

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE BILL 2197

AN ACT

AMENDING SECTIONS 32-1401, 32-1501, 32-1854 AND 32-1901.01, ARIZONA
REVISED STATUTES; RELATING TO TELEMEDICINE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 32-1401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Active license" means a valid and existing license to practice
7 medicine.

8 2. "Adequate records" means legible medical records, produced by
9 hand or electronically, containing, at a minimum, sufficient information
10 to identify the patient, support the diagnosis, justify the treatment,
11 accurately document the results, indicate advice and cautionary warnings
12 provided to the patient and provide sufficient information for another
13 practitioner to assume continuity of the patient's care at any point in
14 the course of treatment.

15 3. "Advisory letter" means a nondisciplinary letter to notify a
16 licensee that either:

17 (a) While there is insufficient evidence to support disciplinary
18 action, the board believes that continuation of the activities that led to
19 the investigation may result in further board action against the licensee.

20 (b) The violation is a minor or technical violation that is not of
21 sufficient merit to warrant disciplinary action.

22 (c) While the licensee has demonstrated substantial compliance
23 through rehabilitation or remediation that has mitigated the need for
24 disciplinary action, the board believes that repetition of the activities
25 that led to the investigation may result in further board action against
26 the licensee.

27 4. "Approved hospital internship, residency or clinical fellowship
28 program" means a program at a hospital that at the time the training
29 occurred was legally incorporated and that had a program that was approved
30 for internship, fellowship or residency training by the accreditation
31 council for graduate medical education, the association of American
32 medical colleges, the royal college of physicians and surgeons of Canada
33 or any similar body in the United States or Canada approved by the board
34 whose function is that of approving hospitals for internship, fellowship
35 or residency training.

36 5. "Approved school of medicine" means any school or college
37 offering a course of study that, on successful completion, results in the
38 degree of doctor of medicine and whose course of study has been approved
39 or accredited by an educational or professional association, recognized by
40 the board, including the association of American medical colleges, the
41 association of Canadian medical colleges or the American medical
42 association.

43 6. "Board" means the Arizona medical board.

1 7. "Completed application" means that the applicant has supplied
2 all required fees, information and correspondence requested by the board
3 on forms and in a manner acceptable to the board.

4 8. "Direct supervision" means that a physician, physician assistant
5 licensed pursuant to chapter 25 of this title or nurse practitioner
6 certified pursuant to chapter 15 of this title is within the same room or
7 office suite as the medical assistant in order to be available for
8 consultation regarding those tasks the medical assistant performs pursuant
9 to section 32-1456.

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

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

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

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

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

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

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

39 16. "Medical assistant" means an unlicensed person who meets the
40 requirements of section 32-1456, has completed an education program
41 approved by the board, assists in a medical practice under the supervision
42 of a doctor of medicine, physician assistant or nurse practitioner and
43 performs delegated procedures commensurate with the assistant's education
44 and training but does not diagnose, interpret, design or modify

1 established treatment programs or perform any functions that would violate
2 any statute applicable to the practice of medicine.

3 17. "Medical peer review" means:

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

7 (b) Activities relating to a health care institution's decision to
8 grant or continue privileges to practice at that institution.

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

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

13 (b) When considered with other indications of medical incompetence,
14 failing to obtain a scaled score of at least seventy-five percent on the
15 written special purpose licensing examination.

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

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

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

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

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

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

42 25. "Teaching hospital's accredited graduate medical education
43 program" means that the hospital is incorporated and has an internship,
44 fellowship or residency training program that is accredited by the
45 accreditation council for graduate medical education, the American medical

1 association, the association of American medical colleges, the royal
2 college of physicians and surgeons of Canada or a similar body in the
3 United States or Canada that is approved by the board and whose function
4 is that of approving hospitals for internship, fellowship or residency
5 training.

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

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

11 (a) Violating any federal or state laws, rules or regulations
12 applicable to the practice of medicine.

13 (b) Intentionally disclosing a professional secret or intentionally
14 disclosing a privileged communication except as either act may otherwise
15 be required by law.

16 (c) False, fraudulent, deceptive or misleading advertising by a
17 doctor of medicine or the doctor's staff, employer or representative.

18 (d) Committing a felony, whether or not involving moral turpitude,
19 or a misdemeanor involving moral turpitude. In either case, conviction by
20 any court of competent jurisdiction or a plea of no contest is conclusive
21 evidence of the commission.

22 (e) Failing or refusing to maintain adequate records on a patient.

23 (f) Habitual intemperance in the use of alcohol or habitual
24 substance abuse.

25 (g) Using controlled substances except if prescribed by another
26 physician for use during a prescribed course of treatment.

27 (h) Prescribing or dispensing controlled substances to members of
28 the physician's immediate family.

29 (i) Prescribing, dispensing or administering schedule II controlled
30 substances as defined in section 36-2513 including amphetamines and
31 similar schedule II sympathomimetic drugs in the treatment of exogenous
32 obesity for a period in excess of thirty days in any one year, or the
33 nontherapeutic use of injectable amphetamines.

34 (j) Prescribing, dispensing or administering any controlled
35 substance or prescription-only drug for other than accepted therapeutic
36 purposes.

37 (k) Signing a blank, undated or predated prescription form.

38 (l) Conduct that the board determines is gross malpractice,
39 repeated malpractice or any malpractice resulting in the death of a
40 patient.

41 (m) Representing that a manifestly incurable disease or infirmity
42 can be permanently cured, or that any disease, ailment or infirmity can be
43 cured by a secret method, procedure, treatment, medicine or device, if
44 this is not true.

1 (n) Refusing to divulge to the board on demand the means, method,
2 procedure, modality of treatment or medicine used in the treatment of a
3 disease, injury, ailment or infirmity.

4 (o) Action that is taken against a doctor of medicine by another
5 licensing or regulatory jurisdiction due to that doctor's mental or
6 physical inability to engage safely in the practice of medicine or the
7 doctor's medical incompetence or for unprofessional conduct as defined by
8 that jurisdiction and that corresponds directly or indirectly to an act of
9 unprofessional conduct prescribed by this paragraph. The action taken may
10 include refusing, denying, revoking or suspending a license by that
11 jurisdiction or a surrendering of a license to that jurisdiction,
12 otherwise limiting, restricting or monitoring a licensee by that
13 jurisdiction or placing a licensee on probation by that jurisdiction.

14 (p) Sanctions imposed by an agency of the federal government,
15 including restricting, suspending, limiting or removing a person from the
16 practice of medicine or restricting that person's ability to obtain
17 financial remuneration.

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

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

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

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

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

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

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

- 1 (x) Conduct that is in violation of section 36-2302.
- 2 (y) The use of experimental forms of diagnosis and treatment
3 without adequate informed patient consent, and without conforming to
4 generally accepted experimental criteria, including protocols, detailed
5 records, periodic analysis of results and periodic review by a medical
6 peer review committee as approved by the United States food and drug
7 administration or its successor agency.
- 8 (z) Engaging in sexual conduct with a current patient or with a
9 former patient within six months after the last medical consultation
10 unless the patient was the licensee's spouse at the time of the contact
11 or, immediately preceding the physician-patient relationship, was in a
12 dating or engagement relationship with the licensee. For the purposes of
13 this subdivision, "sexual conduct" includes:
- 14 (i) Engaging in or soliciting sexual relationships, whether
15 consensual or nonconsensual.
- 16 (ii) Making sexual advances, requesting sexual favors or engaging
17 in any other verbal conduct or physical contact of a sexual nature.
- 18 (iii) Intentionally viewing a completely or partially disrobed
19 patient in the course of treatment if the viewing is not related to
20 patient diagnosis or treatment under current practice standards.
- 21 (aa) Procuring or attempting to procure a license to practice
22 medicine or a license renewal by fraud, by misrepresentation or by
23 knowingly taking advantage of the mistake of another person or an agency.
- 24 (bb) Representing or claiming to be a medical specialist if this is
25 not true.
- 26 (cc) Maintaining a professional connection with or lending one's
27 name to enhance or continue the activities of an illegal practitioner of
28 medicine.
- 29 (dd) Failing to furnish information in a timely manner to the board
30 or the board's investigators or representatives if legally requested by
31 the board.
- 32 (ee) Failing to allow properly authorized board personnel on demand
33 to examine and have access to documents, reports and records maintained by
34 the physician that relate to the physician's medical practice or medically
35 related activities.
- 36 (ff) Knowingly failing to disclose to a patient on a form that is
37 prescribed by the board and that is dated and signed by the patient or
38 guardian acknowledging that the patient or guardian has read and
39 understands that the doctor has a direct financial interest in a separate
40 diagnostic or treatment agency or in nonroutine goods or services that the
41 patient is being prescribed if the prescribed treatment, goods or services
42 are available on a competitive basis. This subdivision does not apply to
43 a referral by one doctor of medicine to another doctor of medicine within
44 a group of doctors of medicine practicing together.

- 1 (gg) Using chelation therapy in the treatment of arteriosclerosis
2 or as any other form of therapy, with the exception of treatment of heavy
3 metal poisoning, without:
- 4 (i) Adequate informed patient consent.
5 (ii) Conforming to generally accepted experimental criteria,
6 including protocols, detailed records, periodic analysis of results and
7 periodic review by a medical peer review committee.
8 (iii) Approval by the United States food and drug administration or
9 its successor agency.
- 10 (hh) Prescribing, dispensing or administering anabolic-androgenic
11 steroids to a person for other than therapeutic purposes.
12 (ii) Lack of or inappropriate direction, collaboration or direct
13 supervision of a medical assistant or a licensed, certified or registered
14 health care provider employed by, supervised by or assigned to the
15 physician.
- 16 (jj) Knowingly making a false or misleading statement to the board
17 or on a form required by the board or in a written correspondence,
18 including attachments, with the board.
- 19 (kk) Failing to dispense drugs and devices in compliance with
20 article 6 of this chapter.
- 21 (ll) Conduct that the board determines is gross negligence,
22 repeated negligence or negligence resulting in harm to or the death of a
23 patient.
- 24 (mm) The representation by a doctor of medicine or the doctor's
25 staff, employer or representative that the doctor is boarded or board
26 certified if this is not true or the standing is not current or without
27 supplying the full name of the specific agency, organization or entity
28 granting this standing.
- 29 (nn) Refusing to submit to a body fluid examination or any other
30 examination known to detect the presence of alcohol or other drugs as
31 required by the board pursuant to section 32-1452 or pursuant to a board
32 investigation into a doctor of medicine's alleged substance abuse.
- 33 (oo) Failing to report in writing to the Arizona medical board or
34 the Arizona regulatory board of physician assistants any evidence that a
35 doctor of medicine or a physician assistant is or may be medically
36 incompetent, guilty of unprofessional conduct or mentally or physically
37 unable to safely practice medicine or to perform as a physician assistant.
- 38 (pp) The failure of a physician who is the chief executive officer,
39 the medical director or the medical chief of staff of a health care
40 institution to report in writing to the board that the hospital privileges
41 of a doctor of medicine have been denied, revoked, suspended, supervised
42 or limited because of actions by the doctor that appear to show that the
43 doctor is or may be medically incompetent, is or may be guilty of
44 unprofessional conduct or is or may be unable to engage safely in the
45 practice of medicine.

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

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

12 (ss) Prescribing, dispensing or furnishing a prescription
13 medication or a prescription-only device as defined in section 32-1901 to
14 a person unless the licensee first conducts a physical or mental health
15 status examination of that person or has previously established a
16 doctor-patient relationship. The physical or mental health status
17 examination may be conducted during a real-time telemedicine encounter
18 with audio and video capability ~~if the telemedicine audio and video~~
19 ~~capability meets the elements required by the centers for medicare and~~
20 ~~medicaid services~~, unless the examination is for the purpose of obtaining
21 a written certification from the physician for the purposes of title 36,
22 chapter 28.1. This subdivision does not apply to:

23 (i) A physician who provides temporary patient supervision on
24 behalf of the patient's regular treating licensed health care professional
25 or provides a consultation requested by the patient's regular treating
26 licensed health care professional.

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

28 (iii) Prescriptions written to prepare a patient for a medical
29 examination.

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

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

41 (vi) Prescriptions written or prescription medications issued for
42 administration of immunizations or vaccines listed in the United States
43 centers for disease control and prevention's recommended immunization
44 schedule to a household member of a patient.

1 (vii) Prescriptions for epinephrine auto-injectors written or
2 dispensed for a school district or charter school to be stocked for
3 emergency use pursuant to section 15-157 or for an authorized entity to be
4 stocked pursuant to section 36-2226.01.

5 (viii) Prescriptions written by a licensee through a telemedicine
6 program that is covered by the policies and procedures adopted by the
7 administrator of a hospital or outpatient treatment center.

8 (ix) Prescriptions for naloxone hydrochloride or any other opioid
9 antagonist approved by the United States food and drug administration that
10 are written or dispensed for use pursuant to section 36-2228 or 36-2266.

11 (tt) Performing office based surgery using sedation in violation of
12 board rules.

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

15 Sec. 2. Section 32-1501, Arizona Revised Statutes, is amended to
16 read:

17 32-1501. Definitions

18 In this chapter, unless the context otherwise requires:

19 1. "Accepted therapeutic purpose" means treatment of a disease,
20 injury, ailment or infirmity that is competent and generally recognized as
21 safe and effective.

22 2. "Active license" means a current valid license to practice
23 naturopathic medicine.

24 3. "Adequate medical records" means legible medical records
25 containing, at a minimum, sufficient information to identify the patient,
26 support the diagnosis, describe the treatment, accurately document the
27 results, indicate advice and cautionary warning provided to the patient
28 and provide sufficient information for a similarly qualified practitioner
29 to assume continuity of the patient's care at any point in the course of
30 treatment.

31 4. "Approved clinical training program" or "clinical training
32 program" means a program for naturopathic medical students in which the
33 training occurred or is being conducted by or in conjunction with an
34 approved school of naturopathic medicine.

35 5. "Approved internship program" or "internship" means that the
36 program in which the training occurred or is being conducted has been
37 approved for internship training for physicians or for graduates of a
38 school of naturopathic medicine by the board or was approved or accredited
39 by an educational or professional association recognized by the board or
40 by another state's or country's licensing agency recognized by the board.

41 6. "Approved postdoctoral training" or "postdoctoral training"
42 means that the program in which the training occurred or is being
43 conducted has been approved for specialty training or for graduate medical
44 education in naturopathic medicine by the board or approved or accredited

1 by an educational or professional association recognized by the board or
2 by another state's or country's licensing agency recognized by the board.

3 7. "Approved preceptorship program" or "preceptorship" means that
4 the program in which the training occurred or is being conducted has been
5 approved for preceptorship training for physicians or for graduates of a
6 school of naturopathic medicine by the board or was approved or accredited
7 by an educational or professional association recognized by the board or
8 by another state's or country's licensing agency recognized by the board.

9 8. "Approved school of naturopathic medicine" or "school of
10 naturopathic medicine" means a school or college determined by the board
11 to have an educational program that meets standards prescribed by the
12 council on naturopathic medical education, or its successor agency, and
13 that offers a course of study that, on successful completion, results in
14 the awarding of the degree of doctor of naturopathic medicine and whose
15 course of study is either of the following:

16 (a) Accredited or a candidate for accreditation by an accrediting
17 agency recognized by the United States secretary of education as a
18 specialized accrediting agency for schools of naturopathic medicine or its
19 successor.

20 (b) Accredited or a candidate for accreditation by an accrediting
21 agency recognized by the council for higher education accreditation or its
22 successor.

23 9. "Board" means the naturopathic physicians medical board.

24 10. "Chelation therapy" means an experimental medical therapy to
25 restore cellular homeostasis through the use of intravenous, metal-binding
26 and bioinorganic agents such as ethylene diamine tetraacetic acid.
27 Chelation therapy does not include experimental therapy used to treat
28 heavy metal poisoning.

29 11. "Completed application" means that the applicant paid the
30 required fees and supplied all documents and information as requested by
31 the board and in a manner acceptable to the board.

32 12. "Controlled substance" means a drug, substance or immediate
33 precursor in schedules I through V of title 36, chapter 27, article 2.

34 13. "Direct supervision" means that a physician who is licensed
35 pursuant to this chapter or chapter 13, 17 or 29 of this title:

36 (a) Is physically present and within sight or sound of the person
37 supervised and is available for consultation regarding procedures that the
38 physician has authorized and for which the physician remains responsible.

39 (b) Has designated a person licensed pursuant to this chapter or
40 chapter 13, 17 or 29 of this title to provide direct supervision in the
41 physician's absence.

42 14. "Doctor of naturopathic medicine" or "doctor" means a natural
43 person licensed to practice naturopathic medicine under this chapter.

44 15. "Drug" has the same meaning prescribed in section 32-1901 but
45 does not include:

- 1 (a) Intravenous administration of legend drugs, except for:
2 (i) Vitamins, chelation therapy and drugs used in emergency
3 resuscitation and stabilization.
4 (ii) Minerals.
5 (iii) Nutrients. For the purposes of this item, "nutrient" means a
6 substance that provides nourishment for growth or metabolism and that is
7 manufactured and supplied for intravenous use by a manufacturer registered
8 with the United States food and drug administration or compounded by a
9 pharmacy licensed by the state board of pharmacy.
- 10 (b) Controlled substances listed as schedule I or II controlled
11 substances as defined in the federal controlled substances act of 1970
12 (21 United States Code section 802), except morphine, any drug that is
13 reclassified from schedule III to schedule II after January 1, 2014 and
14 any homeopathic preparations that are also controlled substances.
- 15 (c) Cancer chemotherapeutics classified as legend drugs.
16 (d) Antipsychotics.
- 17 16. "General supervision" means that the physician is available for
18 consultation regarding procedures that the physician has authorized and
19 for which the physician remains responsible.
- 20 17. "Legend drug" means any drug defined by section 503(b) of the
21 federal food, drug and cosmetic act and under which definition its label
22 is required to bear the statement "Rx only".
- 23 18. "Letter of concern" means a nondisciplinary advisory letter that
24 is issued by the board to a person who is regulated under this chapter and
25 that states that while there is insufficient evidence to support
26 disciplinary action the board believes that the person should modify or
27 eliminate certain practices and that continuation of the activities that
28 led to the information being submitted to the board may result in action
29 against the person's license, certificate or registration.
- 30 19. "Letter of reprimand" means a disciplinary letter that is issued
31 by the board and that informs a person who is regulated under this chapter
32 that the person's conduct violates state or federal law but does not
33 require the board to restrict the person's license, certificate or
34 registration because the person's conduct did not result in harm to a
35 patient or to the public.
- 36 20. "Limit" means taking a nondisciplinary action that alters the
37 physician's practice or professional activities if the board determines
38 that there is evidence that the physician is or may be mentally or
39 physically unable to safely engage in the practice of medicine.
- 40 21. "Medical assistant" or "naturopathic medical assistant" means a
41 person who is certified by the board as a medical assistant, who assists a
42 doctor of naturopathic medicine and who may perform delegated procedures
43 that are commensurate with the assistant's education and training under
44 the direct supervision of a doctor of naturopathic medicine and that do

1 not include diagnosing, designing or modifying established treatment
2 programs or those procedures prohibited by the board or by this chapter.

3 22. "Medically incompetent" means a person who is licensed,
4 certified or registered pursuant to this chapter and who lacks sufficient
5 naturopathic medical knowledge or skills, or both, to a degree that is
6 likely to endanger the health of patients.

7 23. "Natural substance" means a homeopathic, botanical, nutritional
8 or other supplement that does not require a prescription pursuant to
9 federal law before it is prescribed, dispensed or otherwise furnished to a
10 patient and that is prescribed by a physician licensed pursuant to this
11 chapter to enhance health, prevent disease or treat a medical condition
12 diagnosed by the physician.

13 24. "Naturopathic medical student" means a person who is enrolled in
14 a course of study at an approved school of naturopathic medicine.

15 25. "Naturopathic medicine" means medicine as taught in approved
16 schools of naturopathic medicine and in clinical, internship,
17 preceptorship and postdoctoral training programs approved by the board and
18 practiced by a recipient of a degree of doctor of naturopathic medicine
19 licensed pursuant to this chapter.

20 26. "Nurse" means a person licensed pursuant to chapter 15 of this
21 title.

22 27. "Physician" means a doctor of naturopathic medicine licensed
23 pursuant to this chapter.

24 28. "Practice of naturopathic medicine" means a medical system of
25 diagnosing and treating diseases, injuries, ailments, infirmities and
26 other conditions of the human mind and body including by natural means,
27 drugless methods, drugs, nonsurgical methods, devices, physical,
28 electrical, hygienic and sanitary measures and all forms of physical
29 agents and modalities.

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

34 30. "Specialist" means a physician who has successfully completed
35 approved postdoctoral training, who is certified by a specialty board of
36 examiners recognized by the board and who is certified by the board to
37 practice the specialty pursuant to this chapter.

38 31. "Unprofessional conduct" includes the following, whether
39 occurring in this state or elsewhere:

40 (a) Intentionally disclosing a professional secret or intentionally
41 disclosing a privileged communication except as either of these may
42 otherwise be required by law.

43 (b) Any dishonorable conduct reflecting unfavorably on the
44 profession.

- 1 (c) Committing a felony, whether or not involving moral turpitude,
2 or a misdemeanor involving moral turpitude. In either case conviction by
3 any court of competent jurisdiction or a plea of no contest is conclusive
4 evidence of the commission of the felony or misdemeanor.
- 5 (d) Habitual intemperance in the use of alcohol or any substance
6 abuse.
- 7 (e) The illegal use of any narcotic or hypnotic drugs, or illegal
8 substances.
- 9 (f) Conduct that the board determines is gross malpractice,
10 repeated malpractice or any malpractice resulting in the death of a
11 patient.
- 12 (g) Impersonating another doctor of naturopathic medicine or any
13 other practitioner of the healing arts.
- 14 (h) Falsely acting or assuming to act as a member, an employee or
15 an authorized agent of the board.
- 16 (i) Procuring or attempting to procure a license or a certificate
17 pursuant to this chapter by fraud, by misrepresentation or by knowingly
18 taking advantage of the mistake of another person or agency.
- 19 (j) Having professional connection with or lending one's name to
20 enhance or continue the activities of an illegal physician or an illegal
21 practitioner of any healing art.
- 22 (k) Representing that a manifestly incurable disease, injury,
23 ailment or infirmity can be permanently cured, or falsely or fraudulently
24 representing that a curable disease, injury, ailment or infirmity can be
25 cured within a stated time.
- 26 (l) Offering, undertaking or agreeing to cure or treat a disease,
27 injury, ailment or infirmity by a secret means, method, treatment,
28 medicine, substance, device or instrumentality.
- 29 (m) Refusing to divulge to the board on demand the means, method,
30 treatment, medicine, substance, device or instrumentality used in the
31 treatment of a disease, injury, ailment or infirmity.
- 32 (n) Giving or receiving, or aiding or abetting the giving or
33 receiving of, rebates, either directly or indirectly.
- 34 (o) Knowingly making any false or fraudulent statement, written or
35 oral, in connection with the practice of naturopathic medicine or any
36 naturopathic treatment method.
- 37 (p) Immorality or misconduct that tends to discredit the
38 naturopathic profession.
- 39 (q) Refusal, revocation or suspension of a license by any other
40 state, district or territory of the United States or any other country,
41 unless it can be shown that this action was not due to reasons that relate
42 to the ability to safely and skillfully practice as a doctor of
43 naturopathic medicine or to any act of unprofessional conduct in this
44 paragraph.

1 (r) Any conduct or practice that is contrary to recognized
2 standards of ethics of the naturopathic profession, any conduct or
3 practice that does or might constitute a danger to the health, welfare or
4 safety of the patient or the public, or any conduct, practice or condition
5 that does or might impair the ability to safely and skillfully practice as
6 a doctor of naturopathic medicine.

7 (s) Failure to observe any federal, state, county or municipal law
8 relating to public health as a physician in this state.

9 (t) Violating or attempting to violate, directly or indirectly, or
10 assisting in or abetting the violation of, or conspiring to violate this
11 chapter or board rules.

12 (u) False, fraudulent, deceptive or misleading advertising or
13 advertising the quality of a medical or health care service by a physician
14 or by the physician's staff, employer or representative.

15 (v) Failing or refusing to maintain adequate medical records on a
16 patient or failing or refusing to make medical records in the physician's
17 possession promptly available to another physician or health care provider
18 who is licensed pursuant to chapter 7, 8, 13, 15, 17 or 29 of this title
19 on request and receipt of proper authorization to do so from the patient,
20 a minor patient's parent, the patient's legal guardian or the patient's
21 authorized representative or failing to comply with title 12, chapter 13,
22 article 7.1.

23 (w) Referring a patient to a diagnostic or treatment facility or
24 prescribing goods and services without disclosing in writing to the
25 patient that the physician has a pecuniary interest in the facility, goods
26 or services to which the patient is referred or prescribed. This
27 subdivision does not apply to a referral by one physician or practitioner
28 to another physician or practitioner within a group of physicians or
29 practitioners practicing together.

30 (x) Sexual intimacies with a patient in the course of direct
31 treatment.

32 (y) Failing to dispense drugs and devices in compliance with
33 article 4 of this chapter.

34 (z) Administering, dispensing or prescribing any drug or a device
35 for other than an accepted therapeutic purpose.

36 (aa) Falsely representing or holding oneself out as being a
37 specialist or representation by a doctor of naturopathic medicine or the
38 doctor's staff, employer or representative that the doctor is boarded or
39 board certified if this is not true or that standing is not current.

40 (bb) Delegating professional duties and responsibilities to a
41 person if the person has not been approved or qualified by licensure or by
42 certification to perform these duties or responsibilities.

43 (cc) Failing to appropriately supervise a naturopathic medical
44 student, a nurse, a medical assistant, a health care provider or a

1 technician employed by or assigned to the physician during the performance
2 of delegated professional duties and responsibilities.

3 (dd) Using experimental forms of diagnosis or treatment without
4 adequate informed consent of the patient or the patient's legal guardian
5 and without conforming to experimental criteria including protocols,
6 detailed records, periodic analysis of results and periodic review by a
7 medical peer review committee as approved by the federal food and drug
8 administration or its successor agency.

9 (ee) Failing to furnish information in a timely manner to the board
10 or investigators or representatives of the board if this information is
11 legally requested by the board and failing to allow properly authorized
12 board personnel on demand to examine and have access to documents, reports
13 and records maintained by the physician that relate to the physician's
14 medical practice or medically related activities.

15 (ff) Failing to report in writing to the board evidence that a
16 person licensed, certified or registered pursuant to this chapter is or
17 may be medically incompetent, guilty of unprofessional conduct or mentally
18 or physically unable to safely practice or assist in the practice of
19 naturopathic medicine.

20 (gg) Conducting or engaging in an internship, preceptorship or
21 clinical training program in naturopathic medicine without being approved
22 and registered by the board for that internship, preceptorship or clinical
23 training program.

24 (hh) Signing a blank, undated or predated prescription form.

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

27 (jj) Knowingly making a false or misleading statement in oral
28 testimony to the board on a form required by the board or in written
29 correspondence to the board, including attachments to that correspondence.

30 (kk) The failure of a physician who is the chief medical officer,
31 the executive officer or the chief of staff of an internship, a
32 preceptorship or a clinical training program to report in writing to the
33 board that the privileges of a doctor of naturopathic medicine, a
34 naturopathic medical student or a medical assistant have been denied,
35 limited, revoked or suspended because that doctor's, student's or
36 assistant's actions appear to indicate that the person is or may be
37 medically incompetent, is or may be guilty of unprofessional conduct or is
38 or may be unable to safely engage or assist in the practice of
39 naturopathic medicine.

40 (ll) Action taken against a doctor of naturopathic medicine by a
41 licensing or regulatory board in another jurisdiction due to that doctor's
42 mental or physical inability to engage safely in the practice of
43 naturopathic medicine or the doctor's medical incompetence or for
44 unprofessional conduct as defined by that licensing or regulatory board
45 and that corresponds directly or indirectly to an act of unprofessional

1 conduct prescribed by this paragraph. The action taken may include
2 refusing, denying, revoking or suspending a license, otherwise limiting,
3 restricting or monitoring a licensee or placing a licensee on probation by
4 that licensing or regulatory board.

5 (mm) Sanctions imposed by an agency of the federal government,
6 including restricting, suspending, limiting or removing a person from the
7 practice of naturopathic medicine or restricting that person's ability to
8 obtain financial remuneration.

9 (nn) Violating any formal order, probation, consent agreement or
10 stipulation issued or entered into by the board pursuant to this chapter.

11 (oo) Refusing to submit to a body fluid examination pursuant to a
12 board investigation of alleged substance abuse by a doctor of naturopathic
13 medicine.

14 (pp) Charging a fee for services not rendered or dividing a
15 professional fee for patient referrals among health care providers or
16 health care institutions or between these providers and institutions or a
17 contractual arrangement that has this effect.

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

19 (rr) Charging or collecting a clearly excessive fee. In
20 determining if a fee is clearly excessive, the board shall consider the
21 fee or range of fees customarily charged in this state for similar
22 services, in light of modifying factors such as the time required, the
23 complexity of the service and the skill required to perform the service
24 properly. This subdivision does not apply if there is a clear written
25 contract for a fixed fee between the physician and the patient that was
26 entered into before the service was provided.

27 (ss) With the exception of heavy metal poisoning, using chelation
28 therapy in the treatment of arteriosclerosis or as any other form of
29 therapy without adequate informed patient consent and without conforming
30 to generally accepted experimental criteria, including protocols, detailed
31 records, periodic analysis of results and periodic review by a medical
32 peer review committee.

33 (tt) Using a controlled substance unless it is prescribed by
34 another physician for use during a prescribed course of treatment.

35 (uu) Prescribing, dispensing or administering anabolic androgenic
36 steroids for other than therapeutic purposes.

37 (vv) Except in an emergency or urgent care situation, prescribing
38 or dispensing a controlled substance to a member of the naturopathic
39 physician's immediate family.

40 (ww) Prescribing, dispensing or furnishing a prescription
41 medication or a prescription-only device as defined in section 32-1901 to
42 a person unless the licensee first conducts a physical examination of that
43 person or has previously established a doctor-patient relationship. The
44 physical examination may be conducted during a real-time telemedicine
45 encounter with audio and video capability ~~if the telemedicine audio and~~

1 ~~video capability meets the elements required by the centers for medicare~~
2 ~~and medicaid services,~~ unless the examination is for the purpose of
3 obtaining a written certification from the physician for the purposes of
4 title 36, chapter 28.1. This subdivision does not apply to:

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

7 (ii) An emergency medical situation as defined in section 41-1831.

8 (iii) Prescriptions written to prepare a patient for a medical
9 examination.

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

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

21 (vi) Prescriptions written by a licensee through a telemedicine
22 program that is covered by the policies and procedures adopted by the
23 administrator of a hospital or outpatient treatment center.

24 (xx) If medical treatment is considered experimental or
25 investigational, failing to include in a patient's record a consent to
26 treatment document that is signed by the patient or the patient's parent
27 or legal guardian and that indicates that the patient or the patient's
28 parent or legal guardian has been informed of the risk of any treatment to
29 be provided and the expected cost of that treatment.

30 (yy) When issuing a written certification as defined in section
31 36-2801, failing or refusing to include in the adequate medical records of
32 a patient a copy of all of the following:

33 (i) The medical records relied on by the physician to support the
34 diagnosis or confirmed diagnosis of the patient's debilitating medical
35 condition.

36 (ii) The written certification.

37 (iii) The patient's profile on the Arizona board of pharmacy
38 controlled substances prescription monitoring program database.

39 Sec. 3. Section 32-1854, Arizona Revised Statutes, is amended to
40 read:

41 32-1854. Definition of unprofessional conduct

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

44 1. Knowingly betraying a professional secret or wilfully violating
45 a privileged communication except as either of these may otherwise be

1 required by law. This paragraph does not prevent members of the board
2 from exchanging information with the licensing and disciplinary boards of
3 other states, territories or districts of the United States or with
4 foreign countries or with osteopathic medical organizations located in
5 this state or in any state, district or territory of this country or in
6 any foreign country.

7 2. Committing a felony or a misdemeanor involving moral turpitude.
8 In either case conviction by any court of competent jurisdiction is
9 conclusive evidence of the commission of the offense.

10 3. Practicing medicine while under the influence of alcohol, a
11 dangerous drug as defined in section 13-3401, narcotic or hypnotic drugs
12 or any substance that impairs or may impair the licensee's ability to
13 safely and skillfully practice medicine.

14 4. Being diagnosed by a physician licensed under this chapter or
15 chapter 13 of this title or a psychologist licensed under chapter 19.1 of
16 this title as excessively or illegally using alcohol or a controlled
17 substance.

18 5. Prescribing, dispensing or administering controlled substances
19 or prescription-only drugs for other than accepted therapeutic purposes.

20 6. Engaging in the practice of medicine in a manner that harms or
21 may harm a patient or that the board determines falls below the community
22 standard.

23 7. Impersonating another physician.

24 8. Acting or assuming to act as a member of the board if this is
25 not true.

26 9. Procuring, renewing or attempting to procure or renew a license
27 to practice osteopathic medicine by fraud or misrepresentation.

28 10. Having professional connection with or lending one's name to an
29 illegal practitioner of osteopathic medicine or any of the other healing
30 arts.

31 11. Representing that a manifestly incurable disease, injury,
32 ailment or infirmity can be permanently cured or that a curable disease,
33 injury, ailment or infirmity can be cured within a stated time, if this is
34 not true.

35 12. Failing to reasonably disclose and inform the patient or the
36 patient's representative of the method, device or instrumentality the
37 licensee uses to treat the patient's disease, injury, ailment or
38 infirmity.

39 13. Refusing to divulge to the board on demand the means, method,
40 device or instrumentality used in the treatment of a disease, injury,
41 ailment or infirmity.

42 14. Charging a fee for services not rendered or dividing a
43 professional fee for patient referrals. This paragraph does not apply to
44 payments from a medical researcher to a physician in connection with

1 identifying and monitoring patients for clinical trial regulated by the
2 United States food and drug administration.

3 15. Knowingly making any false or fraudulent statement, written or
4 oral, in connection with the practice of medicine or when applying for or
5 renewing privileges at a health care institution or a health care program.

6 16. Advertising in a false, deceptive or misleading manner.

7 17. Representing or claiming to be an osteopathic medical
8 specialist if the physician has not satisfied the applicable requirements
9 of this chapter or board rules.

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

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

17 20. Violating or attempting to violate, directly or indirectly, or
18 assisting in or abetting the violation of or conspiring to violate any of
19 the provisions of this chapter.

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

22 (a) If the patient is an adult, for at least six years after the
23 last date the licensee provided the patient with medical or health care
24 services.

25 (b) If the patient is a child, either for at least three years
26 after the child's eighteenth birthday or for at least six years after the
27 last date the licensee provided that patient with medical or health care
28 services, whichever date occurs later.

29 22. Using controlled substances or prescription-only drugs unless
30 they are provided by a medical practitioner, as defined in section
31 32-1901, as part of a lawful course of treatment.

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

35 24. Nontherapeutic use of injectable amphetamines.

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

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

41 27. Using experimental forms of therapy without adequate informed
42 patient consent or without conforming to generally accepted criteria and
43 complying with federal and state statutes and regulations governing
44 experimental therapies.

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

9 29. Failing to allow properly authorized board personnel to have,
10 on presentation of a subpoena, access to any documents, reports or records
11 that are maintained by the physician and that relate to the physician's
12 medical practice or medically related activities pursuant to section
13 32-1855.01.

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

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

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

20 33. Referring a patient to a diagnostic or treatment facility or
21 prescribing goods and services without disclosing that the physician has a
22 direct pecuniary interest in the facility, goods or services to which the
23 patient has been referred or prescribed. This paragraph does not apply to
24 a referral by one physician to another physician within a group of
25 physicians practicing together.

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

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

32 36. Prescribing or dispensing controlled substances or
33 prescription-only medications without establishing and maintaining
34 adequate patient records.

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

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

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

42 40. With the exception of heavy metal poisoning, using chelation
43 therapy in the treatment of arteriosclerosis or as any other form of
44 therapy without adequate informed patient consent and without conforming
45 to generally accepted experimental criteria, including protocols, detailed

1 records, periodic analysis of results and periodic review by a medical
2 peer review committee.

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

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

11 (a) Engaging in or soliciting sexual relationships, whether
12 consensual or nonconsensual.

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

15 43. Conduct that is in violation of section 36-2302.

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

19 45. Conduct in the practice of medicine that evidences moral
20 unfitness to practice medicine.

21 46. Engaging in disruptive or abusive behavior in a professional
22 setting.

23 47. Failing to disclose to a patient that the licensee has a direct
24 financial interest in a prescribed treatment, good or service if the
25 treatment, good or service is available on a competitive basis. This
26 paragraph does not apply to a referral by one licensee to another licensee
27 within a group of licensees who practice together. A licensee meets the
28 disclosure requirements of this paragraph if both of the following are
29 true:

30 (a) The licensee makes the disclosure on a form prescribed by the
31 board.

32 (b) The patient or the patient's guardian or parent acknowledges by
33 signing the form that the licensee has disclosed the licensee's direct
34 financial interest.

35 48. Prescribing, dispensing or furnishing a prescription medication
36 or a prescription-only device to a person if the licensee has not
37 conducted a physical or mental health status examination of that person or
38 has not previously established a physician-patient relationship. The
39 physical or mental health status examination may be conducted during a
40 real-time telemedicine encounter with audio and video capability ~~if the~~
41 ~~telemedicine audio and video capability meets the elements required by the~~
42 ~~centers for medicare and medicaid services~~, unless the examination is for
43 the purpose of obtaining a written certification from the physician for
44 the purposes of title 36, chapter 28.1. This paragraph does not apply to:

1 (a) Emergencies.

2 (b) A licensee who provides patient care on behalf of the patient's
3 regular treating licensed health care professional or provides a
4 consultation requested by the patient's regular treating licensed health
5 care professional.

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

11 (d) Prescriptions for epinephrine auto-injectors written or
12 dispensed for a school district or charter school to be stocked for
13 emergency use pursuant to section 15-157 or for an authorized entity to be
14 stocked pursuant to section 36-2226.01.

15 (e) Prescriptions written by a licensee through a telemedicine
16 program that is covered by the policies and procedures adopted by the
17 administrator of a hospital or outpatient treatment center.

18 (f) Prescriptions for naloxone hydrochloride or any other opioid
19 antagonist approved by the United States food and drug administration that
20 are written or dispensed for use pursuant to section 36-2228 or 36-2266.

21 49. If a licensee provides medical care by computer, failing to
22 disclose the licensee's license number and the board's address and
23 telephone number.

24 Sec. 4. Section 32-1901.01, Arizona Revised Statutes, is amended to
25 read:

26 32-1901.01. Definition of unethical and unprofessional
27 conduct; permittees; licensees

28 A. In this chapter, unless the context otherwise requires, for the
29 purposes of disciplining a permittee, "unethical conduct" means the
30 following, whether occurring in this state or elsewhere:

31 1. Committing a felony, whether or not involving moral turpitude,
32 or a misdemeanor involving moral turpitude or any drug-related offense.
33 In either case, conviction by a court of competent jurisdiction or a plea
34 of no contest is conclusive evidence of the commission.

35 2. Committing an act that is substantially related to the
36 qualifications, functions or duties of a permittee and that demonstrates
37 either a lack of good moral character or an actual or potential unfitness
38 to hold a permit in light of the public's safety.

39 3. Working under the influence of alcohol or other drugs.

40 4. Addiction to the use of alcohol or other drugs to such a degree
41 as to render the permittee unfit to perform the permittee's employment
42 duties.

43 5. Violating a federal or state law or administrative rule relating
44 to the manufacture, sale or distribution of drugs, devices, poisons,
45 hazardous substances or precursor chemicals.

- 1 6. Violating a federal or state law or administrative rule relating
2 to marijuana, prescription-only drugs, narcotics, dangerous drugs,
3 controlled substances or precursor chemicals.
- 4 7. Violating state or federal reporting or recordkeeping
5 requirements on transactions relating to precursor chemicals.
- 6 8. Failing to report in writing to the board any evidence that a
7 pharmacist, pharmacy intern or graduate intern is or may be professionally
8 incompetent, is or may be guilty of unprofessional conduct or is or may be
9 mentally or physically unable safely to engage in the practice of
10 pharmacy.
- 11 9. Failing to report in writing to the board any evidence that a
12 pharmacy technician or pharmacy technician trainee is or may be
13 professionally incompetent, is or may be guilty of unprofessional conduct
14 or is or may be mentally or physically unable safely to engage in the
15 permissible activities of a pharmacy technician or pharmacy technician
16 trainee.
- 17 10. Failing to report in writing to the board any evidence that
18 appears to show that a permittee or permittee's employee is or may be
19 guilty of unethical conduct, is or may be mentally or physically unable
20 safely to engage in employment duties related to manufacturing, selling,
21 distributing or dispensing of drugs, devices, poisons, hazardous
22 substances, controlled substances or precursor chemicals or is or may be
23 in violation of this chapter or a rule adopted under this chapter.
- 24 11. Intending to sell, transfer or distribute, or to offer for
25 sale, transfer or distribution, or selling, transferring, distributing or
26 dispensing or offering for sale, transfer or distribution an imitation
27 controlled substance, imitation over-the-counter drug or imitation
28 prescription-only drug as defined in section 13-3451.
- 29 12. Denial or discipline of a permittee's permit to manufacture,
30 sell, distribute or dispense drugs, devices, poisons, hazardous substances
31 or precursor chemicals in another jurisdiction and the permit was not
32 reinstated.
- 33 13. Committing an offense in another jurisdiction that if committed
34 in this state would be grounds for discipline.
- 35 14. Obtaining or attempting to obtain a permit or a permit renewal
36 by fraud, by misrepresentation or by knowingly taking advantage of the
37 mistake of another person or an agency.
- 38 15. Wilfully making a false report or record required by this
39 chapter, required by federal or state laws pertaining to drugs, devices,
40 poisons, hazardous substances or precursor chemicals or required for the
41 payment for drugs, devices, poisons or hazardous substances or precursor
42 chemicals or for services pertaining to such drugs or substances.
- 43 16. Knowingly filing with the board any application, renewal or
44 other document that contains false or misleading information.

1 17. Providing false or misleading information or omitting material
2 information in any communication to the board or the board's employees or
3 agents.

4 18. Violating or attempting to violate, directly or indirectly, or
5 assisting in or abetting the violation of, or conspiring to violate, this
6 chapter.

7 19. Violating a formal order, terms of probation, a consent
8 agreement or a stipulation issued or entered into by the board or its
9 executive director pursuant to this chapter.

10 20. Failing to comply with a board subpoena or failing to comply in
11 a timely manner with a board subpoena without providing any explanation to
12 the board for not complying with the subpoena.

13 21. Failing to provide the board or its employees or agents or an
14 authorized federal or state official conducting a site investigation,
15 inspection or audit with access to any place for which a permit has been
16 issued or for which an application for a permit has been submitted.

17 22. Failing to notify the board of a change of ownership,
18 management or pharmacist in charge.

19 23. Failing to promptly produce on the request of the official
20 conducting a site investigation, inspection or audit any book, record or
21 document.

22 24. Overruling or attempting to overrule a pharmacist in matters of
23 pharmacy ethics or interpreting laws pertaining to the practice of
24 pharmacy or the distribution of drugs or devices.

25 25. Distributing premiums or rebates of any kind in connection with
26 the sale of prescription medication, other than to the prescription
27 medication recipient.

28 26. Failing to maintain effective controls against the diversion of
29 precursor chemicals to unauthorized persons or entities.

30 27. Fraudulently claiming to have performed a service.

31 28. Fraudulently charging a fee for a service.

32 29. Advertising drugs or devices, or services pertaining to drugs
33 or devices, in a manner that is untrue or misleading in any particular,
34 and that is known, or that by the exercise of reasonable care should be
35 known, to be untrue or misleading.

36 B. In this chapter, unless the context otherwise requires, for the
37 purposes of disciplining a pharmacist, pharmacy intern or graduate intern,
38 "unprofessional conduct" means the following, whether occurring in this
39 state or elsewhere:

40 1. Addiction to the use of alcohol or other drugs to such a degree
41 as to render the licensee unfit to practice the profession of pharmacy.

42 2. Violating any federal or state law, rule or regulation relating
43 to the manufacture or distribution of drugs and devices or the practice of
44 pharmacy.

1 3. Dispensing a different drug or brand of drug in place of the
2 drug or brand of drug ordered or prescribed without the express permission
3 in each case of the orderer, or in the case of a prescription order, the
4 medical practitioner. The conduct prohibited by this paragraph does not
5 apply to substitutions authorized pursuant to section 32-1963.01.

6 4. Obtaining or attempting to obtain a license to practice pharmacy
7 or a license renewal by fraud, by misrepresentation or by knowingly taking
8 advantage of the mistake of another person or an agency.

9 5. Denial or discipline of a licensee's license to practice
10 pharmacy in another jurisdiction and the license was not reinstated.

11 6. Claiming professional superiority in compounding or dispensing
12 prescription orders.

13 7. Failing to comply with the mandatory continuing professional
14 pharmacy education requirements of sections 32-1936 and 32-1937 and rules
15 adopted by the board.

16 8. Committing a felony, whether or not involving moral turpitude,
17 or a misdemeanor involving moral turpitude or any drug-related offense.
18 In either case, conviction by a court of competent jurisdiction or a plea
19 of no contest is conclusive evidence of the commission.

20 9. Working under the influence of alcohol or other drugs.

21 10. Violating a federal or state law or administrative rule
22 relating to marijuana, prescription-only drugs, narcotics, dangerous
23 drugs, controlled substances or precursor chemicals when determined by the
24 board or by conviction in a federal or state court.

25 11. Knowingly dispensing a drug without a valid prescription order
26 as required pursuant to section 32-1968, subsection A.

27 12. Knowingly dispensing a drug on a prescription order that was
28 issued in the course of the conduct of business of dispensing drugs
29 pursuant to diagnosis by mail or the internet, unless the order was any of
30 the following:

31 (a) Made by a physician who provides temporary patient supervision
32 on behalf of the patient's regular treating licensed health care
33 professional or provides a consultation requested by the patient's regular
34 treating licensed health care professional.

35 (b) Made in an emergency medical situation as defined in section
36 41-1831.

37 (c) Written to prepare a patient for a medical examination.

38 (d) Written or the prescription medications were issued for use by
39 a county or tribal public health department for immunization programs or
40 emergency treatment or in response to an infectious disease investigation,
41 a public health emergency, an infectious disease outbreak or an act of
42 bioterrorism. For the purposes of this subdivision, "bioterrorism" has
43 the same meaning prescribed in section 36-781.

44 (e) Written or antimicrobials were dispensed by the prescribing or
45 dispensing physician to a contact as defined in section 36-661 who is

1 believed to have had significant exposure risk as defined in section
2 36-661 with another person who has been diagnosed with a communicable
3 disease as defined in section 36-661.

4 (f) Written or the prescription medications were issued for
5 administration of immunizations or vaccines listed in the United States
6 centers for disease control and prevention's recommended immunization
7 schedule to a household member of a patient.

8 (g) For epinephrine auto-injectors that are written or dispensed
9 for a school district or charter school and that are to be stocked for
10 emergency use pursuant to section 15-157 or for an authorized entity to be
11 stocked pursuant to section 36-2226.01.

12 (h) Written by a licensee through a telemedicine program that is
13 covered by the policies and procedures adopted by the administrator of a
14 hospital or outpatient treatment center.

15 (i) Written pursuant to a physical or mental health status
16 examination that was conducted during a real-time telemedicine encounter
17 with audio and video capability ~~that meets the elements required by the~~
18 ~~centers for medicare and medicaid services.~~

19 (j) For naloxone hydrochloride or any other opioid antagonist
20 approved by the United States food and drug administration and written or
21 dispensed for use pursuant to section 36-2228 or 36-2266.

22 13. Failing to report in writing to the board any evidence that a
23 pharmacist, pharmacy intern or graduate intern is or may be professionally
24 incompetent, is or may be guilty of unprofessional conduct or is or may be
25 mentally or physically unable to safely engage in the practice of
26 pharmacy.

27 14. Failing to report in writing to the board any evidence that a
28 pharmacy technician or pharmacy technician trainee is or may be
29 professionally incompetent, is or may be guilty of unprofessional conduct
30 or is or may be mentally or physically unable to safely engage in the
31 permissible activities of a pharmacy technician or pharmacy technician
32 trainee.

33 15. Failing to report in writing to the board any evidence that a
34 permittee or a permittee's employee is or may be guilty of unethical
35 conduct or is or may be in violation of this chapter or a rule adopted
36 under this chapter.

37 16. Committing an offense in another jurisdiction that if committed
38 in this state would be grounds for discipline.

39 17. Knowingly filing with the board any application, renewal or
40 other document that contains false or misleading information.

41 18. Providing false or misleading information or omitting material
42 information in any communication to the board or the board's employees or
43 agents.

- 1 19. Violating or attempting to violate, directly or indirectly, or
2 assisting in or abetting in the violation of, or conspiring to violate,
3 this chapter.
- 4 20. Violating a formal order, terms of probation, a consent
5 agreement or a stipulation issued or entered into by the board or its
6 executive director pursuant to this chapter.
- 7 21. Failing to comply with a board subpoena or failing to comply in
8 a timely manner with a board subpoena without providing any explanation to
9 the board for not complying with the subpoena.
- 10 22. Refusing without just cause to allow authorized agents of the
11 board to examine documents that are required to be kept pursuant to this
12 chapter or title 36.
- 13 23. Participating in an arrangement or agreement to allow a
14 prescription order or a prescription medication to be left at, picked up
15 from, accepted by or delivered to a place that is not licensed as a
16 pharmacy. This paragraph does not prohibit a pharmacist or a pharmacy
17 from using an employee or a common carrier to pick up prescription orders
18 at or deliver prescription medications to the office or home of a medical
19 practitioner, the residence of a patient or a patient's hospital.
- 20 24. Paying rebates or entering into an agreement for the payment of
21 rebates to a medical practitioner or any other person in the health care
22 field.
- 23 25. Providing or causing to be provided to a medical practitioner
24 prescription order blanks or forms bearing the pharmacist's or pharmacy's
25 name, address or other means of identification.
- 26 26. Fraudulently claiming to have performed a professional service.
- 27 27. Fraudulently charging a fee for a professional service.
- 28 28. Failing to report a change of the licensee's home address or
29 employer as required pursuant to section 32-1926.
- 30 29. Failing to report a change in the licensee's residency status
31 as required pursuant to section 32-1926.01.
- 32 C. In this chapter, unless the context otherwise requires, for the
33 purposes of disciplining a pharmacy technician or pharmacy technician
34 trainee, "unprofessional conduct" means the following, whether occurring
35 in this state or elsewhere:
- 36 1. Addiction to the use of alcohol or other drugs to such a degree
37 as to render the licensee unfit to perform the licensee's employment
38 duties.
- 39 2. Violating a federal or state law or administrative rule relating
40 to the manufacture or distribution of drugs or devices.
- 41 3. Obtaining or attempting to obtain a pharmacy technician or
42 pharmacy technician trainee license or a pharmacy technician license
43 renewal by fraud, by misrepresentation or by knowingly taking advantage of
44 the mistake of another person or an agency.

1 4. Denial or discipline of a licensee's license to practice as a
2 pharmacy technician in another jurisdiction and the license was not
3 reinstated.

4 5. Failing to comply with the mandatory continuing professional
5 education requirements of section 32-1925, subsection I and rules adopted
6 by the board.

7 6. Committing a felony, whether or not involving moral turpitude,
8 or a misdemeanor involving moral turpitude or any drug-related offense.
9 In either case, conviction by a court of competent jurisdiction or a plea
10 of no contest is conclusive evidence of the commission.

11 7. Working under the influence of alcohol or other drugs.

12 8. Violating a federal or state law or administrative rule relating
13 to marijuana, prescription-only drugs, narcotics, dangerous drugs,
14 controlled substances or precursor chemicals when determined by the board
15 or by conviction in a federal or state court.

16 9. Failing to report in writing to the board any evidence that a
17 pharmacist, pharmacy intern or graduate intern is or may be professionally
18 incompetent, is or may be guilty of unprofessional conduct or is or may be
19 mentally or physically unable to safely engage in the practice of
20 pharmacy.

21 10. Failing to report in writing to the board any evidence that a
22 pharmacy technician or pharmacy technician trainee is or may be
23 professionally incompetent, is or may be guilty of unprofessional conduct
24 or is or may be mentally or physically unable to safely engage in the
25 permissible activities of a pharmacy technician or pharmacy technician
26 trainee.

27 11. Failing to report in writing to the board any evidence that a
28 permittee or a permittee's employee is or may be guilty of unethical
29 conduct or is or may be in violation of this chapter or a rule adopted
30 under this chapter.

31 12. Committing an offense in another jurisdiction that if committed
32 in this state would be grounds for discipline.

33 13. Knowingly filing with the board any application, renewal or
34 other document that contains false or misleading information.

35 14. Providing false or misleading information or omitting material
36 information in any communication to the board or the board's employees or
37 agents.

38 15. Violating or attempting to violate, directly or indirectly, or
39 assisting in or abetting in the violation of, or conspiring to violate,
40 this chapter.

41 16. Violating a formal order, terms of probation, a consent
42 agreement or a stipulation issued or entered into by the board or its
43 executive director pursuant to this chapter.

1 17. Failing to comply with a board subpoena or failing to comply in
2 a timely manner with a board subpoena without providing any explanation to
3 the board for not complying with the subpoena.

4 18. Failing to report a change of the licensee's home address or
5 employer as required pursuant to section 32-1926.

6 19. Failing to report a change in the licensee's residency status
7 as required pursuant to section 32-1926.01.