

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2411

AN ACT

AMENDING SECTIONS 32-3251, 32-3253, 32-3261, 32-3272, 32-3281 AND 32-4223,
ARIZONA REVISED STATUTES; RELATING TO HEALTH PROFESSIONALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-3251, Arizona Revised Statutes, is amended to
3 read:
4 32-3251. Definitions; notifications or communications
5 A. In this chapter, unless the context otherwise requires:
6 1. "Board" means the board of behavioral health examiners.
7 2. "Client" means a patient who receives behavioral health services
8 from a person licensed pursuant to this chapter.
9 3. "Direct client contact" means, ~~beginning November 1, 2015,~~ the
10 performance of therapeutic or clinical functions related to the
11 applicant's professional practice level of psychotherapy that includes
12 diagnosis, assessment and treatment and that may include psychoeducation
13 for mental, emotional and behavioral disorders based primarily on verbal
14 or nonverbal communications and intervention with, and in the presence of,
15 one or more clients.
16 4. "Equivalent" means comparable in content and quality but not
17 identical.
18 5. "Indirect client service" means, ~~beginning November 1, 2015,~~
19 training for, and the performance of, functions of an applicant's
20 professional practice level in preparation for or on behalf of a client
21 for whom direct client contact functions are also performed, including
22 case consultation and receipt of clinical supervision. Indirect client
23 service does not include the provision of psychoeducation.
24 6. "Letter of concern" means a nondisciplinary written document
25 sent by the board to notify a licensee that, while there is insufficient
26 evidence to support disciplinary action, the board believes that
27 continuation of the activities that led to the investigation may result in
28 further board action against the licensee.
29 7. "Licensee" means a person who is licensed pursuant to this
30 chapter.
31 8. "Practice of behavioral health" means the practice of marriage
32 and family therapy, professional counseling, social work and substance
33 abuse counseling pursuant to this chapter.
34 9. "Practice of marriage and family therapy" means the professional
35 application of family systems theories, principles and techniques to treat
36 interpersonal relationship issues and nervous, mental and emotional
37 disorders that are cognitive, affective or behavioral. The practice of
38 marriage and family therapy includes:
39 (a) Assessment, appraisal and diagnosis.
40 (b) The use of psychotherapy for the purpose of evaluation,
41 diagnosis and treatment of individuals, couples, families and groups.
42 10. "Practice of professional counseling" means the professional
43 application of mental health, psychological and human development
44 theories, principles and techniques to:

1 (a) Facilitate human development and adjustment throughout the
2 human life span.

3 (b) Assess and facilitate career development.

4 (c) Treat interpersonal relationship issues and nervous, mental and
5 emotional disorders that are cognitive, affective or behavioral.

6 (d) Manage symptoms of mental illness.

7 (e) Assess, appraise, evaluate, diagnose and treat individuals,
8 couples, families and groups through the use of psychotherapy.

9 11. "Practice of social work" means the professional application of
10 social work theories, principles, methods and techniques to:

11 (a) Treat mental, behavioral and emotional disorders.

12 (b) Assist individuals, families, groups and communities to enhance
13 or restore the ability to function physically, socially, emotionally,
14 mentally and economically.

15 (c) Assess, appraise, diagnose, evaluate and treat individuals,
16 couples, families and groups through the use of psychotherapy.

17 12. "Practice of substance abuse counseling" means the professional
18 application of general counseling theories, principles and techniques as
19 specifically adapted, based on research and clinical experience, to the
20 specialized needs and characteristics of persons who are experiencing
21 substance abuse, chemical dependency and related problems and to the
22 families of those persons. The practice of substance abuse counseling
23 includes the following as they relate to substance abuse and chemical
24 dependency issues:

25 (a) Assessment, appraisal and diagnosis.

26 (b) The use of psychotherapy for the purpose of evaluation,
27 diagnosis and treatment of individuals, couples, families and groups.

28 13. "Psychoeducation" means the education of a client as part of a
29 treatment process that provides the client with information regarding
30 mental health, emotional disorders or behavioral health.

31 14. "Psychotherapy" means a variety of treatment methods developing
32 out of generally accepted theories about human behavior and development.

33 15. "Telepractice" means providing behavioral health services
34 through interactive audio, video or electronic communication that occurs
35 between the behavioral health professional and the client, including any
36 electronic communication for evaluation, diagnosis and treatment,
37 including distance counseling, in a secure platform, and that meets the
38 requirements of telemedicine pursuant to section 36-3602.

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

41 (a) ~~Conviction~~ BEING CONVICTED of a felony. Conviction by a court
42 of competent jurisdiction or a plea of no contest is conclusive evidence
43 of the conviction.

- 1 (b) ~~Use of~~ USING fraud or deceit in connection with rendering
2 services as a licensee or in establishing qualifications pursuant to this
3 chapter.
- 4 (c) MAKING any oral or written misrepresentation of a fact ~~by an~~
5 ~~applicant or licensee~~:
- 6 (i) To secure or attempt to secure the issuance or renewal of a
7 license.
- 8 (ii) In any statements provided during an investigation or
9 disciplinary proceeding by the board.
- 10 (iii) Regarding the licensee's skills or the value of any treatment
11 provided or to be provided.
- 12 (d) MAKING any false, fraudulent or deceptive statement connected
13 with the practice of behavioral health, including false or misleading
14 advertising by the licensee or the licensee's staff or a representative
15 compensated by the licensee.
- 16 (e) Securing or attempting to secure the issuance or renewal of a
17 license by knowingly taking advantage of the mistake of another person or
18 the board.
- 19 (f) ENGAGING IN active habitual intemperance in the use of alcohol
20 or active habitual substance abuse.
- 21 (g) Using a controlled substance that is not prescribed for use
22 during a prescribed course of treatment.
- 23 (h) Obtaining a fee by fraud, deceit or misrepresentation.
- 24 (i) Aiding or abetting a person who is not licensed pursuant to
25 this chapter to purport to be a licensed behavioral health professional in
26 this state.
- 27 (j) ENGAGING IN conduct that the board determines is gross
28 negligence or repeated negligence in the licensee's profession.
- 29 (k) ENGAGING IN any conduct or practice that is contrary to
30 recognized standards of ethics in the behavioral health profession or that
31 constitutes a danger to the health, welfare or safety of a client.
- 32 (l) ENGAGING IN any conduct, practice or condition that impairs the
33 ability of the licensee to safely and competently practice the licensee's
34 profession.
- 35 (m) Engaging or offering to engage as a licensee in activities that
36 are not congruent with the licensee's professional education, training or
37 experience.
- 38 (n) Failing to comply with or violating, attempting to violate or
39 assisting in or abetting the violation of any provision of this chapter,
40 any rule adopted pursuant to this chapter, any lawful order of the board,
41 or any formal order, consent agreement, term of probation or stipulated
42 agreement issued under this chapter.
- 43 (o) Failing to furnish information within a specified time to the
44 board or its investigators or representatives if legally requested by the
45 board.

- 1 (p) Failing to conform to minimum practice standards as developed
2 by the board.
- 3 (q) Failing or refusing to maintain adequate records of behavioral
4 health services provided to a client.
- 5 (r) Providing behavioral health services that are clinically
6 unjustified or unsafe or otherwise engaging in activities as a licensee
7 that are unprofessional by current standards of practice.
- 8 (s) Terminating behavioral health services to a client without
9 making an appropriate referral for continuation of care for the client if
10 continuing behavioral health services are indicated.
- 11 (t) Disclosing a professional confidence or privileged
12 communication except as may otherwise be required by law or permitted by a
13 LEGALLY valid written release.
- 14 (u) Failing to allow the board or its investigators on demand to
15 examine and have access to documents, reports and records in any format
16 maintained by the licensee that relate to the licensee's practice of
17 behavioral health.
- 18 (v) ENGAGING IN any sexual conduct between a licensee and a client
19 or former client.
- 20 (w) Providing behavioral health services to any person with whom
21 the licensee has had sexual contact.
- 22 (x) Exploiting a client, former client or supervisee. For the
23 purposes of this subdivision, "exploiting" means taking advantage of a
24 professional relationship with a client, former client or supervisee for
25 the benefit or profit of the licensee.
- 26 (y) Engaging in a dual relationship with a client that could impair
27 the licensee's objectivity or professional judgment or create a risk of
28 harm to the client. For the purposes of this subdivision, "dual
29 relationship" means a licensee simultaneously engages in both a
30 professional and nonprofessional relationship with a client that is
31 avoidable and not incidental.
- 32 (z) Engaging in physical contact between a licensee and a client if
33 there is a reasonable possibility of physical or psychological harm to the
34 client as a result of that contact.
- 35 (aa) Sexually harassing a client, former client, research subject,
36 supervisee or coworker. For the purposes of this subdivision, "sexually
37 harassing" includes sexual advances, sexual solicitation, requests for
38 sexual favors, unwelcome comments or gestures or any other verbal or
39 physical conduct of a sexual nature.
- 40 (bb) Harassing, exploiting or retaliating against a client, former
41 client, research subject, supervisee, coworker or witness or a complainant
42 in a disciplinary investigation or proceeding involving a licensee.
- 43 (cc) Failing to take reasonable steps to inform potential victims
44 and appropriate authorities if the licensee becomes aware during the
45 course of providing or supervising behavioral health services that a

1 client's condition indicates a clear and imminent danger to the client or
2 others.

3 (dd) Failing to comply with the laws of the appropriate licensing
4 or credentialing authority to provide behavioral health services by
5 electronic means in all governmental jurisdictions where the client
6 receiving these services resides.

7 (ee) Giving or receiving a payment, kickback, rebate, bonus or
8 other remuneration for a referral.

9 (ff) Failing to report in writing to the board information that
10 would cause a reasonable licensee to believe that another licensee is
11 guilty of unprofessional conduct or is physically or mentally unable to
12 provide behavioral health services competently or safely. This duty does
13 not extend to information provided by a licensee that is protected by the
14 behavioral health professional-client privilege unless the information
15 indicates a clear and imminent danger to the client or others or is
16 otherwise subject to mandatory reporting requirements pursuant to state or
17 federal law.

18 (gg) Failing to follow federal and state laws regarding the
19 storage, use and release of confidential information regarding a client's
20 personal identifiable information or care.

21 (hh) Failing to retain records pursuant to section 12-2297.

22 (ii) Violating any federal or state law, rule or regulation
23 applicable to the practice of behavioral health.

24 (jj) Failing to make client records in the licensee's possession
25 available in a timely manner to another health professional or licensee on
26 receipt of proper authorization to do so from the client, a minor client's
27 parent, the client's legal guardian or the client's authorized
28 representative.

29 (kk) Failing to make client records in the licensee's possession
30 promptly available to the client, a minor client's parent, the client's
31 legal guardian or the client's authorized representative on receipt of
32 proper authorization to do so from the client, a minor client's parent,
33 the client's legal guardian or the client's authorized representative.

34 (ll) Being the subject of the revocation, suspension, surrender or
35 any other disciplinary sanction of a professional license, certificate or
36 registration or other adverse action related to a professional license,
37 certificate or registration in another jurisdiction or country, including
38 the failure to report the adverse action to the board. The action taken
39 may include refusing, denying, revoking or suspending a license or
40 certificate, the surrendering of a license or certificate, otherwise
41 limiting, restricting or monitoring a licensee or certificate holder or
42 placing a licensee or certificate holder on probation.

43 (mm) **ENGAGING IN** any conduct that results in a sanction imposed by
44 an agency of the federal government that involves restricting, suspending,

1 limiting or removing the licensee's ability to obtain financial
2 remuneration for behavioral health services.

3 (nn) Violating the security of any licensure examination materials.

4 (oo) ~~The use of~~ USING fraud or deceit in connection with taking or
5 assisting another person in taking a licensure examination.

6 B. FOR THE PURPOSES OF THIS CHAPTER, NOTIFICATIONS OR
7 COMMUNICATIONS REQUIRED TO BE WRITTEN OR IN WRITING MAY BE TRANSMITTED OR
8 RECEIVED BY MAIL, ELECTRONIC TRANSMISSION, FACSIMILE TRANSMISSION OR HAND
9 DELIVERY AND SHALL NOT BE TRANSMITTED OR RECEIVED ORALLY.

10 Sec. 2. Section 32-3253, Arizona Revised Statutes, is amended to
11 read:

12 32-3253. Powers and duties

13 A. The board shall:

14 1. Adopt rules consistent with and necessary or proper to carry out
15 the purposes of this chapter.

16 2. Administer and enforce this chapter, rules adopted pursuant to
17 this chapter and orders of the board.

18 3. Issue a license by examination, endorsement or temporary
19 recognition to, and renew the license of, each person who is qualified to
20 be licensed pursuant to this chapter. The board must issue or deny a
21 license within one hundred eighty days after the applicant submits a
22 completed application.

23 4. Establish a licensure fee schedule annually, by a formal vote at
24 a regular board meeting.

25 5. Collect fees and spend monies.

26 6. Keep a record of all persons WHO ARE licensed pursuant to this
27 chapter, actions taken on all applications for licensure, actions
28 involving renewal, suspension, revocation or denial of a license or
29 probation of licensees and the receipt and disbursement of monies.

30 7. Adopt an official seal for attestation of licensure and other
31 official papers and documents.

32 8. Conduct investigations and determine on its own motion ~~if~~
33 WHETHER a licensee or an applicant has engaged in unprofessional conduct,
34 is incompetent or is mentally or physically unable to engage in the
35 practice of behavioral health.

36 9. Conduct disciplinary actions pursuant to this chapter and board
37 rules.

38 10. Establish and enforce standards or criteria of programs or
39 other mechanisms to ensure the continuing competence of licensees.

40 11. Establish and enforce compliance with professional standards
41 and rules of conduct for licensees.

42 12. Engage in a full exchange of information with the licensing and
43 disciplinary boards and professional associations for behavioral health
44 professionals in this state and other jurisdictions.

1 13. Subject to section 35-149, accept, expend and account for
2 gifts, grants, devises and other contributions, money or property from any
3 public or private source, including the federal government. Monies
4 received under this paragraph shall be deposited, pursuant to sections
5 35-146 and 35-147, in special funds for the purpose specified, which are
6 exempt from the provisions of section 35-190 relating to lapsing of
7 appropriations.

8 14. Adopt rules regarding the application for and approval of
9 educational curricula of regionally accredited colleges or universities
10 with a program not otherwise accredited by an organization or entity
11 recognized by the board that are consistent with the requirements of this
12 chapter and maintain a list of those programs. Approvals ~~shall be~~ ARE
13 valid for a period of five years if no changes of curricula are made that
14 are inconsistent with the requirements of this chapter or board rule.

15 15. Maintain a registry of licensees who have met the educational
16 requirements to provide supervision as required pursuant to this chapter
17 to applicants in the same profession.

18 16. Adopt rules to allow approval of persons who wish to provide
19 supervision pursuant to this chapter and who are not licensed by the board
20 and who are licensed in a profession other than the profession in which
21 the applicant is seeking licensure.

22 17. Recognize not more than four hundred hours of psychoeducation
23 for work experience required pursuant to sections 32-3293, 32-3301,
24 32-3311 and 32-3321.

25 18. Adopt rules regarding the use of telepractice ~~beginning on~~
26 ~~November 1, 2015.~~

27 19. IF AN APPLICANT IS REQUIRED TO PASS AN EXAMINATION FOR
28 LICENSURE, ALLOW THE APPLICANT TO TAKE THE EXAMINATION THREE TIMES DURING
29 A TWELVE-MONTH PERIOD.

30 B. The board may join professional organizations and associations
31 organized exclusively to promote the improvement of the standards of the
32 practice of behavioral health, protect the health and welfare of the
33 public or assist and facilitate the work of the board.

34 C. The board may enter into stipulated agreements with a licensee
35 for the confidential treatment, rehabilitation and monitoring of chemical
36 dependency or psychiatric, psychological or behavioral health disorders in
37 a program provided pursuant to subsection D of this section. A licensee
38 who materially fails to comply with a program shall be terminated from the
39 confidential program. Any records of the licensee who is terminated from
40 a confidential program are no longer confidential or exempt from the
41 public records law, notwithstanding any law to the contrary. Stipulated
42 agreements are not public records if the following conditions are met:

43 1. The licensee voluntarily agrees to participate in the
44 confidential program.

1 4. Review applications and make recommendations to the board for
2 curriculum approval applications made pursuant to section 32-3253,
3 subsection A, paragraph 14.

4 5. At the request of the board, make recommendations regarding
5 examinations required pursuant to this chapter.

6 6. Review applications for and make determinations regarding
7 exemptions related to clinical supervision requirements.

8 ~~B.~~ B. IF AN APPLICATION IS REFERRED TO AN ACADEMIC REVIEW COMMITTEE
9 FOR REVIEW AND THE ACADEMIC REVIEW COMMITTEE FINDS THAT ADDITIONAL
10 INFORMATION IS NEEDED FROM THE APPLICANT, THE ACADEMIC REVIEW COMMITTEE
11 SHALL PROVIDE A COMPREHENSIVE WRITTEN REQUEST FOR ADDITIONAL INFORMATION
12 TO THE APPLICANT.

13 ~~C.~~ C. An academic review committee shall be composed of three
14 members who have been residents of this state for at least one year before
15 appointment, at least one but not more than two of whom are licensed in
16 the professional area pursuant to this chapter and have five years of
17 experience in the applicable profession. At least one but not more than
18 two members must have served within the previous ten years as core or
19 full-time faculty at a regionally accredited college or university in a
20 program related to the applicable profession and have experience in the
21 design and development of the curriculum of a related program. If
22 qualified, a faculty member may serve on more than one academic review
23 committee. A board member may not be appointed to serve on an academic
24 review committee.

25 ~~D.~~ D. Committee members shall initially be appointed by the board.
26 From and after January 1, 2016, the governor shall appoint the committee
27 members. A committee member who is initially appointed by the board may be
28 reappointed by the governor. A committee member who is initially
29 appointed by the board shall continue to serve until appointed or replaced
30 by the governor.

31 ~~E.~~ E. Committee members serve at the pleasure of the governor for
32 terms of three years. A member shall not serve more than two full
33 consecutive terms.

34 ~~F.~~ F. Committee members are eligible to receive compensation of
35 not more than eighty-five dollars for each day actually and necessarily
36 spent in the performance of their duties.

37 ~~G.~~ G. An academic review committee shall annually elect a chairman
38 and secretary from its membership.

39 ~~H.~~ H. Committee members are personally immune from suit with
40 respect to all acts done and actions taken in good faith and in
41 furtherance of the purposes of this chapter.

42 ~~I.~~ I. Committee members shall receive at least five hours of
43 training as prescribed by the board within one year after the member is
44 initially appointed and that includes instruction in ethics and open
45 meeting requirements.

1 Sec. 4. Section 32-3272, Arizona Revised Statutes, is amended to
2 read:

3 32-3272. Fees

4 A. For issuance of a license pursuant to this chapter, including
5 application fees, the board shall establish and charge reasonable fees not
6 to exceed five hundred dollars.

7 B. For renewal of a license pursuant to this chapter, the board
8 shall establish and charge reasonable fees not to exceed five hundred
9 dollars. The board shall not increase fees pursuant to this subsection
10 more than twenty-five dollars each year.

11 C. The board by rule may adopt a fee for applications for approval
12 of educational curricula pursuant to section 32-3253, subsection A,
13 paragraph ~~15~~ 14.

14 D. The board shall establish fees to produce monies that
15 approximate the cost of maintaining the board.

16 E. THE BOARD SHALL WAIVE THE APPLICATION FEE FOR AN INDEPENDENT
17 LEVEL LICENSE IF AN APPLICANT HAS PAID THE FEE FOR AN INITIAL OR RENEWAL
18 ASSOCIATE LEVEL LICENSE IN THIS STATE AND WITHIN NINETY DAYS AFTER PAYMENT
19 OF THE FEE THE APPLICANT APPLIES FOR AN INDEPENDENT LEVEL LICENSE.

20 Sec. 5. Section 32-3281, Arizona Revised Statutes, is amended to
21 read:

22 32-3281. Disciplinary action; investigations; hearings; civil
23 penalty; timely complaints; burden of proof

24 A. The board, on its own motion or on a complaint, may investigate
25 any evidence that appears to show that a licensee is or may be
26 incompetent, is or may be guilty of unprofessional conduct or is or may be
27 mentally or physically unable to safely engage in the practice of
28 behavioral health. As part of its investigation, the board may hold an
29 investigational meeting pursuant to this chapter. Any person may, and a
30 licensee and any entity licensed by the office of behavioral health
31 licensure shall, report to the board any information that would cause a
32 reasonable licensee to believe that another licensee is guilty of
33 unprofessional conduct or is physically or mentally unable to provide
34 behavioral health services competently or safely. Any person or entity
35 that reports or provides information to the board in good faith is not
36 subject to an action for civil damages. It is an act of unprofessional
37 conduct for any licensee to fail to report as required by this
38 section. The board shall report to the office of behavioral health
39 licensure in the department of health services any entity licensed by the
40 office of behavioral health licensure that fails to report as required by
41 this section. For complaints related to conduct that is inconsistent with
42 professional standards or ethics, scope of practice or standard of care,
43 the board may consult with one or more licensed or retired behavioral
44 health professionals of the same profession as the licensee to review
45 complaints and make recommendations to the board.

1 B. On determination of reasonable cause, the board shall require,
2 at the licensee's own expense, any combination of mental, physical or
3 psychological examinations, assessments or skills evaluations necessary to
4 determine the licensee's competence or ability to safely engage in the
5 practice of behavioral health and conduct necessary investigations,
6 including investigational interviews between representatives of the board
7 and the licensee, to fully inform the board with respect to any
8 information filed with the board under subsection A of this
9 section. These examinations may include biological fluid testing. The
10 board may require the licensee, at the licensee's expense, to undergo
11 assessment by a rehabilitative, retraining or assessment program approved
12 by the board.

13 C. If the board finds, based on the information received pursuant
14 to subsection A or B of this section, that the public health, safety or
15 welfare imperatively requires emergency action, and incorporates a finding
16 to that effect in its order, the board may restrict, limit or order a
17 summary suspension of a license pending proceedings for revocation or
18 other action. If the board takes action pursuant to this subsection, it
19 must also serve the licensee with a written notice that states the charges
20 and that the licensee is entitled to a formal hearing before the board or
21 an administrative law judge within sixty days.

22 D. If after completing an investigation the board finds that the
23 information provided is not of sufficient seriousness to merit
24 disciplinary action against the licensee, the board shall either:

25 1. Dismiss the complaint if, in the opinion of the board, the
26 complaint is without merit.

27 2. File a letter of concern and dismiss the complaint. The
28 licensee may file a written response with the board within thirty days
29 after the licensee receives the letter of concern.

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

34 E. A complaint dismissed by the board pursuant to subsection D,
35 paragraph 1 of this section is not a complaint of unprofessional conduct
36 and shall not be disclosed by the board as a complaint on the licensee's
37 complaint history.

38 F. If after completing its investigation the board believes that
39 the information is or may be true, the board may enter into a consent
40 agreement with the licensee to limit or restrict the licensee's practice
41 or to rehabilitate the licensee, protect the public and ensure the
42 licensee's ability to safely engage in the practice of behavioral health.
43 A consent agreement may also require the licensee to successfully complete
44 a board approved rehabilitative, retraining or assessment program.

1 G. If the board finds that the information provided pursuant to
2 subsection A of this section is or may be true, the board may request a
3 formal interview with the licensee. If the licensee refuses the
4 invitation for a formal interview or accepts and the results indicate that
5 grounds may exist for revocation or suspension of the licensee's license
6 for more than twelve months, the board shall issue a formal complaint and
7 order that a hearing be held pursuant to title 41, chapter 6, article 10.
8 If after completing a formal interview the board finds that the protection
9 of the public requires emergency action, the board may order a summary
10 suspension of the licensee's license pending formal revocation proceedings
11 or other action authorized by this section.

12 H. If after completing the formal interview the board finds the
13 information provided is not of sufficient seriousness to merit suspension
14 for more than twelve months or revocation of the license, the board may
15 take the following actions:

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

18 2. File a letter of concern and dismiss the complaint. The
19 licensee may file a written response with the board within thirty days
20 after the licensee receives the letter of concern.

21 3. Issue a decree of censure. A decree of censure is an official
22 action against the licensee's license and may include a requirement for
23 restitution of fees to a client resulting from violations of this chapter
24 or rules adopted pursuant to this chapter.

25 4. Fix a period and terms of probation best adapted to protect the
26 public health and safety and rehabilitate or educate the licensee
27 concerned. Probation may include temporary suspension not to exceed
28 twelve months, restriction of the licensee's license to practice
29 behavioral health, a requirement for restitution of fees to a client or
30 education or rehabilitation at the licensee's own expense. If a licensee
31 fails to comply with the terms of probation, the board shall serve the
32 licensee with a written notice that states that the licensee is subject to
33 a formal hearing based on the information considered by the board at the
34 formal interview and any other acts or conduct alleged to be in violation
35 of this chapter or rules adopted by the board pursuant to this chapter,
36 including noncompliance with the terms of probation or a consent
37 agreement.

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

42 I. If the board finds that the information provided in subsection A
43 or G of this section warrants suspension or revocation of a license issued
44 under this chapter, the board shall initiate formal proceedings pursuant
45 to title 41, chapter 6, article 10.

1 J. In a formal interview pursuant to subsection G of this section
2 or in a hearing pursuant to subsection I of this section, the board in
3 addition to any other action may impose a civil penalty not to exceed one
4 thousand dollars for each violation of this chapter or a rule adopted
5 under this chapter.

6 K. A letter of concern is a public document.

7 L. A licensee who after a formal hearing is found by the board to
8 be guilty of unprofessional conduct, to be mentally or physically unable
9 to safely engage in the practice of behavioral health or to be
10 professionally incompetent is subject to censure, probation as provided in
11 this section, suspension of license or revocation of license or any
12 combination of these, including a stay of action, and for a period of time
13 or permanently and under conditions as the board deems appropriate for the
14 protection of the public health and safety and just in the
15 circumstance. The board may charge all costs incurred in the course of
16 the investigation and formal hearing to the licensee it finds is in
17 violation of this chapter. The board shall deposit, pursuant to sections
18 35-146 and 35-147, monies collected pursuant to this subsection in the
19 board of behavioral health examiners fund established by section 32-3254.

20 M. If the board during the course of any investigation determines
21 that a criminal violation may have occurred involving the delivery of
22 behavioral health services, the board shall make the evidence of
23 violations available to the appropriate criminal justice agency for its
24 consideration.

25 N. The board shall deposit, pursuant to sections 35-146 and 35-147,
26 all monies collected from civil penalties paid pursuant to this chapter in
27 the state general fund.

28 O. Notice of a complaint and hearing is effective by a true copy of
29 the notice being sent by certified mail to the licensee's last known
30 address of record in the board's files. Notice of the complaint and
31 hearing is complete on the date of its deposit in the mail.

32 P. In determining the appropriate disciplinary action under this
33 section, the board shall consider all previous nondisciplinary and
34 disciplinary actions against a licensee.

35 Q. The board may defer action with regard to an impaired licensee
36 who voluntarily signs an agreement, in a form satisfactory to the board,
37 agreeing to practice restrictions and treatment and monitoring programs
38 deemed necessary by the board to protect the public health and safety. A
39 licensee who is impaired and who does not agree to enter into an agreement
40 with the board is subject to other action as provided pursuant to this
41 chapter.

1 R. Subject to an order duly entered by the board, a person whose
2 license to practice behavioral health has been suspended or restricted
3 pursuant to this chapter, whether voluntarily or by action of the board,
4 may at reasonable intervals apply to the board for reinstatement of the
5 license. The person shall submit the application in writing and in the
6 form prescribed by the board. After conducting an investigation and
7 hearing, the board may grant or deny the application or modify the
8 original finding to reflect any circumstances that have changed
9 sufficiently to warrant modification. The board may require the applicant
10 to pass an examination or complete board imposed continuing education
11 requirements or may impose any other sanctions the board deems appropriate
12 for reentry into the practice of behavioral health.

13 S. A person whose license is revoked, suspended or not renewed must
14 return the license to the offices of the board within ten days after
15 notice of that action.

16 T. The board may enforce a civil penalty imposed pursuant to this
17 section in the superior court in Maricopa county.

18 U. For complaints being brought before the full board, the
19 information released to the public regarding an ongoing investigation must
20 clearly indicate that the investigation is a pending complaint and must
21 include the following statement:

22 Pending complaints represent unproven allegations. On
23 investigation, many complaints are found to be without merit
24 or not of sufficient seriousness to merit disciplinary action
25 against the licensee and are dismissed.

26 V. The board shall not act on its own motion or on any complaint
27 received by the board in which an allegation of unprofessional conduct or
28 any other violation of this chapter against a professional who holds an
29 Arizona license occurred more than four years before the complaint is
30 received by the board. The time limitation does not apply to:

31 1. Malpractice settlements or judgments, ~~or~~ allegations of sexual
32 misconduct or ~~if~~ an incident or occurrence **THAT** involved a felony,
33 diversion of a controlled substance or impairment while practicing by the
34 licensee.

35 2. ~~A~~ **THE** board's consideration of the specific unprofessional
36 conduct related to ~~a~~ **THE** licensee's failure to disclose conduct or a
37 violation as required by law.

38 W. The board shall not open an investigation if identifying
39 information regarding the complainant is not provided.

40 X. Except for disciplinary matters prescribed by section 32-3251,
41 **SUBSECTION A**, paragraph 16, subdivision (v), the board has the burden of
42 proof by clear and convincing evidence for disciplinary matters brought
43 pursuant to this chapter.

1 Sec. 6. Section 32-4223, Arizona Revised Statutes, is amended to
2 read:

3 32-4223. Reciprocity

4 A. An applicant is eligible for reciprocal licensure if either of
5 the following applies:

6 1. The applicant has been licensed ~~continuously~~ in another state
7 **THAT HAS COMPREHENSIVE STANDARDS FOR LICENSURE FOR MASSAGE THERAPISTS** for
8 **AT LEAST TWO OF** the last five years preceding the filing of the
9 application with the board ~~and the other state has standards for massage~~
10 ~~therapists that are substantially equivalent to those in this state.~~

11 2. The applicant holds a current certification from the national
12 certification board for therapeutic massage and bodywork or another agency
13 that meets the standards of the national organization on competency
14 assurance and received education and training substantially equivalent to
15 that required by this chapter.

16 B. When an applicant submits an application for reciprocity, the
17 applicant shall also submit a letter or other document acceptable to the
18 board showing whether any jurisdiction that has previously certified or
19 licensed the applicant has instituted disciplinary proceedings or has
20 unresolved complaints pending against the applicant. If a disciplinary
21 proceeding or an unresolved complaint is pending, the applicant shall not
22 be licensed until the proceeding or the complaint has been resolved in the
23 applicant's favor.

24 Sec. 7. Board of massage therapy; report; delayed repeal

25 A. On or before December 1, 2018, the board of massage therapy
26 shall report to the chairperson of the health committee of the house of
27 representatives and the chairperson of the health and human services
28 committee of the senate, or their successor committees, on issues related
29 to the number of hours required for a person to demonstrate entry-level
30 competence to practice massage therapy in this state, including a survey
31 of the requirements of businesses that employ massage therapists, laws in
32 this and other states and requirements of accreditation entities or other
33 organizations with expertise in massage therapy.

34 B. This section is repealed from and after June 30, 2019.

35 Sec. 8. Regulatory boards; report; delayed repeal

36 A. The board of homeopathic and integrated medicine examiners,
37 state board of dispensing opticians and board of behavioral health
38 examiners shall each research and compare licensing requirements of other
39 states and shall consult with state industry representatives and licensees
40 to make recommendations on the following:

41 1. The reduction of administrative burdens for licensing
42 applicants.

- 1 2. Streamlining of the licensing application and renewal process
2 and reducing the cost to the applicant and licensee.
- 3 B. On or before December 31, 2018, each board shall submit a report
4 regarding its findings and recommendations to the governor, the president
5 of the senate, the speaker of the house of representatives, the
6 chairperson of the health committee of the house of representatives and
7 the chairperson of the health and human services committee of the senate,
8 or their successor committees, and shall provide a copy of the report to
9 the secretary of state.
- 10 C. This section is repealed from and after June 30, 2019.