

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1433

AN ACT

AMENDING SECTIONS 32-1701, 32-1702, 32-1704, 32-1725, 32-1743 AND 32-1744, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 16, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1747.01; AMENDING SECTION 32-1748, ARIZONA REVISED STATUTES; REPEALING TITLE 32, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 16, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 5; RELATING TO THE STATE BOARD OF OPTOMETRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1701, Arizona Revised Statutes, is amended to
3 read:

4 32-1701. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Board" means the state board of optometry.

7 2. "Conviction" means a judgment of conviction by any state or federal
8 court of competent jurisdiction in a criminal cause, regardless of whether an
9 appeal is pending or could be taken, and includes any judgment or order based
10 on a plea of no contest.

11 3. "Licensee" means a person licensed to practice the profession of
12 optometry pursuant to this chapter.

13 4. "Optometrist" or "doctor of optometry" means a person who has
14 graduated from an accredited college of optometry.

15 5. "Pharmaceutical" or "pharmaceutical agent" means a prescription or
16 nonprescription substance or a schedule III controlled substance used for
17 examination, diagnosis or treatment of conditions of the human eye and its
18 adnexa.

19 6. "Practice of the profession of optometry" means:

20 (a) The examination or refraction of the human eye and its appendages
21 and the employment of any objective or subjective means or methods other than
22 surgery for the purpose of diagnosing or treating any visual, muscular,
23 neurological or anatomical anomalies of the eye.

24 (b) The use of pharmaceutical agents authorized pursuant to this
25 chapter.

26 (c) The use of any instrument or device to train the visual system or
27 correct any abnormal condition of the eye or eyes.

28 (d) The prescribing, fitting or employment of any lens, prism, frame
29 or mountings for the correction or relief of or aid to the visual function,
30 provided that superficial foreign bodies may be removed from the eye and its
31 appendages.

32 (e) The taking of smears of the human eye and its adnexa for culture
33 analysis and the ordering or performing of clinical tests that are
34 appropriate to diagnose, treat or manage conditions of the human eye and its
35 adnexa and that are limited to those CLIA-waived clinical tests approved
36 pursuant to 42 Code of Federal Regulations section 493.15.

37 7. "Surgery" means, in reference to the human eye and its appendages,
38 an invasive procedure in which in vivo human tissue is cut, burned,
39 vaporized, removed, coagulated or photodisrupted by use of an electrical
40 cautery, a scalpel, a cryoprobe, a laser or ionizing radiation. Surgery does
41 not include nonsurgical procedures, including the removal of superficial
42 foreign bodies or eyelashes or the use of lasers for diagnostic purposes.

43 8. "Unprofessional conduct" means:

44 (a) Wilful betrayal of a professional secret or wilful violation of a
45 privileged communication except as otherwise required by law.

1 (b) Charging a fee for services not rendered or dividing a
2 professional fee for patient referrals among health care providers or health
3 care institutions or between these providers and institutions or a
4 contractual arrangement that has the same effect. This subdivision does not
5 prohibit a bona fide lease based on the revenues earned by a licensee.

6 (c) Addiction to, or illegal use of, narcotic drugs or use of
7 intoxicating beverages to excess or practicing or attempting to practice the
8 profession of optometry while under the influence of intoxicating beverages
9 or narcotic drugs.

10 (d) Impersonating another licensee.

11 (e) Knowingly having professional connection with or lending one's
12 name to a person who is not a licensee.

13 (f) Gross negligence, repeated or continuing acts of negligence or
14 incompetence in the practice of optometry.

15 (g) Any conduct or practice, including incompetency, that constitutes
16 a danger to the health, welfare or safety of patients or the public.

17 (h) Prescribing, dispensing or pretending to use any secret means,
18 methods, device or instrumentality.

19 (i) Refusing to divulge to the board on demand the means, methods,
20 device or instrumentality used for optometric examination or therapy.

21 (j) Representing that a manifestly not correctable condition can be
22 permanently corrected or that a correctable condition can be corrected within
23 a stated time if this is not accurate.

24 (k) Knowingly making any false or fraudulent statement, written or
25 oral, in connection with the practice of the profession of optometry,
26 INCLUDING ADVERTISING.

27 (l) Failing to comply with a board order or consent agreement.

28 (m) Fraud, forgery, unsworn falsification, false swearing or perjury
29 involving a matter before the board or a written instrument submitted to the
30 board.

31 (n) Wilfully and without legal justification failing to furnish in a
32 timely manner information that is necessary for the board to conduct an
33 investigation under this chapter and that has been requested or subpoenaed by
34 the board.

35 (o) Conduct that discredits the profession.

36 (p) Sexual intimacies with a patient in the course of care or
37 treatment.

38 (q) Falsely claiming attendance at a required continuing education
39 course.

40 (r) SOLICITING PATIENTS BY FRAUDULENT OR MISLEADING ADVERTISING OF ANY
41 KIND.

42 (s) AIDING THE PRACTICE OF OPTOMETRY BY AN UNLICENSED, INCOMPETENT OR
43 IMPAIRED PERSON.

44 (t) SHARING FEES WITH A PERSON OR ORGANIZATION IN RETURN FOR
45 SOLICITING CUSTOMERS BY THAT PERSON OR ORGANIZATION.

1 (u) ISSUING A PRESCRIPTION ORDER CONTINGENT ON THE PURCHASE OF
2 OPHTHALMIC SERVICES OR MATERIALS.

3 Sec. 2. Section 32-1702, Arizona Revised Statutes, is amended to read:

4 32-1702. Board of optometry; appointment; qualifications; term;
5 removal

6 A. The state board of optometry is established consisting of the
7 following members who are appointed by the governor to staggered four-year
8 terms that end on July 1:

9 1. Five members who have been licensed and engaged in the active
10 practice of optometry in this state for at least three years immediately
11 before the appointment.

12 2. ~~One~~ TWO public ~~member~~ MEMBERS who ~~does~~ DO not have a direct or
13 indirect interest in the practice of optometry, opticianry or medicine.

14 ~~3. One member who is a physician licensed pursuant to chapter 13 or 17~~
15 ~~of this title.~~

16 B. The governor may remove any professional member for incompetency or
17 unprofessional conduct or if the member's license has been revoked or
18 suspended or if the member has been censured or placed on probation. The
19 governor may remove any member for neglect of duty or improper conduct. The
20 unexcused absence of a member for more than two consecutive meetings is
21 justification for removal. Appointment by the governor to fill a vacancy
22 caused other than by expiration of a term is for the unexpired portion of the
23 term.

24 C. A member of the board is ineligible to serve more than two
25 consecutive full terms. The completion of the unexpired portion of a full
26 term does not constitute a full term for purposes of this subsection.

27 D. The board shall conduct regular meetings at least six times each
28 year at times and places designated by the board or the governor. Special
29 meetings may be called that the president determines are necessary to carry
30 out the functions of the board, including meetings using communications
31 equipment that allows all members participating in the meetings to hear each
32 other.

33 E. A majority of the members of the board constitutes a quorum and a
34 majority vote of a quorum present at any meeting governs all actions taken by
35 the board.

36 Sec. 3. Section 32-1704, Arizona Revised Statutes, is amended to read:

37 32-1704. Powers and duties of the board

38 A. The board shall adopt, and may amend, rules consistent with this
39 chapter governing the practice of the profession of optometry, for the
40 performance of its duties under this chapter and for the examination of
41 applicants for licenses. The board shall adopt and use a seal, administer
42 oaths and take testimony concerning any matter within its jurisdiction.

43 B. The board may not adopt a rule that:

44 1. Regulates a licensee's fees or charges to a patient.

45 2. Regulates the place in which a licensee may practice.

1 3. Prescribes the manner or method of accounting, billing or
2 collection of fees.

3 4. Prohibits advertising by a licensee unless the advertising is
4 inconsistent with section 44-1481.

5 C. The board shall maintain its records in accordance with a retention
6 schedule approved by the Arizona state library, archives and public records.

7 D. The board shall adopt rules for criteria it must use to approve
8 continuing education programs for licensees. Programs shall be designed to
9 assist licensees to maintain competency, to become aware of new developments
10 in the practice of the profession of optometry and to increase management
11 skills and administrative efficiency. The board shall approve programs that
12 meet these criteria.

13 E. Subject to title 41, chapter 4, article 4, the board may hire an
14 executive director as an employee of the board. The executive director is
15 responsible for the performance of the regular administrative functions of
16 the board and such other administrative duties as the board may direct. The
17 executive director is eligible to receive compensation in an amount as
18 determined pursuant to section 38-611.

19 F. The board may hire investigators subject to title 41, chapter 4,
20 article 4 or contract with investigators to assist in the investigation of
21 violations of this chapter, hire other employees subject to title 41, chapter
22 4, article 4 required to carry out this chapter and contract with other state
23 agencies when required to carry out this chapter.

24 G. The board may:

25 1. Appoint advisory committees.

26 2. Issue subpoenas for the attendance of witnesses and the production
27 of books, records, documents and other evidence it deems relevant to an
28 investigation or hearing.

29 3. Charge reasonable fees for materials it has printed at its own
30 expense.

31 4. Delegate to the executive director, board staff and persons with
32 whom the board contracts the board's licensing and regulatory duties. The
33 board shall adopt rules for each specific licensing and regulatory duty the
34 board delegates pursuant to this paragraph.

35 H. Subject to title 41, chapter 4, article 4, the board may hire
36 consultants and professional and clerical personnel as required to perform
37 its duties.

38 I. The board may contract with other state or federal agencies as
39 required to carry out this chapter.

40 J. Subject to the limitations of section 41-2544, the executive
41 director may enter into agreements to allow licensees to pay fees by
42 alternative methods, including credit cards, charge cards, debit cards and
43 electronic funds transfers.

44 K. A person who is aggrieved by an action taken by the executive
45 director, board staff or person with whom the board contracts may request the

1 board to review that action by filing with the board a written request within
2 thirty days after that person is notified of the action by personal delivery
3 or certified mail to that person's last known residence or place of business.
4 At the next regular board meeting, the board shall review the action and
5 approve, modify or reject the action.

6 L. THE BOARD SHALL REPORT ALLEGATIONS OF EVIDENCE OF CRIMINAL
7 WRONGDOING TO THE APPROPRIATE CRIMINAL JUSTICE AGENCY.

8 Sec. 4. Section 32-1725, Arizona Revised Statutes, is amended to read:
9 32-1725. Issuance and display of license and certificate

10 A. The board shall issue to each applicant who satisfactorily passes
11 the examination and who pays the license issuance fee pursuant to section
12 32-1727 a license under the seal and signatures of the members of the board.
13 An applicant who does not pay the issuance fee within sixty days must submit
14 a new application and all applicable fees pursuant to section 32-1727.

15 B. A PERSON WHO HOLDS A LICENSE OR CERTIFICATE PURSUANT TO THIS
16 CHAPTER MUST DISPLAY THE CURRENT, ORIGINAL DOCUMENT IN A CONSPICUOUS PLACE
17 THAT IS ACCESSIBLE TO THE PUBLIC.

18 C. A PERSON WHO PRACTICES, CONDUCTS BUSINESS OR IS EMPLOYED AT MORE
19 THAN ONE LOCATION AND WHO MAINTAINS A CONTINUING ACTIVITY AS AUTHORIZED BY
20 THE LICENSE OR CERTIFICATE MUST DISPLAY A BOARD-ISSUED DUPLICATE OF THAT
21 DOCUMENT AT EACH LOCATION.

22 Sec. 5. Section 32-1743, Arizona Revised Statutes, is amended to read:
23 32-1743. Grounds for censure, civil penalty, probation,
24 suspension, revocation, denial or renewal of license

25 A. After notice and a hearing the board in its discretion may censure,
26 impose a civil penalty, prescribe probation, suspend or revoke the license of
27 a doctor of optometry or refuse to issue or renew a license, certificate or
28 registration for any of the following reasons:

- 29 1. Conviction of a felony or any offense involving moral turpitude.
- 30 2. Procuring or attempting to procure a license to practice optometry
31 or a certificate to use pharmaceutical agents by fraud, deceit,
32 misrepresentation or knowingly taking advantage of the mistake of another
33 person or agency.
- 34 3. Conduct likely to deceive or defraud the public.
- 35 4. Unprofessional conduct.
- 36 5. Employment of a solicitor to solicit business or soliciting from
37 house to house or person to person.
- 38 6. Obtaining a fee or compensation by fraud or misrepresentation.
- 39 7. Employment of a person to engage in the practice of the profession
40 of optometry who does not hold a license to practice the profession of
41 optometry in this state.
- 42 8. Using any device to evade or defeat the provisions of this chapter,
43 such as a profit sharing plan or partnership with a person not licensed to
44 practice the profession of optometry in this state.

1 9. The practice of the profession of optometry under a false or
2 assumed name.

3 10. Violation of any provision of this chapter OR ANY BOARD ORDER.

4 11. Violation of any of the rules adopted by the board pursuant to this
5 chapter.

6 12. Any violation of any statutes, laws or rules regulating the
7 practice of optometry in this state or any other jurisdiction in the United
8 States.

9 13. Providing any controlled substance or pharmaceutical agent not
10 authorized by this chapter or providing any controlled substance or
11 prescription-only drug for other than accepted therapeutic purposes for
12 diagnosis and treatment of conditions of the human eye and its adnexa.

13 14. Gross malpractice or repeated acts constituting malpractice.

14 15. Failing to maintain or submit records as required by this chapter.

15 B. TO DETERMINE THE APPROPRIATE DISCIPLINARY ACTION PURSUANT TO THIS
16 SECTION, THE BOARD MAY CONSIDER ANY PREVIOUS NONDISCIPLINARY AND DISCIPLINARY
17 ACTIONS AGAINST A LICENSEE.

18 Sec. 6. Section 32-1744, Arizona Revised Statutes, is amended to read:

19 32-1744. Board investigations; duty to report violations;
20 hearing; decision of board; informal settlement
21 conference

22 A. The board on its own motion shall investigate any evidence that
23 appears to show that a licensee may be guilty of a violation of section
24 32-1743. Any person may report to the board information the person may have
25 that appears to show that a licensee may be guilty of unprofessional conduct
26 or of practice without regard for the safety and welfare of the public. A
27 person who reports or provides information to the board in good faith is not
28 subject to civil damages as a result, ~~and~~. The name of the person reporting
29 ~~shall not be disclosed unless the information is necessary to conduct an~~
30 ~~investigation or is essential to disciplinary proceedings conducted pursuant~~
31 ~~to this section~~ INFORMATION PURSUANT TO THIS SUBSECTION IS SUBJECT TO THE
32 DISCLOSURE REQUIREMENTS PRESCRIBED IN SECTION 41-1010.

33 B. THE BOARD OR ITS DESIGNEE SHALL REGISTER AND INVESTIGATE ALL
34 COMPLAINTS. ON RECEIPT OF A COMPLAINT, THE BOARD OR ITS DESIGNEE SHALL SEND
35 THE LICENSEE A COPY OF THE COMPLAINT FOR A RESPONSE. THE BOARD SHALL REVIEW
36 THE COMPLAINT AND RESPONSE AND MAY DISMISS THE COMPLAINT, INVESTIGATE IT
37 FURTHER OR BRING ITS OWN COMPLAINT AGAINST THE LICENSEE. THE BOARD MAY
38 RESOLVE A DISCIPLINARY MATTER INFORMALLY OR AFTER A FORMAL HEARING. THE
39 BOARD OR ITS DESIGNEE SHALL INFORM THE COMPLAINANT OF THE FINDINGS OF THE
40 INVESTIGATION AND THE RESOLUTION OF THE COMPLAINT.

41 ~~B.~~ C. The board, its designee or the executive director shall require
42 a licensee to provide a written response to a complaint within twenty days
43 after the licensee receives the notification of complaint.

44 ~~C.~~ D. Except as provided in subsection ~~E~~ F of this section, if in
45 the opinion of the board it appears that information provided under

1 subsection A of this section may be accurate and a violation of this chapter,
2 the board shall request an informal interview with the licensee before
3 proceeding to a formal hearing. If the licensee refuses an invitation for an
4 informal interview, or if the licensee accepts the invitation and if the
5 results of the interview indicate suspension or revocation of license may be
6 in order, a complaint shall be issued and a formal hearing held pursuant to
7 title 41, chapter 6, article 10. If at the informal interview the board
8 finds the information provided under subsection A of this section is accurate
9 but not of sufficient seriousness to merit suspension exceeding thirty days
10 or revocation of the license, it may take any or all of the following
11 actions:

12 1. Issue a decree of censure or written reprimand.

13 2. Fix a period and terms of probation best adapted to protect the
14 public health and safety and rehabilitate the licensee. Probation may
15 include a requirement for a refund of fees and charges to professional
16 services clients resulting from services performed in violation of this
17 chapter or rules adopted pursuant to this chapter, restriction of a license
18 to practice or temporary suspension not to exceed thirty days. Failure to
19 comply with probation is cause for filing a complaint and holding a formal
20 hearing pursuant to title 41, chapter 6, article 10.

21 3. Impose a civil penalty of not more than ~~one~~ FIVE thousand dollars
22 for each violation of this chapter.

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

27 ~~D.~~ E. If the board determines that a reasonable basis exists to
28 believe that a violation of this chapter or rules adopted pursuant to this
29 chapter has occurred and the violation is not sufficiently serious to warrant
30 disciplinary action, it may send a letter of concern to the licensee. The
31 letter of concern shall advise the licensee of the possible violation and the
32 board's decision not to initiate proceedings. If violations occur after the
33 board sends a letter of concern, the board may initiate proceedings on all
34 violations, including the violation that was the subject of the letter of
35 concern.

36 ~~E.~~ F. If in the opinion of the board it appears that information
37 provided under subsection A of this section may be accurate, the board may
38 issue a complaint and hold a formal hearing pursuant to title 41, chapter 6,
39 article 10 without first holding an informal interview if the probable
40 violation involves one or more of the following:

41 1. Gross negligence.

42 2. Fraud, forgery, unsworn falsification, false swearing or perjury.

43 3. Three or more repeated offenses.

44 4. Conviction of a felony.

45 5. Conviction of an offense involving moral turpitude.

1 6. Incompetence.

2 7. Failing to comply with a board order or consent agreement.

3 8. Wilfully and without legal justification failing to furnish in a
4 timely manner information necessary for the board to conduct an investigation
5 under this chapter that has been requested or subpoenaed by the board.

6 ~~F.~~ G. The board shall serve on the licensee a notice fully setting
7 forth the conduct or inability concerned and returnable at a hearing to be
8 held before the board or an administrative law judge in not less than thirty
9 days, stating the time and place of the hearing. A LICENSEE WHO HAS BEEN
10 NOTIFIED OF A COMPLAINT PURSUANT TO THIS SUBSECTION MUST FILE WITH THE BOARD
11 A WRITTEN RESPONSE NOT MORE THAN TWENTY DAYS AFTER SERVICE OF THE COMPLAINT
12 AND NOTICE OF HEARING. IF THE LICENSEE FAILS TO ANSWER IN WRITING, IT IS
13 DEEMED AN ADMISSION OF THE ACT OR ACTS CHARGED IN THE COMPLAINT AND NOTICE OF
14 HEARING. THE BOARD MAY THEN TAKE DISCIPLINARY ACTION PURSUANT TO THIS
15 CHAPTER WITHOUT A HEARING.

16 ~~G.~~ H. AT THE EXPENSE OF THE LICENSEE, the board may require a
17 MEDICAL, mental ~~and~~ OR physical examination and make an investigation,
18 including, if necessary, the issuance of subpoenas, the appointment of
19 advisory committees, the employment of expert witnesses, ~~the taking of~~
20 ~~depositions~~ or otherwise, as may be required fully to inform itself with
21 respect to the complaint.

22 ~~H.~~ I. A person may file a motion with the board for an expedited
23 hearing pursuant to section 41-1092.05.

24 ~~I.~~ J. If the licensee wishes to be present at the hearing in person
25 or by representation, or both, the licensee shall file with the board an
26 answer to the charges in the complaint. The answer shall be in writing,
27 verified under oath and filed within twenty days after service of the summons
28 and complaint.

29 ~~J.~~ K. At the hearing held in compliance with subsection ~~F~~ G of this
30 section, a licensee may be present in person together with any counsel and
31 witnesses the licensee chooses.

32 ~~K.~~ L. The board shall issue subpoenas for witnesses it may need and,
33 at the respondent's expense, for witnesses the respondent may request. All
34 provisions of law compelling a person under subpoena to testify are
35 applicable to a hearing held pursuant to this section.

36 ~~L.~~ M. The board shall serve every notice or decision under this
37 article by any method reasonably calculated to effect actual notice on the
38 board and every other party to the action to the party's last address of
39 record with the board. Each party shall inform the board of any change of
40 address within five days after the change.

41 ~~M.~~ N. A licensee who, after a hearing, is found to be guilty by the
42 board of a violation of this chapter is subject to censure, probation or
43 civil penalty as provided in subsection ~~G~~ D of this section, suspension of
44 license or revocation of license, or any combination of these, and for the
45 period of time or permanently and under the conditions the board deems

1 appropriate for the protection of the public health and safety and just in
2 the circumstances. The board may charge the costs of formal hearings to the
3 licensee who is in violation of this chapter.

4 ~~N.~~ O. The board shall issue a written decision within twenty days
5 after the hearing is concluded. The written decision shall contain a concise
6 explanation of the reasons supporting the decision. The board shall serve a
7 copy of the decision on the licensee. On the licensee's request, the board
8 shall also transmit to the licensee the record of the hearing.

9 ~~Q.~~ P. Except as provided in this subsection, all materials, documents
10 and evidence associated with a pending or resolved complaint or investigation
11 are confidential and are not public records. The following materials,
12 documents and evidence are not confidential and are public records if they
13 are related to resolved complaints and comply with subsection A of this
14 section:

- 15 1. The complaint.
- 16 2. The response and any rebuttal statements submitted by the licensee.
- 17 3. Written or recorded board discussions of the complaint.
- 18 4. Written reports of an investigation of a complaint.
- 19 5. Disposition of the complaint, including any written comments of the
20 board.

21 ~~R.~~ Q. This section or any other law making communications between a
22 licensee and the licensee's patient a privileged communication does not apply
23 to investigations or proceedings conducted pursuant to this chapter. The
24 board and its employees, agents and representatives shall keep in confidence
25 the names of any patients whose records are reviewed during the course of
26 investigations and proceedings pursuant to this chapter.

27 ~~S.~~ R. Any action of the board shall be included in the minutes of the
28 meeting at which the action is taken, including any determination by the
29 board not to proceed under this section. The person reporting information to
30 the board shall receive a copy of any final decision.

31 ~~T.~~ S. Pursuant to sections 35-146 and 35-147, the board shall deposit
32 civil penalties collected pursuant to this chapter in the state general fund.

33 ~~U.~~ T. A licensee who is the subject of a disciplinary action may
34 request an informal settlement conference. The licensee must submit a
35 request for an informal settlement conference to the board in writing. The
36 board shall hold an informal settlement conference within fifteen days after
37 it receives a request to do so from the licensee. Only a person with the
38 authority to act on behalf of the board may represent the board at the
39 informal settlement conference. The board representative shall notify the
40 licensee in writing that any written or oral statement made by the licensee
41 at the informal settlement conference, including statements for the purpose
42 of settlement negotiations, is inadmissible in any subsequent hearing. A
43 licensee who participates in an informal settlement conference waives the
44 right to object to the participation of the board representative in the final
45 administrative decision.

1 D. For the purposes of this section, "good cause shown" means that the
2 person making application for reinstatement or reissuance shall demonstrate
3 through substantial evidence presented to the board that ~~he~~ THE PERSON is
4 completely rehabilitated with respect to the conduct ~~which~~ THAT was the basis
5 of the revocation or suspension of ~~his~~ THE license. Demonstration of
6 rehabilitation shall include:

7 1. Evidence that the person has not engaged in any conduct during the
8 revocation or suspension period ~~which~~ THAT, if ~~he~~ THE PERSON had been
9 licensed during that period, would have constituted a basis for revocation or
10 suspension pursuant to section 32-1743.

11 2. Evidence that, with respect to any criminal conviction ~~which~~ THAT
12 constituted any part of the basis for the previous revocation or suspension,
13 ~~his~~ THE PERSON'S civil rights have been fully restored pursuant to statute or
14 other applicable recognized judicial or gubernatorial order.

15 3. Evidence that restitution has been made to any aggrieved party as
16 ordered by a court of competent jurisdiction.

17 4. Other evidence of rehabilitation the board deems appropriate.

18 Sec. 9. Repeal

19 Title 32, chapter 16, article 5, Arizona Revised Statutes, is repealed.

20 Sec. 10. Title 32, chapter 16, Arizona Revised Statutes, is amended by
21 adding a new article 5, to read:

22 ARTICLE 5. DISPENSERS OF CONTACT LENSES

23 32-1771. Dispensing contact lenses; conformity with federal
24 law; requirements

25 A. ALL SALES OF AND PRESCRIPTIONS FOR CONTACT LENSES IN THIS STATE
26 MUST CONFORM TO THE FEDERAL FAIRNESS TO CONTACT LENS CONSUMERS ACT (15 UNITED
27 STATES CODE SECTIONS 7601 THROUGH 7610).

28 B. CONTACT LENSES USED TO DETERMINE A PRESCRIPTION FOR CONTACT LENSES
29 ARE CONSIDERED TO BE DIAGNOSTIC LENSES. AFTER THE DIAGNOSTIC AND TRIAL
30 PERIOD AND AFTER THE CONTACT LENSES HAVE BEEN ADEQUATELY FITTED AND THE
31 PATIENT HAS BEEN RELEASED FROM IMMEDIATE FOLLOW-UP CARE BY A PERSON WHO IS
32 LICENSED PURSUANT TO THIS CHAPTER OR CHAPTER 13 OR 17 OF THIS TITLE, THE
33 PRESCRIBING OPTOMETRIST SHALL PROVIDE A PRESCRIPTION FOR CONTACT LENSES AT NO
34 COST TO THE PATIENT.

35 C. CONTACT LENSES MAY NOT BE SOLD OR DISPENSED EXCEPT PURSUANT TO A
36 PRESCRIPTION ORDER THAT CONFORMS TO STATE AND FEDERAL REGULATIONS GOVERNING
37 PRESCRIPTIONS.

38 Sec. 11. Retention of board members

39 Notwithstanding section 32-1702, Arizona Revised Statutes, as amended
40 by this act, all persons serving as members of the state board of optometry
41 on the effective date of this act may continue to serve until the expiration
42 of their normal term. The governor shall make all subsequent appointments as
43 prescribed by statute.