AN ACT

AMENDING SECTIONS 32-1401, 32-1403.01, 32-1452 AND 32-1452.01, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA MEDICAL BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

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

32-1401. Definitions
In this chapter, unless the context otherwise requires:
1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
   (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
   (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
   (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.
5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.
6. "Board" means the Arizona medical board.
7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.
8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite
as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

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

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

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

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

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

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

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

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

17. "Medical peer review" means:

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

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.
18. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:
   (a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.
   (b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five per cent on the written special purpose licensing examination.

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

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

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

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

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

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

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

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

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:
(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.
(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.
(c) False, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.
(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
(e) Failing or refusing to maintain adequate records on a patient.
(f) Habitual intemperance in the use of alcohol or habitual substance abuse.
(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.
(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.
(i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513 including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the non-therapeutic use of injectable amphetamines.
(j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
(k) Signing a blank, undated or predated prescription form.
(l) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
(m) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
(n) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
(o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.
(p) Sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.

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

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

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

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

(u) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

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

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

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

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

(z) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:
(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

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

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(aa) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(bb) Representing or claiming to be a medical specialist if this is not true.

(cc) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(dd) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ee) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(ff) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(gg) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the federal food and drug administration or its successor agency.

(hh) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(ii) Lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.
(jj) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

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

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

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

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

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

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

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

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

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

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

(ii) Emergency medical situations as defined in section 41-1831.
(iii) Prescriptions written to prepare a patient for a medical examination.
(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, “bioterrorism” has the same meaning prescribed in section 36-781.
(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.
(vi) PRESCRIPTIONS WRITTEN OR PRESCRIPTION MEDICATIONS ISSUED FOR ADMINISTRATION OF IMMUNIZATIONS OR VACCINES LISTED IN THE UNITED STATES CENTERS FOR DISEASE CONTROL AND PREVENTION’S RECOMMENDED IMMUNIZATION SCHEDULE TO A HOUSEHOLD MEMBER OF A PATIENT.
(tt) Performing office based surgery using sedation in violation of board rules.
(uu) Practicing medicine under a false or assumed name in this state.
Sec. 2. Section 32-1403.01, Arizona Revised Statutes, is amended to read:
32-1403.01. Licensees; profiles; required information; updates; civil penalty
A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet web site and, if requested, in writing. The profile shall contain the following information:
1. A description of any conviction of a felony or a misdemeanor involving moral turpitude within the last five years. For the purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty or was found guilty by a court of competent jurisdiction.
2. A description of any felony charges or misdemeanor charges involving moral turpitude within the last five years to which the licensee pled no contest.
3. 1. Final board disciplinary and nondisciplinary actions within the last five years.
   4. All medical malpractice court judgments and all medical malpractice awards or settlements in which a payment is made to a complaining party within the last five years. Information concerning malpractice actions shall also contain the following statement:
      The settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment
in settlement of a medical malpractice action does not create a
presumption that medical malpractice occurred.

5. 2. The name and location of the licensee's medical school and the
date of graduation.

6. 3. The name and location of the institution from which the
licensee received graduate medical education and the date that education was
completed.

7. 4. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to
subsection A each year as directed by the board. An applicant for licensure
shall submit this information at the time of application. The applicant and
licensee shall submit the information on a form prescribed by the board.
A licensee shall submit immediately any changes in information required
pursuant to subsection A, paragraphs 1, 2 and 4. The board shall update
immediately its internet web site WEBSITE to reflect changes in information
relating to subsection A, paragraphs PARAGRAPH 1 through 4. The board shall
update the internet web site WEBSITE information at least annually.

C. The board shall provide each licensee with a copy of the licensee's
profile and give the licensee reasonable time to correct the profile before
it is available to the public ON REQUEST AND SHALL MAKE VALID AND VERIFIABLE
CORRECTIONS TO THE PROFILE ON NOTIFICATION AT ANY TIME BY THE LICENSEE. A
CHANGE MADE BY A LICENSEE TO AN ADDRESS OR TELEPHONE NUMBER IS SUBJECT TO THE
REQUIREMENTS OF SECTION 32-1435.

D. It is an act of unprofessional conduct for a licensee to provide
erroneous information pursuant to this section. In addition to other
disciplinary action, the board may impose a civil penalty of not more than
one thousand dollars for each erroneous statement.

Sec. 3. Section 32-1452, Arizona Revised Statutes, is amended to read:
32-1452. Substance abuse treatment and rehabilitation program;
private contract; funding; license restrictions;
immunity

A. The board may establish a confidential program for the treatment
and rehabilitation of doctors of medicine WHO ARE LICENSED PURSUANT TO THIS
CHAPTER and physician assistants who are LICENSED PURSUANT TO CHAPTER 25 OF
THIS TITLE AND WHO ARE impaired by alcohol or drug abuse. This program shall
include education, intervention, therapeutic treatment and posttreatment
monitoring and support.

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

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each doctor's diagnosis
and prognosis and the recommendations for continuing care, treatment and
supervision.
3. Immediate reporting to the board of the name of an impaired doctor OR PHYSICIAN ASSISTANT who the treating organization believes to be misusing chemical substances.

4. Reports to the board, as soon as possible, of the name of a doctor OR PHYSICIAN ASSISTANT who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not to exceed forty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-1436 for the operation of the program established by this section.

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

E. In order to determine that a doctor of medicine OR PHYSICIAN ASSISTANT who has been placed on probationary order or who has entered into a stipulation order pursuant to this section is not impaired by drugs or alcohol after that order is no longer in effect, the board or its designee may require the doctor of medicine OR PHYSICIAN ASSISTANT to submit to body fluid examinations and other examinations known to detect the presence of alcohol or other drugs at any time within five consecutive years following termination of the probationary or stipulated order.

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

G. The board shall revoke the license of a doctor of medicine OR PHYSICIAN ASSISTANT if that doctor LICENSEE is impaired by alcohol or drug abuse and was previously placed on probation pursuant to subsection F--D of this section and the probation is no longer in effect. The board may accept the surrender of the license if the doctor LICENSEE admits in writing to being impaired by alcohol or drug abuse.

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

Sec. 4. Section 32-1452.01, Arizona Revised Statutes, is amended to read:

32-1452.01. Mental, behavioral and physical health evaluation and treatment program; private contract; immunity

A. The board may establish a confidential program for the evaluation, treatment and monitoring of persons licensed pursuant to this chapter and chapter 25 of this title who have medical, psychiatric, psychological or behavioral health disorders that may impact a licensee's ability to safely practice medicine or perform healthcare tasks. The program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section, who voluntarily reports that disorder to that licensee's board and who has not committed a statutory violation under this chapter or chapter 25 of this title, may agree to enter into a confidential consent agreement for participation in a program established pursuant to this section.

C. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section, who is reported to that licensee's board by a peer review committee, hospital medical staff, health plan or other health care practitioner or health care entity and who has not committed a statutory violation under this chapter or chapter 25 of this title, may agree to enter into a confidential consent agreement for participation in a program established pursuant to this section.

D. The board may contract with other organizations to operate a program established pursuant to this section. A contract with a private organization must include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each participant's diagnosis and prognosis and the recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the Arizona medical board of the name of a licensee who the treating organization believes is incapable of safely practicing medicine or performing healthcare tasks. If the licensee is a physician assistant, the Arizona medical board shall immediately report this information to the Arizona regulatory board of physician assistants.

E. An evaluator, teacher, supervisor or volunteer in a program established pursuant to this section who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a licensee who is attending the program pursuant to board action.