

REFERENCE TITLE: nursing board; regulatory actions; expungement

State of Arizona
House of Representatives
Fifty-seventh Legislature
Second Regular Session
2026

HB 2408

Introduced by
Representative Willoughby

AN ACT

AMENDING SECTIONS 32-1601 AND 32-1606, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 15, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-1664.01, 32-1664.02, 32-1664.03, 32-1664.04 AND 32-1664.05; RELATING TO THE ARIZONA STATE BOARD OF NURSING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1601, Arizona Revised Statutes, is amended to
3 read:

4 32-1601. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Absolute discharge from the sentence" means completion of any
7 sentence, including imprisonment, probation, parole, community supervision
8 or any form of court supervision.

9 2. "Appropriate health care professional" means a licensed health
10 care professional whose scope of practice, education, experience, training
11 and accreditation are appropriate for the situation or condition of the
12 patient who is the subject of a consultation or referral.

13 3. "Approval" means that a regulated training or educational
14 program to prepare persons for licensure, certification or registration
15 has met standards established by the board.

16 4. "Board" means the Arizona state board of nursing.

17 5. "Certified nurse midwife" means a registered nurse who:

18 (a) Is certified by the board.

19 (b) Has completed a nurse midwife education program **THAT IS**
20 approved or recognized by the board and educational requirements **THAT ARE**
21 prescribed by the board by rule.

22 (c) Holds a national certification as a certified nurse midwife
23 from a national certifying body **THAT IS** recognized by the board.

24 (d) Has an expanded scope of practice in providing health care
25 services for women from adolescence to beyond menopause, including
26 antepartum, intrapartum, postpartum, reproductive, gynecologic and primary
27 care, for normal newborns during the first twenty-eight days of life and
28 for men for the treatment of sexually transmitted diseases. The expanded
29 scope of practice under this subdivision includes:

30 (i) Assessing patients, synthesizing and analyzing data and
31 understanding and applying principles of health care at an advanced level.

32 (ii) Managing the physical and psychosocial health care of
33 patients.

34 (iii) Analyzing multiple sources of data, identifying alternative
35 possibilities as to the nature of a health care problem and selecting,
36 implementing and evaluating appropriate treatment.

37 (iv) Making independent decisions in solving complex patient care
38 problems.

39 (v) Diagnosing, performing diagnostic and therapeutic procedures
40 and prescribing, administering and dispensing therapeutic measures,
41 including legend drugs, medical devices and controlled substances, within
42 the scope of the certified nurse midwife practice after meeting
43 requirements established by the board.

1 (vi) Recognizing the limits of the ~~nurse's~~ CERTIFIED NURSE
2 MIDWIFE'S knowledge and experience by consulting with or referring
3 patients to other appropriate health care professionals if a situation or
4 condition occurs that is beyond the knowledge and experience of the
5 CERTIFIED nurse MIDWIFE or if the referral will protect the health and
6 welfare of the patient.

7 (vii) Delegating to a medical assistant pursuant to section
8 32-1456.

9 (viii) Performing additional acts that require education and
10 training as prescribed by the board and that are recognized by the nursing
11 profession as proper to be performed by a certified nurse midwife.

12 6. "Certified nursing assistant" means a person who is registered
13 on the registry of nursing assistants pursuant to this chapter to provide
14 or assist in delivering nursing or nursing-related services under the
15 supervision and direction of a licensed nursing staff member. Certified
16 nursing assistant does not include a person who:

17 (a) Is a licensed health care professional.

18 (b) Volunteers to provide nursing assistant services without
19 monetary compensation.

20 (c) Is a licensed nursing assistant.

21 7. "Certified registered nurse" means a registered nurse who has
22 been certified by a national nursing credentialing agency THAT IS
23 recognized by the board.

24 8. "Certified registered nurse anesthetist" means a registered
25 nurse who meets the requirements of section 32-1634.03 and who practices
26 pursuant to the requirements of section 32-1634.04.

27 9. "Clinical nurse specialist" means a registered nurse who:

28 (a) Is certified by the board as a clinical nurse specialist.

29 (b) Holds a graduate degree with a major in nursing and completes
30 educational requirements as prescribed by the board by rule.

31 (c) Is nationally certified as a clinical nurse specialist or, if
32 certification is not available, provides proof of competence to the board.

33 (d) Has an expanded scope of practice based on advanced education
34 in a clinical nursing specialty that includes:

35 (i) Assessing clients, synthesizing and analyzing data and
36 understanding and applying nursing principles at an advanced level.

37 (ii) Managing directly and indirectly a client's physical and
38 psychosocial health status.

39 (iii) Analyzing multiple sources of data, identifying alternative
40 possibilities as to the nature of a health care problem and selecting
41 appropriate nursing interventions.

42 (iv) Developing, planning and guiding programs of care for
43 populations of patients.

44 (v) Making independent nursing decisions to solve complex client
45 care problems.

- 1 (vi) Using research skills and acquiring and applying critical new
2 knowledge and technologies to nursing practice.
- 3 (vii) Prescribing and dispensing durable medical equipment.
- 4 (viii) Consulting with or referring a client to other health care
5 providers based on assessment of the client's health status and needs.
- 6 (ix) Facilitating collaboration with other disciplines to attain
7 the desired client outcome across the continuum of care.
- 8 (x) Performing additional acts that require education and training
9 as prescribed by the board and that are recognized by the nursing
10 profession as proper to be performed by a clinical nurse specialist.
- 11 (xi) Prescribing, ordering and dispensing pharmacological agents
12 THAT ARE subject to the requirements and limits specified in section
13 32-1651.
- 14 10. "Conditional license" or "conditional approval" means a license
15 or approval that specifies the conditions under which the regulated party
16 is allowed to practice or to operate and that is prescribed by the board
17 pursuant to section 32-1644 or 32-1663.
- 18 11. "Delegation" means transferring to a competent individual the
19 authority to perform a selected nursing task in a designated situation in
20 which the nurse making the delegation retains accountability for the
21 delegation.
- 22 12. "Disciplinary action" means a regulatory sanction of a license,
23 certificate or approval pursuant to this chapter in any combination of the
24 following:
- 25 (a) A civil penalty for each violation of this chapter, not to
26 exceed \$1,000 for each violation.
- 27 (b) Restitution made to an aggrieved party.
- 28 (c) A decree of censure.
- 29 (d) A conditional license or a conditional approval that ~~fixed~~
30 FIXES a period and terms of probation.
- 31 (e) Limited licensure.
- 32 (f) Suspension of a license, a certificate or an approval.
- 33 (g) Voluntary surrender of a license, a certificate or an approval.
- 34 (h) Revocation of a license, a certificate or an approval.
- 35 13. "Health care institution" has the same meaning prescribed in
36 section 36-401.
- 37 14. "Licensed health aide" means a person who:
- 38 (a) Is licensed pursuant to this chapter to provide or to assist in
39 providing nursing-related services authorized pursuant to section 36-2939.
- 40 (b) Is the parent, guardian or family member by affinity or
41 consanguinity of the Arizona long-term care system member receiving
42 services who may provide licensed health aide services only to that member
43 and only consistent with that member's plan of care.

1 (c) Has a scope of practice that is the same as a licensed nursing
2 assistant and may also provide medication administration, tracheostomy
3 care, enteral care and routine ventilator care and therapy and any other
4 tasks approved by the board in rule.

5 (d) Has supervision requirements that are the same as a certified
6 nursing assistant.

7 15. "Licensed nursing assistant" means a person who is licensed
8 pursuant to this chapter to provide or assist in delivering nursing or
9 nursing-related services under the supervision and direction of a licensed
10 nursing staff member. Licensed nursing assistant does not include a
11 person who:

12 (a) Is a licensed health care professional.

13 (b) Volunteers to provide nursing assistant services without
14 monetary compensation.

15 (c) Is a certified nursing assistant.

16 16. "Licensee" means a person who is licensed pursuant to this
17 chapter or in a party state as defined in section 32-1668.

18 17. "Limited license" means a license that restricts the scope or
19 setting of a licensee's practice.

20 18. "Medication order" means a written or verbal communication
21 given by a certified registered nurse anesthetist to a health care
22 professional to administer a drug or medication, including controlled
23 substances.

24 19. "Practical nurse" means a person who holds a practical nurse
25 license issued pursuant to this chapter or pursuant to a multistate
26 compact privilege and who practices practical nursing ~~as defined in this~~
27 ~~section~~.

28 20. "Practical nursing" includes the following activities that are
29 performed under the supervision of a physician or a registered nurse:

30 (a) Contributing to the assessment of the health status of
31 individuals and groups.

32 (b) Participating in the development and modification of the
33 strategy of care.

34 (c) Implementing aspects of the strategy of care within the nurse's
35 scope of practice.

36 (d) Maintaining safe and effective nursing care that is rendered
37 directly or indirectly.

38 (e) Participating in the evaluation of responses to interventions.

39 (f) Delegating nursing activities within the scope of practice of a
40 practical nurse.

41 (g) Performing additional acts that require education and training
42 as prescribed by the board and that are recognized by the nursing
43 profession as proper to be performed by a practical nurse.

1 21. "Presence" means within the same health care institution or
2 office as specified in section 32-1634.04, subsection A, and available as
3 necessary.

4 22. "Registered nurse" or "professional nurse" means a person who
5 practices registered nursing and who holds a registered nurse license
6 issued pursuant to this chapter or pursuant to a multistate compact
7 privilege.

8 23. "Registered nurse practitioner" means a registered nurse who:

9 (a) Is certified by the board.

10 (b) Has completed a nurse practitioner education program **THAT IS**
11 approved or recognized by the board and educational requirements **THAT ARE**
12 prescribed by the board by rule.

13 (c) If applying for certification after July 1, 2004, holds
14 national certification as a nurse practitioner from a national certifying
15 body **THAT IS** recognized by the board.

16 (d) Has an expanded scope of practice within a specialty area that
17 includes:

18 (i) Assessing clients, synthesizing and analyzing data and
19 understanding and applying principles of health care at an advanced level.

20 (ii) Managing the physical and psychosocial health status of
21 patients.

22 (iii) Analyzing multiple sources of data, identifying alternative
23 possibilities as to the nature of a health care problem and selecting,
24 implementing and evaluating appropriate treatment.

25 (iv) Making independent decisions in solving complex patient care
26 problems.

27 (v) Diagnosing, performing diagnostic and therapeutic procedures,
28 and prescribing, administering and dispensing therapeutic measures,
29 including legend drugs, medical devices and controlled substances within
30 the scope of registered nurse practitioner practice on meeting the
31 requirements established by the board.

32 (vi) Recognizing the limits of the ~~nurse's~~ **REGISTERED NURSE**
33 **PRACTITIONER'S** knowledge and experience by consulting with or referring
34 patients to other appropriate health care professionals if a situation or
35 condition occurs that is beyond the knowledge and experience of the
36 **REGISTERED** nurse **PRACTITIONER** or if the referral will protect the health
37 and welfare of the patient.

38 (vii) Delegating to a medical assistant pursuant to section
39 32-1456.

40 (viii) Performing additional acts that require education and
41 training as prescribed by the board and that are recognized by the nursing
42 profession as proper to be performed by a **REGISTERED** nurse practitioner.

43 24. "Registered nursing" includes the following:

44 (a) Diagnosing and treating human responses to actual or potential
45 health problems.

- 1 (b) Assisting individuals and groups to maintain or attain optimal
2 health by implementing a strategy of care to accomplish defined goals and
3 evaluating responses to care and treatment.
- 4 (c) Assessing the health status of individuals and groups.
- 5 (d) Establishing a nursing diagnosis.
- 6 (e) Establishing goals to meet identified health care needs.
- 7 (f) Prescribing nursing interventions to implement a strategy of
8 care.
- 9 (g) Delegating nursing interventions to others who are qualified to
10 do so.
- 11 (h) Providing for the maintenance of safe and effective nursing
12 care that is rendered directly or indirectly.
- 13 (i) Evaluating responses to interventions.
- 14 (j) Teaching nursing knowledge and skills.
- 15 (k) Managing and supervising the practice of nursing.
- 16 (l) Consulting and coordinating with other health care
17 professionals in the management of health care.
- 18 (m) Performing additional acts that require education and training
19 as prescribed by the board and that are recognized by the nursing
20 profession as proper to be performed by a registered nurse.
- 21 25. "Registry of nursing assistants" means the nursing assistants
22 registry maintained by the board pursuant to the omnibus budget
23 reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by
24 the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat.
25 683).
- 26 26. "Regulated party" means any person or entity that is licensed,
27 certified, registered, recognized or approved pursuant to this chapter.
- 28 27. "Unprofessional conduct" includes the following, whether
29 occurring in this state or elsewhere:
- 30 (a) Committing fraud or deceit in obtaining, attempting to obtain
31 or renewing a license or a certificate issued pursuant to this chapter.
- 32 (b) Committing a felony, whether or not involving moral turpitude,
33 or a misdemeanor involving moral turpitude. In either case, conviction by
34 a court of competent jurisdiction or a plea of no contest is conclusive
35 evidence of the commission.
- 36 (c) Aiding or abetting in a criminal abortion or attempting,
37 agreeing or offering to procure or assist in a criminal abortion.
- 38 (d) COMMITTING any conduct or practice that is or might be harmful
39 or dangerous to the health of a patient or the public.
- 40 (e) Being mentally incompetent or physically unsafe to a degree
41 that is or might be harmful or dangerous to the health of a patient or the
42 public.
- 43 (f) Having a license, certificate, permit or registration to
44 practice a health care profession denied, suspended, conditioned, limited

1 or revoked in another jurisdiction and not reinstated by that
2 jurisdiction.

3 (g) Wilfully or repeatedly violating a provision of this chapter or
4 a rule adopted pursuant to this chapter.

5 (h) Committing an act that deceives, defrauds or harms the public.

6 (i) Failing to comply with a stipulated agreement, consent
7 agreement or board order.

8 (j) Violating this chapter or a rule that is adopted by the board
9 pursuant to this chapter.

10 (k) Failing to report to the board any evidence that a registered
11 ~~or~~ NURSE, practical nurse or ~~a~~ nursing assistant is or may be:

12 (i) Incompetent to practice.

13 (ii) Guilty of unprofessional conduct.

14 (iii) Mentally or physically unable to safely practice nursing or
15 to perform nursing-related duties. A nurse who is providing therapeutic
16 counseling for a nurse who is in a drug rehabilitation program is required
17 to report that nurse only if the nurse providing therapeutic counseling
18 has personal knowledge that patient safety is being jeopardized.

19 (l) Failing to self-report a conviction for a felony or
20 undesignated offense within ten days after the conviction.

21 (m) Cheating or assisting another to cheat on a licensure or
22 certification examination.

23 (n) ENGAGING IN SEXUAL CONDUCT WITH A CURRENT PATIENT OR WITH A
24 FORMER PATIENT WITHIN SIX MONTHS AFTER THE LAST TREATMENT UNLESS THE
25 PATIENT WAS THE LICENSEE'S SPOUSE AT THE TIME OF THE CONTACT OR,
26 IMMEDIATELY PRECEDING THE NURSE-PATIENT RELATIONSHIP, WAS IN A DATING OR
27 ENGAGEMENT RELATIONSHIP WITH THE LICENSEE. FOR THE PURPOSES OF THIS
28 SUBDIVISION, "SEXUAL CONDUCT" INCLUDES:

29 (i) ENGAGING IN OR SOLICITING A SEXUAL RELATIONSHIP, WHETHER
30 CONSENSUAL OR NONCONSENSUAL.

31 (ii) MAKING SEXUAL ADVANCES, REQUESTING SEXUAL FAVORS OR ENGAGING
32 IN ANY OTHER VERBAL CONDUCT OR PHYSICAL CONTACT OF A SEXUAL NATURE.

33 (iii) INTENTIONALLY VIEWING A COMPLETELY OR PARTIALLY DISROBED
34 PATIENT IN THE COURSE OF TREATMENT IF THE VIEWING IS NOT RELATED TO
35 PATIENT DIAGNOSIS OR TREATMENT UNDER CURRENT PRACTICE STANDARDS.

36 Sec. 2. Section 32-1606, Arizona Revised Statutes, is amended to
37 read:

38 32-1606. Powers and duties of board

39 A. The board may:

40 1. Adopt and revise rules necessary to carry into effect this
41 chapter.

42 2. Publish advisory opinions regarding registered and practical
43 nursing practice and nursing education.

- 1 3. Issue limited licenses or certificates if it determines that an
2 applicant or licensee cannot function safely in a specific setting or
3 within the full scope of practice.
- 4 4. Refer criminal violations of this chapter to the appropriate law
5 enforcement agency.
- 6 5. Establish a confidential program for monitoring licensees who
7 are chemically dependent and who enroll in rehabilitation programs that
8 meet the criteria established by the board. The board may take further
9 action if the licensee refuses to enter into a stipulated agreement or
10 fails to comply with its terms. In order to protect the public health and
11 safety, the confidentiality requirements of this paragraph do not apply if
12 the licensee does not comply with the stipulated agreement.
- 13 6. On the applicant's or regulated party's request, establish a
14 payment schedule with the applicant or regulated party.
- 15 7. Provide education regarding board functions.
- 16 8. Collect or assist in collecting workforce data.
- 17 9. Adopt rules to conduct pilot programs consistent with public
18 safety for innovative applications in nursing practice, education and
19 regulation.
- 20 10. Grant retirement status on request to retired nurses who are or
21 were licensed under this chapter, who have no open complaint or
22 investigation pending against them and who are not subject to discipline.
- 23 11. Accept and spend federal monies and private grants, gifts,
24 contributions and devises to assist in carrying out the purposes of this
25 chapter. These monies do not revert to the state general fund at the end
26 of the fiscal year.
- 27 B. The board shall:
 - 28 1. Approve regulated training and educational programs that meet
29 the requirements of this chapter and rules adopted by the board.
 - 30 2. By rule, establish approval and reapproval processes for nursing
31 and nursing assistant training programs that meet the requirements of this
32 chapter and board rules.
 - 33 3. Prepare and maintain a list of approved nursing programs to
34 prepare registered nurses and practical nurses whose graduates are
35 eligible for licensing under this chapter as registered nurses or as
36 practical nurses if they satisfy the other requirements of this chapter
37 and board rules.
 - 38 4. Examine qualified registered nurse and practical nurse
39 applicants.
 - 40 5. License and renew the licenses of qualified registered nurse and
41 practical nurse applicants and licensed nursing assistants who are not
42 qualified to be licensed by the executive director.
 - 43 6. Adopt a seal, which the executive director shall keep.
 - 44 7. Keep a record of all proceedings.

- 1 8. For proper cause, deny or rescind approval of a regulated
2 training or educational program for failure to comply with this chapter or
3 the rules of the board.
- 4 9. Adopt rules to approve credential evaluation services that
5 evaluate the qualifications of applicants who graduated from an
6 international nursing program.
- 7 10. Determine and administer appropriate disciplinary action
8 against all regulated parties who are found guilty of violating this
9 chapter or rules adopted by the board.
- 10 11. Perform functions necessary to carry out the requirements of
11 the nursing assistant and nurse aide training and competency evaluation
12 program as set forth in the omnibus budget reconciliation act of 1987
13 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic
14 coverage act of 1988 (P.L. 100-360; 102 Stat. 683). These functions shall
15 include:
- 16 (a) Testing and registering certified nursing assistants.
17 (b) Testing and licensing licensed nursing assistants.
18 (c) Maintaining a list of board-approved training programs.
19 (d) Maintaining a registry of nursing assistants for all certified
20 nursing assistants and licensed nursing assistants.
21 (e) Assessing fees.
- 22 12. Adopt rules establishing acts that may be performed by a
23 registered nurse practitioner or certified nurse midwife, except that the
24 board does not have authority to decide scope of practice relating to
25 abortion as defined in section 36-2151.
- 26 13. Adopt rules that prohibit registered nurse practitioners,
27 clinical nurse specialists or certified nurse midwives from dispensing a
28 schedule II controlled substance that is an opioid, except for an
29 implantable device or an opioid that is for medication-assisted treatment
30 for substance use disorders or as provided in section 32-3248.03.
- 31 14. Adopt rules establishing educational requirements to certify
32 school nurses.
- 33 15. Publish copies of board rules and distribute these copies on
34 request.
- 35 16. Require each applicant for initial licensure or certification
36 to submit a full set of fingerprints to the board for the purpose of
37 obtaining a state and federal criminal records check pursuant to section
38 41-1750 and Public Law 92-544. The department of public safety may
39 exchange this fingerprint data with the federal bureau of investigation.
- 40 17. Except for a licensee who has been convicted of a felony that
41 has been designated a misdemeanor pursuant to section 13-604, revoke a
42 license of a person, revoke the multistate licensure privilege of a person
43 pursuant to section 32-1669 or not issue a license or renewal to an
44 applicant who has one or more felony convictions and who has not received
45 an absolute discharge from the sentences for all felony convictions three

1 or more years before the date of filing an application pursuant to this
2 chapter.

3 18. Establish standards to approve and reapprove registered nurse
4 practitioner and clinical nurse specialist programs and provide for
5 surveys of registered nurse practitioner and clinical nurse specialist
6 programs as the board deems necessary.

7 19. Provide the licensing authorities of health care institutions,
8 facilities and homes with any information the board receives regarding
9 practices that place a patient's health at risk.

10 20. Limit the multistate licensure privilege of any person who
11 holds or applies for a license in this state pursuant to section 32-1668.

12 21. Adopt rules to establish competency standards for obtaining and
13 maintaining a license.

14 22. Adopt rules to qualify and certify clinical nurse specialists.

15 23. Adopt rules to approve and reapprove refresher courses for
16 nurses who are not currently practicing.

17 24. Maintain a list of approved medication assistant training
18 programs.

19 25. Test and certify medication assistants.

20 26. Maintain a registry and disciplinary record of medication
21 assistants who are certified pursuant to this chapter.

22 27. Adopt rules to establish the requirements for a clinical nurse
23 specialist to prescribe and dispense drugs and devices consistent with
24 section 32-1651 and within the clinical nurse specialist's population or
25 disease focus.

26 28. Issue registrations to administer general anesthesia and
27 sedation in dental offices and dental clinics pursuant to section 32-1272
28 to certified registered nurse anesthetists who have national board
29 certification in anesthesiology.

30 29. POST ALL WRITTEN SUBSTANTIVE POLICIES IN A CLEARLY IDENTIFIABLE
31 SECTION ON THE BOARD'S PUBLIC WEBSITE.

32 C. The board may conduct an investigation on receipt of information
33 that indicates that a person or regulated party may have violated this
34 chapter or a rule adopted pursuant to this chapter. Following the
35 investigation, the board may take disciplinary action pursuant to this
36 chapter.

37 D. The board may limit, revoke or suspend the privilege of a nurse
38 to practice in this state granted pursuant to section 32-1668.

39 E. Failure to comply with any final order of the board, including
40 an order of censure or probation, is cause for suspension or revocation of
41 a license or a certificate.

42 F. The president or a member of the board designated by the
43 president may administer oaths in transacting the business of the board.

1 Sec. 3. Title 32, chapter 15, article 3, Arizona Revised Statutes,
2 is amended by adding sections 32-1664.01, 32-1664.02, 32-1664.03,
3 32-1664.04 and 32-1664.05, to read:

4 32-1664.01. Investigation of complaints; confidentiality;
5 limits; notice; evaluations; timeframe;
6 definition

7 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR CHAPTER
8 32 OF THIS TITLE TO THE CONTRARY:

9 1. EXCEPT AS SET FORTH IN PARAGRAPH 3 OF THIS SUBSECTION, THE BOARD
10 SHALL REQUIRE COMPLAINANTS TO IDENTIFY THEMSELVES IN THE COMPLAINT AND
11 MAKE THEMSELVES AVAILABLE FOR AN EVIDENTIARY INTERVIEW. COMPLAINANTS MAY
12 REQUEST THAT THEIR IDENTITY REMAIN CONFIDENTIAL DURING THE INVESTIGATORY
13 PROCESS. IF THE INVESTIGATORY PROCESS RESULTS IN A DETERMINATION THAT A
14 VIOLATION OF LAW MAY HAVE OCCURRED, THE RESPONDENT IS ENTITLED TO REVIEW
15 THE COMPLETE INVESTIGATORY FILE, INCLUDING THE IDENTITY OF THE COMPLAINANT
16 EXCEPT AS PROVIDED IN PARAGRAPH 2 OF THIS SUBSECTION.

17 2. THE BOARD, ON FINDING CAUSE THAT A COMPLAINANT MAY REASONABLY
18 FEAR RETALIATION OR BE ENDANGERED IF THE COMPLAINANT'S IDENTITY IS
19 REVEALED OR IF THE COMPLAINT DIRECTLY IMPACTS PATIENT SAFETY, MAY CONTINUE
20 TO MAINTAIN THE COMPLAINANT'S CONFIDENTIALITY FROM THE LICENSEE UNTIL THE
21 CONCLUSION OF THE ADMINISTRATIVE PROCESS. THE BOARD MAY CONDUCT A CLOSED
22 EVIDENTIARY HEARING IF THE COMPLAINANT REQUESTS THAT THE COMPLAINANT'S
23 IDENTITY REMAIN PRIVATE AND THE BOARD HAS A REASONABLE BASIS TO CONDUCT
24 THE HEARING. A COMPLAINANT'S ANONYMITY MAY CONTINUE UNTIL EVIDENCE BY THE
25 COMPLAINANT IS REQUIRED AT AN ADMINISTRATIVE PROCEEDING PURSUANT TO TITLE
26 41 OR A LEGAL PROCEEDING.

27 3. THE BOARD MAY TAKE ACTION ON A COMPLAINT IF THE COMPLAINANT
28 REFUSES TO IDENTIFY HIMSELF OR HERSELF ONLY IF THE BOARD HAS SUFFICIENT
29 INFORMATION THAT A VIOLATION MAY HAVE OCCURRED WITHIN ITS JURISDICTION
30 THAT DIRECTLY IMPACTS THE SAFETY OF PATIENTS WITHOUT THE TESTIMONY OF THE
31 ANONYMOUS COMPLAINANT.

32 4. THE BOARD SHALL LIMIT AN INVESTIGATION OF A COMPLAINT TO THOSE
33 INVESTIGATIVE SUBJECTS AND ACTIONS THAT ARE RELEVANT AND MATERIAL TO THE
34 ISSUES RAISED IN THE COMPLAINT AND THAT WOULD REASONABLY BE TAKEN TO
35 INVESTIGATE THE ISSUES IN THE COMPLAINT. THIS PARAGRAPH DOES NOT PROHIBIT
36 THE BOARD FROM INVESTIGATING ANY ISSUE OR EVIDENCE OF UNPROFESSIONAL
37 CONDUCT THAT IS DISCOVERED OR BROUGHT TO THE ATTENTION OF THE BOARD DURING
38 THE INVESTIGATION OF THE ORIGINAL COMPLAINT.

39 5. ON REASONABLE BELIEF THAT A CRIME HAS BEEN COMMITTED, THE BOARD
40 SHALL SEEK LEGAL ADVICE FROM ITS ASSIGNED LEGAL COUNSEL ON WHETHER THE
41 BOARD SHOULD REPORT THE ALLEGED CRIMINAL CONDUCT TO THE APPROPRIATE
42 CRIMINAL JUSTICE AGENCY, INCLUDING WHETHER ANY STATUTORY REPORTING
43 REQUIREMENTS EXIST. IF THE BOARD HAS A REASONABLE BELIEF THAT CONDUCT BY
44 A LICENSED, PERMITTED OR CERTIFICATED INDIVIDUAL OR OTHER ENTITY OVER
45 WHICH THE BOARD DOES NOT HAVE JURISDICTION MAY VIOLATE THE LAW OR CODES OF

1 CONDUCT, THE BOARD SHALL REPORT THE CONDUCT TO THE APPROPRIATE STATE
2 REGULATORY BOARD OR STATE AGENCY THAT THE BOARD REASONABLY BELIEVES HAS
3 JURISDICTION OVER THE LICENSEE, PERMITTEE OR CERTIFICATE HOLDER OR OTHER
4 ENTITY.

5 6. THE BOARD SHALL IMPLEMENT A POLICY PRIORITIZING COMPLAINTS BASED
6 ON THE HARM TO A PATIENT OR POTENTIALLY TO THE PUBLIC. THE BOARD SHALL
7 ASSIGN THE HIGHEST PRIORITY TO COMPLAINTS ALLEGING SEXUAL MISCONDUCT WITH
8 A PATIENT, CRIMINAL ASSAULT OR THEFT OR PROVIDING SERVICES WHILE UNDER THE
9 INFLUENCE OF ANY ILLEGAL OR LEGAL SUBSTANCE THAT IMPAIRS THE LICENSEE OR
10 CERTIFICATE HOLDER.

11 7. THE BOARD SHALL PROVIDE THE RESPONDENT WITH A WRITTEN NOTICE
12 THAT THERE IS AN OPEN INVESTIGATION, THAT THE RESPONDENT HAS THE RIGHT TO
13 BE REPRESENTED BY LEGAL COUNSEL AND THAT THE RESPONDENT HAS AT LEAST
14 FIFTEEN BUSINESS DAYS AFTER RECEIVING THE WRITTEN NOTICE BEFORE THE BOARD
15 REQUIRES A RESPONSE. THE WRITTEN NOTICE SHALL ALSO INFORM THE RESPONDENT
16 THAT THE BOARD MAY USE ANY STATEMENT THE RESPONDENT MAKES AGAINST THE
17 RESPONDENT. THE RESPONDENT MAY WAIVE THE FIFTEEN-DAY TIME FRAME BY
18 WRITTEN COMMUNICATION.

19 8. IF THE BOARD DETERMINES THAT A PSYCHOLOGICAL, PSYCHIATRIC OR
20 OTHER MEDICAL EVALUATION OF THE LICENSEE OR CERTIFICATE HOLDER IS
21 ESSENTIAL FOR THE BOARD TO MAKE A DECISION REGARDING A COMPLAINT AND
22 ORDERS THE LICENSEE OR CERTIFICATE HOLDER TO OBTAIN AN EVALUATION, AND THE
23 LICENSEE OR CERTIFICATE HOLDER REQUESTS THAT THE EVALUATION BE MADE BY A
24 PROFESSIONAL OTHER THAN THE PROFESSIONAL RECOMMENDED BY THE BOARD, THE
25 BOARD OR ITS DESIGNEE MAY ACCEPT AND APPROVE AN EVALUATION FROM A
26 PROFESSIONAL WHO HAS THE CREDENTIALS, TRAINING AND EXPERTISE REQUIRED TO
27 ADDRESS THE ISSUES THE BOARD HAS REQUESTED IN ITS ORDER. THE BOARD MAY NOT
28 REQUIRE THE LICENSEE OR CERTIFICATE HOLDER TO BE EVALUATED ONLY BY A
29 PROFESSIONAL WHOSE NAME IS PROVIDED IN A LIST BY THE BOARD TO THE LICENSEE
30 OR CERTIFICATE HOLDER.

31 9. WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE BOARD RECEIVES A
32 COMPLAINT AGAINST A LICENSEE OR CERTIFICATE HOLDER, THE BOARD SHALL DO ONE
33 OF THE FOLLOWING:

34 (a) SUBMIT THE INVESTIGATION FOR REVIEW.

35 (b) ADMINISTRATIVELY DISMISS THE COMPLAINT IF THE BOARD FINDS IT IS
36 UNSUBSTANTIATED.

37 (c) REPORT A DETERMINATION EITHER THAT THE COMPLAINT INVESTIGATION
38 CANNOT BE REASONABLY COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS DUE TO THE
39 COMPLEXITY OF THE MATTER OR THAT THE RESPONDENT HAS REQUESTED ADDITIONAL
40 TIME TO RESPOND OR HAS CAUSED DELAYS IN THE INVESTIGATION. IF THIS
41 DETERMINATION IS MADE, THE BOARD, WITHIN THE ONE HUNDRED EIGHTY-DAY
42 PERIOD, SHALL TAKE ONE OF THE FOLLOWING ACTIONS:

43 (i) CONTINUE THE INVESTIGATION FOR AN ADDITIONAL ONE HUNDRED DAYS
44 TO COMPLETE THE INVESTIGATION AND PROCEED WITH THE ADMINISTRATIVE
45 PROCEDURE TO SUBMIT THE COMPLAINT FOR FINAL BOARD REVIEW AND ACTION.

1 (ii) ADMINISTRATIVELY DISMISS THE COMPLAINT WITHOUT PREJUDICE. IF
2 THE BOARD ADMINISTRATIVELY DISMISSES THE COMPLAINT WITHOUT PREJUDICE, THE
3 BOARD MAY REOPEN THE INVESTIGATION ONLY IF THE BOARD RECEIVES ADDITIONAL
4 EVIDENCE, INFORMATION OR TESTIMONY SUFFICIENT TO CONCLUDE THE
5 INVESTIGATION.

6 10. IF ANOTHER HEALTH PROFESSION REGULATORY BOARD OR A CRIMINAL
7 JUSTICE AGENCY IS INVESTIGATING THE CIRCUMSTANCES ALLEGED IN A COMPLAINT,
8 THE TIME FRAMES PRESCRIBED IN PARAGRAPH 9 OF THIS SUBSECTION ARE SUSPENDED
9 UNTIL THE INVESTIGATION IS COMPLETED.

10 B. FOR THE PURPOSES OF THIS SECTION, "WITHOUT PREJUDICE" MEANS THAT
11 THE BOARD MAY OPEN ANOTHER COMPLAINT BASED ON THE SAME SET OF FACTS OF A
12 COMPLAINT THAT HAS BEEN DISMISSED IF ADDITIONAL EVIDENCE OR INFORMATION
13 BECOMES AVAILABLE TO SUBSTANTIATE THE COMPLAINT.

14 32-1664.02. Investigative files; access; confidentiality;
15 definition

16 A. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER OR CHAPTER 32 OF
17 THIS TITLE TO THE CONTRARY:

18 1. THE BOARD SHALL PROVIDE NOTICE TO A RESPONDENT AT LEAST FIFTEEN
19 BUSINESS DAYS BEFORE A MEETING OF THE BOARD TO REVIEW THE STATUS OF AN
20 INVESTIGATION. THE BOARD SHALL PROVIDE THE RESPONDENT WITH ACCESS TO THE
21 INVESTIGATIVE FILE BY EITHER OF THE FOLLOWING METHODS AT THE DISCRETION OF
22 THE RESPONDENT:

23 (a) ALLOW THE RESPONDENT TO REVIEW THE FILE AT THE BOARD OFFICE AND
24 RECEIVE COPIES.

25 (b) PROVIDE THE FILE TO THE RESPONDENT OR THE RESPONDENT'S ATTORNEY
26 BY ELECTRONIC TRANSMISSION.

27 2. A PERSON WHO OBTAINS INFORMATION FROM THE BOARD PURSUANT TO THIS
28 SECTION MAY NOT RELEASE THE INFORMATION TO ANY OTHER PERSON OR ENTITY OR
29 USE THE INFORMATION IN ANY PROCEEDING OR ACTION EXCEPT IN CONNECTION WITH
30 THE BOARD'S REVIEW OF THE INVESTIGATION, THE DISCIPLINARY INTERVIEW AND
31 ANY ADMINISTRATIVE PROCEEDING OR APPEAL RELATED TO THE DISCIPLINARY
32 INTERVIEW OR HEARING. A PERSON WHO VIOLATES THIS PARAGRAPH COMMITS AN ACT
33 OF UNPROFESSIONAL CONDUCT.

34 3. THE BOARD MAY NOT MAKE AN ADMINISTRATIVE DISMISSAL OR
35 NONDISCIPLINARY REMEDIAL ACTION PUBLICLY AVAILABLE OR REPORT THE ACTION TO
36 THE NATIONAL PRACTITIONER DATA BANK, CONSISTENT WITH FEDERAL LAW.

37 B. FOR THE PURPOSES OF THIS SECTION, "INVESTIGATIVE FILE" INCLUDES:

38 1. ANY WITNESS OR COMPLAINANT STATEMENT AND ANY DOCUMENTARY
39 EVIDENCE OBTAINED DURING THE INVESTIGATION.

40 2. ANY REVIEW CONDUCTED BY AN EXPERT OR CONSULTANT PROVIDING AN
41 EVALUATION OF OR OPINION ON THE ALLEGATIONS.

42 3. ANY RECORDS ON THE PATIENT OBTAINED BY THE BOARD FROM OTHER
43 HEALTH CARE PROVIDERS.

44 4. THE RESULTS OF ANY EVALUATION OR TEST OF THE LICENSEE OR
45 CERTIFICATE HOLDER CONDUCTED AT THE BOARD'S DIRECTION.

1 5. ANY OTHER FACTUAL INFORMATION THAT THE BOARD WILL USE IN MAKING
2 ITS DETERMINATION.

3 6. ANY RECOMMENDATION TO THE BOARD FOR THE DISPOSITION OF THE
4 INVESTIGATION.

5 32-1664.03. Burden of proof

6 EXCEPT FOR DISCIPLINARY MATTERS BROUGHT PURSUANT TO SECTION 32-1601,
7 PARAGRAPH 27, SUBDIVISION (n), THE BOARD HAS THE BURDEN OF PROOF BY CLEAR
8 AND CONVINCING EVIDENCE FOR DISCIPLINARY MATTERS BROUGHT PURSUANT TO THIS
9 CHAPTER.

10 32-1664.04. Disciplinary actions; expungement; exceptions

11 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER TO THE CONTRARY:

12 1. THE BOARD MAY GRANT A REQUEST FOR EXPUNGEMENT OF A DISCIPLINARY
13 ACTION PREVIOUSLY IMPOSED AGAINST A LICENSEE OR CERTIFICATE HOLDER,
14 WHETHER FORMAL OR INFORMAL, ONLY AS AUTHORIZED BY THIS SECTION. THE BOARD
15 MAY GRANT AN EXPUNGEMENT OF A DISCIPLINARY ACTION ONLY ONCE FOR A LICENSEE
16 OR CERTIFICATE HOLDER.

17 2. ANY REQUEST FOR EXPUNGEMENT PURSUANT TO THIS SECTION SHALL BE
18 MADE IN WRITING AND SHALL COMPLY WITH THIS SECTION AND ANY APPLICABLE
19 RULES ADOPTED BY THE BOARD.

20 3. ANY DISCIPLINARY ACTION ARISING FROM THE FAILURE TO TIMELY RENEW
21 A LICENSE OR CERTIFICATE, THE FAILURE TO COMPLETE CONTINUING EDUCATION OR
22 A DOCUMENTATION ERROR SHALL BE EXPUNGED BY THE BOARD IF ALL OF THE
23 FOLLOWING APPLY:

24 (a) THE DISCIPLINARY ACTION IS AT LEAST TWO YEARS OLD.

25 (b) THE TERMS OF THE DISCIPLINARY ACTION HAVE BEEN MET.

26 (c) THERE HAVE BEEN NO SUBSEQUENT VIOLATIONS OF ANY OTHER
27 PROVISIONS OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS CHAPTER.

28 4. EXCEPT AS PROVIDED IN PARAGRAPH 5 OF THIS SECTION, FOR ANY OTHER
29 DISCIPLINARY ACTION NOT IDENTIFIED IN PARAGRAPH 3 OF THIS SECTION, THE
30 BOARD MAY EXPUNGE A DISCIPLINARY ACTION IF ALL OF THE FOLLOWING APPLY:

31 (a) THE DISCIPLINARY ACTION AT ISSUE IS AT LEAST FIVE YEARS OLD.

32 (b) THE TERMS OF THE DISCIPLINARY ACTION HAVE BEEN MET.

33 (c) THERE HAVE BEEN NO SUBSEQUENT VIOLATIONS OF ANY OTHER
34 PROVISIONS OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS CHAPTER.

35 (d) THE LICENSEE OR CERTIFICATE HOLDER HAS HAD A TOTAL OF NOT MORE
36 THAN TWO DISCIPLINARY ACTIONS IMPOSED BY THE BOARD OR ANY OTHER REGULATORY
37 BOARD OR AUTHORITY FROM THIS STATE OR ANY OTHER STATE.

38 5. THE BOARD MAY NOT GRANT A REQUEST FOR EXPUNGEMENT IF ANY OF THE
39 FOLLOWING APPLIES:

40 (a) THE DISCIPLINARY ACTION WAS BASED ON A CRIMINAL CONVICTION
41 RESULTING FROM:

42 (i) ASSAULT, ABUSE, FRAUD OR ANY OTHER FELONIOUS CONDUCT THAT
43 RESULTED IN PHYSICAL OR FINANCIAL HARM TO OR THE DEATH OF AN INDIVIDUAL.

44 (ii) ATTEMPTED MURDER, ASSAULT, ABUSE OR FRAUD.

1 (b) THE LICENSEE OR CERTIFICATE HOLDER ASSAULTED OR ABUSED A
2 PATIENT.

3 (c) THE LICENSEE'S OR CERTIFICATE HOLDER'S CONDUCT CAUSED HARM OR
4 DEATH TO A PATIENT.

5 6. THE BOARD SHALL REPORT AN EXPUNGEMENT UNDER THIS SECTION TO ANY
6 NATIONAL DATABASE TO WHICH THE BOARD PREVIOUSLY REPORTED THE DISCIPLINARY
7 ACTION.

8 7. A LICENSEE OR CERTIFICATE HOLDER IS NOT REQUIRED TO REPORT AN
9 EXPUNGED DISCIPLINARY ACTION ON ANY FUTURE APPLICATION FOR ISSUANCE OR
10 RENEWAL OF A LICENSE, PERMIT OR CERTIFICATE TO ANY REGULATORY BOARD OR
11 AGENCY IN THIS STATE.

12 32-1664.05. Board liability; damages

13 NOTWITHSTANDING ANY OTHER LAW, IF THE BOARD DOES NOT COMPLY WITH
14 THIS CHAPTER, A LICENSEE OR CERTIFICATE HOLDER OR THE SUBJECT OF A BOARD
15 INVESTIGATION WHO WAS DAMAGED BY THE BOARD'S FAILURE TO COMPLY WITH THIS
16 CHAPTER MAY SEEK DAMAGES, INCLUDING ATTORNEY FEES, IN A CIVIL LEGAL
17 PROCEEDING.