

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

CHAPTER 252
SENATE BILL 1290

AN ACT

AMENDING SECTIONS 23-1026, 32-852.01, 32-1451 AND 32-1855, ARIZONA REVISED
STATUTES; RELATING TO INDEPENDENT MEDICAL EXAMINATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-1026, Arizona Revised Statutes, is amended to
3 read:

4 23-1026. Periodical medical examination of employee; effect of
5 refusal or obstruction of examination or treatment

6 A. An employee who may be entitled to compensation under this chapter
7 shall submit himself for medical examination from time to time at a place
8 reasonably convenient for the employee, if and when requested by the
9 commission, his employer or the insurance carrier. A place is reasonably
10 convenient even if it is not where the employee resides if it is the place
11 where the employee was injured and the employer or the insurance carrier pays
12 in advance the employee's reasonable travel expenses, including the cost of
13 transportation, food, lodging and loss of pay, if applicable.

14 B. The request for the medical examination shall fix a time and place
15 having regard to the convenience of the employee, his physical condition and
16 his ability to attend. The employee may have a physician present at the
17 examination if procured and paid for by ~~himself~~ THE EMPLOYEE.

18 C. If the employee refuses to submit to the medical examination or
19 obstructs the examination, his right to compensation shall be suspended until
20 the examination has been made, and no compensation shall be payable during or
21 for such period.

22 D. A physician who makes or is present at the medical examination
23 provided by this section may be required to testify as to the result ~~thereof~~
24 OF THE EXAMINATION. THE PHYSICIAN IS NOT SUBJECT TO A COMPLAINT FOR
25 UNPROFESSIONAL CONDUCT TO THE PHYSICIAN'S LICENSING BOARD IF THE COMPLAINT IS
26 BASED ON A DISAGREEMENT WITH THE FINDINGS AND OPINIONS EXPRESSED BY THE
27 PHYSICIAN AS A RESULT OF THE EXAMINATION.

28 E. ~~Upon~~ ON appropriate application and hearing, the commission may
29 reduce or suspend the compensation of an employee who persists in unsanitary
30 or injurious practices tending to imperil or retard his recovery, or who
31 refuses to submit to medical or surgical treatment reasonably necessary to
32 promote his recovery.

33 F. An employee shall be excused from attending a scheduled medical
34 examination if the employee requests a protective order and the
35 administrative law judge finds that the scheduled examination is unnecessary,
36 would be cumulative or could reasonably be timely scheduled with an
37 appropriate physician where the employee resides. If a protective order is
38 requested the burden is on the employer or insurance carrier to establish
39 that a medical examination should be scheduled at a place other than where
40 the employee resides. If an employee has left this state and the employer or
41 insurance carrier pays in advance the employee's reasonable travel expenses,
42 including the cost of transportation, food, lodging and loss of pay, if
43 applicable, the employer or insurance carrier is entitled to have the
44 employee return to this state one time a year for examination or one time
45 following the filing of a petition to reopen.

1 G. If a physician performs an examination under this section and is
2 provided data from the Arizona state board of pharmacy pursuant to title 36,
3 chapter 28, the physician may disclose that data to the employee, employer,
4 insurance carrier and ~~the~~ commission.

5 Sec. 2. Section 32-852.01, Arizona Revised Statutes, is amended to
6 read:

7 32-852.01. Investigations; duty to report; unprofessional
8 conduct hearing; decision of board; appeal

9 A. The board on its own motion may investigate any evidence that
10 appears to show that a podiatrist is or may be guilty of a violation of
11 section 32-852. Any podiatrist or the Arizona podiatry association shall, or
12 any other person may, report to the board any information the podiatrist,
13 association or person may have that appears to show that a podiatrist is or
14 may be guilty of unprofessional conduct or is or may be guilty of practice
15 without regard for the safety and welfare of the public. **A PODIATRIST**
16 **CONDUCTING A MEDICAL EXAMINATION PURSUANT TO SECTION 23-1026 IS NOT SUBJECT**
17 **TO A COMPLAINT OF UNPROFESSIONAL CONDUCT BASED ON A DISAGREEMENT WITH THE**
18 **FINDINGS AND OPINIONS EXPRESSED BY THE PODIATRIST AS A RESULT OF THE**
19 **EXAMINATION.** Any podiatrist, association, health care institution or other
20 person that reports or provides information to the board in good faith is not
21 subject to civil liability and the name of the reporter shall not be
22 disclosed unless the information is essential to the investigative
23 proceedings conducted pursuant to this section. It is an act of
24 unprofessional conduct for any podiatrist to fail to report as required by
25 this subsection. The chief executive officer, the medical director or the
26 medical chief of staff of a health care institution shall inform the board if
27 the privileges of a podiatrist to practice in that health care institution
28 are denied, revoked, suspended or limited because of actions by the
29 podiatrist that appear to show that the podiatrist is or may be medically
30 incompetent, is or may be guilty of unprofessional conduct or is or may be
31 mentally or physically unable to safely engage in the practice of podiatry,
32 along with a general statement of the reasons, including patient chart
33 numbers, that led the health care institution to take the action. The chief
34 executive officer, the medical director or the medical chief of staff of a
35 health care institution shall inform the board if a podiatrist under
36 investigation resigns or if a podiatrist resigns in lieu of disciplinary
37 action by the health care institution. Notification shall include a general
38 statement of the reasons for the resignation, including patient chart
39 numbers. The board shall inform all appropriate health care institutions in
40 this state as defined in section 36-401 and the Arizona health care cost
41 containment system administration of a resignation, denial, revocation,
42 suspension or limitation, and the general reason for that action, without
43 divulging the name of the reporting health care institution. A person who
44 reports information in good faith pursuant to this subsection is not subject
45 to civil liability.

1 B. Based on information received pursuant to subsection A of this
2 section, the board may order a summary suspension of a license pending formal
3 proceedings for license revocation or other disciplinary action if the board
4 finds that the protection of the public health or safety requires emergency
5 action. The board shall serve the licensee with a written notice that states
6 the charges and that the licensee is entitled to a formal hearing before the
7 board or an administrative law judge within sixty days.

8 C. If the board finds after completing its investigation that the
9 information provided pursuant to subsection A of this section is not of
10 sufficient seriousness to merit direct action against the license of the
11 podiatrist, it may take any of the following actions:

12 1. Dismiss if, in the opinion of the board, the information is without
13 merit.

14 2. File a letter of concern.

15 3. Issue a nondisciplinary order requiring the licensee to complete a
16 prescribed number of hours of continuing education in an area or areas
17 prescribed by the board to provide the licensee with the necessary
18 understanding of current developments, skills, procedures or treatment.

19 D. If the board finds after completing its investigation that the
20 information is or may be true, the board may request an informal hearing with
21 the licensee. If the licensee refuses the invitation or accepts the
22 invitation and the results of the hearing indicate suspension or revocation
23 of the license might be in order, the board shall issue a complaint and
24 conduct a formal hearing pursuant to title 41, chapter 6, article 10. If the
25 board finds at the informal hearing that the information provided under
26 subsection A of this section is true but is not of sufficient seriousness to
27 merit suspension or revocation of the license, it may take one or more of the
28 following actions:

29 1. File a letter of concern.

30 2. Issue a decree of censure.

31 3. Fix a period and terms of probation best adapted to protect the
32 public health and safety and rehabilitate the licensee. If a licensee fails
33 to comply with the terms of probation the board may file a complaint and hold
34 a formal hearing pursuant to this section.

35 4. Impose a civil penalty of not more than two thousand dollars for
36 each violation. The board shall deposit, pursuant to sections 35-146 and
37 35-147, all monies collected pursuant to this paragraph in the state general
38 fund.

39 5. Issue a nondisciplinary order requiring the licensee to complete a
40 prescribed number of hours of continuing education in an area or areas
41 prescribed by the board to provide the licensee with the necessary
42 understanding of current developments, skills, procedures or treatment.

43 E. If the board believes that the charge is or may be true, the board
44 shall serve on the licensee a summons and complaint that fully states the
45 conduct or inability concerned and the time and place of the hearing. The

1 board shall schedule the hearing not less than thirty days after the date of
2 the summons and complaint.

3 F. The board may require that the licensee under investigation undergo
4 any mental and physical examination and may conduct any investigation,
5 including the taking of depositions, necessary to fully inform itself with
6 respect to the complaint.

7 G. If the licensee wishes to be present at the hearing in person or by
8 representation, or both, the licensee shall file with the board a written and
9 verified answer to the charges within twenty days after service of the
10 summons and complaint. A licensee who complies with this subsection may be
11 present at the hearing with any witnesses of the licensee's choice.

12 H. The board may issue subpoenas for any witnesses, documents and
13 other evidence it may need and for any witnesses, documents and other
14 evidence the licensee may request. The superior court may hold a person who
15 refuses to obey a subpoena in contempt of court.

16 I. Service of the summons and complaint shall be as provided for
17 service of the summons and complaint in civil cases.

18 J. Service of subpoenas for witnesses shall be as provided by law for
19 the service of subpoenas generally.

20 K. The board may administer the oath to all witnesses, shall keep a
21 written transcript of all oral testimony submitted at the hearing and shall
22 keep the original or a copy of all other evidence submitted. The board shall
23 make copies of the transcript available to the licensee at that person's
24 expense and without charge to the court in which the appeal may be taken. At
25 all hearings the board may waive the technical rules of evidence.

26 L. A licensee who, after a hearing held pursuant to this section, is
27 found to be guilty of a violation of section 32-852 or this section is
28 subject to censure, probation as provided in this section, suspension of a
29 license or revocation of a license, or any combination of these, for a period
30 of time or permanently and under any conditions the board deems appropriate
31 for the protection of the public health and safety and just in the
32 circumstances. The board may file a letter of concern if it finds that the
33 violation is not of sufficient seriousness to merit censure, probation or
34 suspension or revocation of a license. The board may also issue a
35 nondisciplinary order requiring the licensee to complete a prescribed number
36 of hours of continuing education in an area or areas prescribed by the board
37 to provide the licensee with the necessary understanding of current
38 developments, skills, procedures or treatment.

39 M. Patient records, including clinical records, medical reports,
40 laboratory statements and reports, any file, film, other report or oral
41 statement relating to diagnostic findings or treatment of patients, any
42 information from which a patient or the patient's family might be identified
43 or information received and records kept by the board as a result of the
44 investigation procedure outlined in this chapter are not available to the
45 public.

1 N. Except as provided in section 41-1092.08, subsection H, final
2 decisions of the board are subject to judicial review pursuant to title 12,
3 chapter 7, article 6.

4 O. This section and any other law relating to a privileged
5 communication do not apply to investigations or proceedings conducted
6 pursuant to this chapter. The board and its employees, agents and
7 representatives shall keep in confidence the names of any patients whose
8 records are reviewed during the course of investigations and proceedings
9 pursuant to this chapter.

10 P. If the board acts to modify any podiatrist's prescription writing
11 privileges, it shall immediately notify the state board of pharmacy of the
12 modification.

13 Q. A letter of concern is a public document and may be used in future
14 disciplinary actions against a podiatrist.

15 Sec. 3. Section 32-1451, Arizona Revised Statutes, is amended to read:
16 32-1451. Grounds for disciplinary action; duty to report;
17 immunity; proceedings; board action; notice
18 requirements

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

40 B. The chief executive officer, the medical director or the medical
41 chief of staff of a health care institution shall inform the board if the
42 privileges of a doctor to practice in that health care institution are
43 denied, revoked, suspended or limited because of actions by the doctor that
44 appear to show that the doctor is or may be medically incompetent, is or may
45 be guilty of unprofessional conduct or is or may be mentally or physically
46 unable to safely engage in the practice of medicine, along with a general

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

14 C. The board or, if delegated by the board, the executive director
15 shall require, at the doctor's expense, any combination of mental, physical
16 or oral or written medical competency examinations and conduct necessary
17 investigations, including investigational interviews between representatives
18 of the board and the doctor to fully inform itself with respect to any
19 information filed with the board under subsection A of this section. These
20 examinations may include biological fluid testing and other examinations
21 known to detect the presence of alcohol or other drugs. The board or, if
22 delegated by the board, the executive director may require the doctor, at the
23 doctor's expense, to undergo assessment by a board approved rehabilitative,
24 retraining or assessment program. This subsection does not establish a cause
25 of action against any person, facility or program that conducts an
26 assessment, examination or investigation in good faith pursuant to this
27 subsection.

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

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

- 42 1. Dismiss if, in the opinion of the board, the information is without
43 merit.
- 44 2. Require the licensee to complete designated continuing medical
45 education courses.

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

3 F. If the board finds that it can take rehabilitative or disciplinary
4 action without the presence of the doctor at a formal interview, it may enter
5 into a consent agreement with the doctor to limit or restrict the doctor's
6 practice or to rehabilitate the doctor in order to protect the public and
7 ensure the doctor's ability to safely engage in the practice of medicine.
8 The board may also require the doctor to successfully complete a board
9 approved rehabilitative, retraining or assessment program at the doctor's own
10 expense.

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

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

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

28 1. Dismiss if, in the opinion of the board, the complaint is without
29 merit.

30 2. Require the licensee to complete designated continuing medical
31 education courses.

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

35 4. Enter into an agreement with the doctor to restrict or limit the
36 doctor's practice or professional activities or to rehabilitate, retrain or
37 assess the doctor in order to protect the public and ensure the doctor's
38 ability to safely engage in the practice of medicine. The board may also
39 require the doctor to successfully complete a board approved rehabilitative,
40 retraining or assessment program at the doctor's own expense pursuant to
41 subsection F of this section.

42 5. File a letter of reprimand.

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

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

19 J. If the board finds that the information provided in subsection A of
20 this section warrants suspension or revocation of a license issued under this
21 chapter, it shall initiate formal proceedings pursuant to title 41, chapter
22 6, article 10.

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

28 L. An advisory letter is a public document.

29 M. Any doctor of medicine who after a formal hearing is found by the
30 board to be guilty of unprofessional conduct, to be mentally or physically
31 unable safely to engage in the practice of medicine or to be medically
32 incompetent is subject to censure, probation as provided in this section,
33 suspension of license or revocation of license or any combination of these,
34 including a stay of action, and for a period of time or permanently and under
35 conditions as the board deems appropriate for the protection of the public
36 health and safety and just in the circumstance. The board may charge the
37 costs of formal hearings to the licensee who it finds to be in violation of
38 this chapter.

39 N. If the board acts to modify any doctor of medicine's prescription
40 writing privileges, the board shall immediately notify the state board of
41 pharmacy of the modification.

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

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

4 1. Dismiss the complaint if a committee determines that the complaint
5 is without merit.

6 2. Issue an advisory letter. The licensee may file a written response
7 with the board within thirty days after the licensee receives the advisory
8 letter.

9 3. Conduct a formal interview pursuant to subsection H of this
10 section. This includes initiating formal proceedings pursuant to
11 subsection J of this section and imposing civil penalties pursuant to
12 subsection K of this section.

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

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

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

22 S. A physician who submits an independent medical examination pursuant
23 to an order by a court **OR PURSUANT TO SECTION 23-1026** is not subject to a
24 complaint for unprofessional conduct unless, ~~a-~~ **IN THE CASE OF A**
25 **COURT-ORDERED EXAMINATION, THE** complaint is made or referred by a court to
26 the board, **OR IN THE CASE OF AN EXAMINATION CONDUCTED PURSUANT TO SECTION**
27 **23-1026, THE COMPLAINT ALLEGES UNPROFESSIONAL CONDUCT BASED ON SOME ACT OTHER**
28 **THAN A DISAGREEMENT WITH THE FINDINGS AND OPINIONS EXPRESSED BY THE PHYSICIAN**
29 **AS A RESULT OF THE EXAMINATION.** For the purposes of this subsection,
30 "independent medical examination" means a professional analysis of medical
31 status **THAT IS** based on a person's past and present physical, **MEDICAL** and
32 psychiatric history and conducted by a licensee or group of licensees on a
33 contract basis for a court **OR FOR A WORKERS' COMPENSATION CARRIER,**
34 **SELF-INSURED EMPLOYER OR CLAIMS PROCESSING REPRESENTATIVE IF THE EXAMINATION**
35 **WAS CONDUCTED PURSUANT TO SECTION 23-1026.**

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

38 1. Being unable to safely engage in the practice of medicine.

39 2. Having committed an act of unprofessional conduct.

40 3. Having violated this chapter or a board rule.

41 U. In determining the appropriate disciplinary action under this
42 section, the board shall consider all previous nondisciplinary and
43 disciplinary actions against a licensee.

44 V. In determining the appropriate action under this section, the board
45 may consider a direct or indirect competitive relationship between the
46 complainant and the respondent as a mitigating factor.

1 Sec. 4. Section 32-1855, Arizona Revised Statutes, is amended to read:
2 32-1855. Disciplinary action; duty to report; hearing; notice;
3 independent medical examinations; surrender of
4 license

5 A. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, the board on its
6 own motion may investigate any information that appears to show that an
7 osteopathic physician and surgeon is or may be guilty of unprofessional
8 conduct or is or may be mentally or physically unable safely to engage in the
9 practice of medicine. A PHYSICIAN WHO CONDUCTS AN INDEPENDENT MEDICAL
10 EXAMINATION PURSUANT TO AN ORDER BY A COURT OR PURSUANT TO SECTION 23-1026 IS
11 NOT SUBJECT TO A COMPLAINT FOR UNPROFESSIONAL CONDUCT UNLESS, IN THE CASE OF
12 A COURT-ORDERED EXAMINATION, THE COMPLAINT IS MADE OR REFERRED BY A COURT TO
13 THE BOARD, OR IN THE CASE OF AN EXAMINATION CONDUCTED PURSUANT TO SECTION
14 23-1026, THE COMPLAINT ALLEGES UNPROFESSIONAL CONDUCT BASED ON SOME ACT OTHER
15 THAN A DISAGREEMENT WITH THE FINDINGS AND OPINIONS EXPRESSED BY THE PHYSICIAN
16 AS A RESULT OF THE EXAMINATION. Any osteopathic physician or surgeon or the
17 Arizona osteopathic medical association or any health care institution as
18 defined in section 36-401 shall, and any other person may, report to the
19 board any information the physician or surgeon, association, health care
20 institution or other person may have that appears to show that an osteopathic
21 physician and surgeon is or may be guilty of unprofessional conduct or is or
22 may be mentally or physically unable safely to engage in the practice of
23 medicine. The board shall notify the doctor about whom information has been
24 received as to the content of the information as soon as reasonable after
25 receiving the information. Any person who reports or provides information to
26 the board in good faith is not subject to civil damages as a result of that
27 action. If requested the board shall not disclose the informant's name
28 unless it is essential to the disciplinary proceedings conducted pursuant to
29 this section. It is an act of unprofessional conduct for any osteopathic
30 physician or surgeon to fail to report as required by this section. The
31 board shall report any health care institution that fails to report as
32 required by this section to that institution's licensing agency. A person
33 who reports information in good faith pursuant to this subsection is not
34 subject to civil liability. FOR THE PURPOSES OF THIS SUBSECTION,
35 "INDEPENDENT MEDICAL EXAMINATION" MEANS A PROFESSIONAL ANALYSIS OF MEDICAL
36 STATUS THAT IS BASED ON A PERSON'S PAST AND PRESENT PHYSICAL, MEDICAL AND
37 PSYCHIATRIC HISTORY AND CONDUCTED BY A LICENSEE OR GROUP OF LICENSEES ON A
38 CONTRACT BASIS FOR A COURT OR FOR A WORKERS' COMPENSATION CARRIER,
39 SELF-INSURED EMPLOYER OR CLAIMS PROCESSING REPRESENTATIVE IF THE EXAMINATION
40 WAS CONDUCTED PURSUANT TO SECTION 23-1026.

41 B. The board may require a physician under investigation pursuant to
42 subsection A of this section to be interviewed by the board or its
43 representatives. The board or the executive director may require a licensee
44 who is under investigation pursuant to subsection A of this section to
45 undergo at the licensee's expense any combination of medical, physical or

1 mental examinations the board finds necessary to determine the physician's
2 competence.

3 C. If the board finds, based on the information it received under
4 subsections A and B of this section, that the public health, safety or
5 welfare imperatively requires emergency action and incorporates a finding to
6 that effect in its order, the board may order a summary suspension of a
7 license pending proceedings for revocation or other action. If an order of
8 summary suspension is issued, the licensee shall also be served with a
9 written notice of complaint and formal hearing setting forth the charges made
10 against the licensee and is entitled to a formal hearing on the charges
11 pursuant to title 41, chapter 6, article 10. Formal proceedings shall be
12 promptly instituted and determined.

13 D. If, after completing its investigation, the board finds that the
14 information provided pursuant to this section is not of sufficient
15 seriousness to merit direct action against the physician's license, it may
16 take any combination of the following actions:

17 1. Dismiss if, in the opinion of the board, the information is without
18 merit.

19 2. File a letter of concern.

20 3. In addition to the requirements of section 32-1825, require
21 continuing medical education on subjects and within a time period determined
22 by the board.

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 E. If, in the opinion of the board, it appears that information
28 provided pursuant to this section is or may be true, the board may request an
29 investigative hearing with the physician concerned. At an investigative
30 hearing the board may receive and consider sworn statements of persons who
31 may be called as witnesses in a formal hearing and other pertinent
32 documents. Legal counsel may be present and participate in the meeting. If
33 the physician refuses the request or if the physician accepts the request and
34 the results of the investigative hearing indicate suspension of more than
35 twelve months or revocation of the license may be in order, a complaint shall
36 be issued and an administrative hearing shall be held pursuant to title 41,
37 chapter 6, article 10. If, after the investigative hearing and a mental,
38 physical or medical competence examination as the board deems necessary, the
39 board finds the information provided pursuant to this section to be true but
40 not of sufficient seriousness to merit suspension or revocation of the
41 license, it may take any of the following actions:

42 1. Dismiss if, in the opinion of the board, the information is without
43 merit.

44 2. File a letter of concern.

1 3. In addition to the requirements of section 32-1825, require
2 continuing medical education on subjects and within a time period determined
3 by the board.

4 4. Issue a decree of censure, which constitutes an official action
5 against a physician's license.

6 5. Fix a period and terms of probation best adapted to protect the
7 public health and safety and rehabilitate or educate the physician
8 concerned. Any costs incidental to the terms of probation are at the
9 physician's own expense.

10 6. Restrict or limit the physician's practice in a manner and for a
11 time determined by the board.

12 7. Suspend the physician's license for not more than twelve months.

13 8. Impose a civil penalty of not to exceed five hundred dollars for
14 each violation of this chapter.

15 9. Issue a nondisciplinary order requiring the licensee to complete a
16 prescribed number of hours of continuing education in an area or areas
17 prescribed by the board to provide the licensee with the necessary
18 understanding of current developments, skills, procedures or treatment.

19 10. Issue an administrative warning.

20 F. If, in the opinion of the board, it appears the charge is of such
21 magnitude as to warrant suspension for more than twelve months or revocation
22 of the license, the board shall immediately initiate formal revocation or
23 suspension proceedings pursuant to title 41, chapter 6, article 10. The
24 board shall notify a licensee of a complaint and hearing by certified mail
25 addressed to the licensee's last known address on record in the board's
26 files.

27 G. If the physician wishes to be present at the investigative or
28 administrative hearing in person or by representation, or both, the physician
29 shall file with the board an answer to the charges in the complaint. The
30 answer shall be in writing, verified under oath and filed within twenty days
31 after service of the summons and complaint.

32 H. A physician who complies with subsection G of this section may be
33 present at the hearing in person with counsel and witnesses.

34 I. A physician who, after an investigative or administrative hearing,
35 is found to be guilty of unprofessional conduct or is found to be mentally or
36 physically unable safely to engage in the practice of osteopathic medicine is
37 subject to any combination of censure, probation, suspension of license,
38 revocation of license, an order to return patient fees, imposition of hearing
39 costs, imposition of a civil penalty of not to exceed five hundred dollars
40 for each violation for a period of time, or permanently, and under conditions
41 the board deems appropriate for the protection of the public health and
42 safety and just in the circumstances. The board may charge the costs of an
43 investigative or administrative hearing to the licensee if pursuant to that
44 hearing the board determines that the licensee violated this chapter or board
45 rules.

1 J. If the board acts to modify a physician's prescription writing
2 privileges, it shall immediately notify the state board of pharmacy and the
3 federal drug enforcement administration in the United States department of
4 justice of the modification.

5 K. The board shall report allegations of evidence of criminal
6 wrongdoing to the appropriate criminal justice agency.

7 L. Notice of a complaint and administrative hearing is effective when
8 a true copy of the notice is sent by certified mail to the licensee's last
9 known address of record in the board's files and is complete on the date of
10 its deposit in the mail. The board shall hold an administrative hearing
11 within one hundred twenty days after that date.

12 M. The board may accept the surrender of an active license from a
13 licensee who admits in writing to having committed an act of unprofessional
14 conduct or to having violated this chapter or board rules.

APPROVED BY THE GOVERNOR APRIL 10, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2015.