board pursuant to this chapter, including noncompliance with  
17 the term of probation, a consent agreement or a stipulated agreement. A  
18 licensee shall pay the costs associated with probation monitoring each year  
19 during which the licensee is on probation. The board may adjust this amount  
20 on an annual basis. The board may allow a licensee to make payments on an  
21 installment plan if a financial hardship occurs. A licensee who does not pay  
22 these costs within thirty days after the due date prescribed by the board  
23 violates the terms of probation.

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

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

33           L. An advisory letter is a public document.

34           M. A DOCTOR WHO IS UNDER INVESTIGATION PURSUANT TO THIS SECTION IS  
35 AFFORDED ALL DUE PROCESS RIGHTS. AT LEAST NINETY DAYS BEFORE A FORMAL  
36 INTERVIEW, THE BOARD MUST INFORM THE DOCTOR IN WRITING OF ALL PROPOSED  
37 FINDINGS AND RECOMMENDATIONS OF THE BOARD'S INVESTIGATORS. AT LEAST SIXTY  
38 DAYS BEFORE A FORMAL INTERVIEW, THE DOCTOR OR THE DOCTOR'S ATTORNEY MAY  
39 CONDUCT A RECORDED INTERVIEW WITH THE BOARD'S INVESTIGATORS, OUTSIDE MEDICAL  
40 CONSULTANTS, BOARD STAFF MEDICAL CONSULTANTS AND ANY OTHER PERSON WHO IS  
41 EXPECTED TO PRODUCE EVIDENCE, TESTIMONY OR COMMENTS AT THE FORMAL  
42 INTERVIEW. THE DOCTOR OR THE DOCTOR'S ATTORNEY MAY CROSS-EXAMINE ANY  
43 INVESTIGATOR, OUTSIDE MEDICAL CONSULTANT, BOARD STAFF MEDICAL CONSULTANT OR  
44 OTHER PERSON WHO PRODUCES EVIDENCE, TESTIMONY OR COMMENTS AT A FORMAL  
45 HEARING. THE BOARD MAY NOT IMPOSE TIME LIMITS THAT INFRINGE ON THE DUE

1 PROCESS RIGHTS PRESCRIBED BY THIS SUBSECTION. THE DOCTOR OR THE DOCTOR'S  
2 ATTORNEY MAY PRESENT TESTIMONIAL AND DOCUMENTARY EVIDENCE AT A FORMAL  
3 HEARING. IF THE BOARD DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION,  
4 ANY BOARD DECISION, CIVIL PENALTY OR DISCIPLINARY ACTION IS UNENFORCEABLE.

5 ~~M.~~ N. Any doctor of medicine who after a formal hearing is found by  
6 the board to be guilty of unprofessional conduct, to be mentally or  
7 physically unable safely to engage in the practice of medicine or to be  
8 medically incompetent is subject to censure, probation as provided in this  
9 section, suspension of license or revocation of license or any combination of  
10 these, including a stay of action, and for a period of time or permanently  
11 and under conditions as the board deems appropriate for the protection of the  
12 public health and safety and just in the circumstance. The board may charge  
13 the costs of formal hearings to the licensee who it finds to be in violation  
14 of this chapter.

15 ~~N.~~ O. If the board acts to modify any doctor of medicine's  
16 prescription writing privileges, the board shall immediately notify the state  
17 board of pharmacy of the modification.

18 ~~O.~~ P. If the board, during the course of any investigation,  
19 determines that a criminal violation may have occurred involving the delivery  
20 of health care, it shall make the evidence of violations available to the  
21 appropriate criminal justice agency for its consideration.

22 ~~P.~~ Q. The board may divide into review committees of not less than  
23 three members, including a public member. The committees shall review  
24 complaints not dismissed by the executive director and may take the following  
25 actions:

26 1. Dismiss the complaint if a committee determines that the complaint  
27 is without merit.

28 2. Issue an advisory letter. The licensee may file a written response  
29 with the board within thirty days after the licensee receives the advisory  
30 letter.

31 3. Conduct a formal interview pursuant to subsection H of this  
32 section. This includes initiating formal proceedings pursuant to  
33 subsection J of this section and imposing civil penalties pursuant to  
34 subsection K of this section.

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

36 ~~Q.~~ R. Pursuant to sections 35-146 and 35-147, the board shall deposit  
37 all monies collected from civil penalties paid pursuant to this chapter in  
38 the state general fund.

39 ~~R.~~ S. Notice of a complaint and hearing is effective by a true copy  
40 of it being sent by certified mail to the doctor's last known address of  
41 record in the board's files. Notice of the complaint and hearing is complete  
42 on the date of its deposit in the mail. The board shall begin a formal  
43 hearing within one hundred twenty days of that date.

1           ~~S.~~ T. A physician who submits an independent medical examination  
2 pursuant to an order by a court is not subject to a complaint for  
3 unprofessional conduct unless a complaint is made or referred by a court to  
4 the board. For the purposes of this subsection, "independent medical  
5 examination" means a professional analysis of medical status based on a  
6 person's past and present physical and psychiatric history and conducted by a  
7 licensee or group of licensees on a contract basis for a court.

8           ~~T.~~ U. The board may accept the surrender of an active license from a  
9 person who admits in writing to any of the following:

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

13           ~~U.~~ V. In determining the appropriate disciplinary action under this  
14 section, the board shall consider all previous nondisciplinary and  
15 disciplinary actions against a licensee.

16           W. IF AN ADMINISTRATIVE LAW JUDGE ISSUES A FINAL ADMINISTRATIVE  
17 DECISION REGARDING A DISCIPLINARY ACTION, THE BOARD IS BOUND BY THE JUDGE'S  
18 FINDINGS OF LAW AND FACT, INCLUDING THOSE RELATING TO CREDIBILITY.