

REFERENCE TITLE: Arizona medical board

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1091

Introduced by
Senator Allen

AN ACT

AMENDING SECTIONS 32-1422, 32-1430, 32-1451 AND 41-1005, ARIZONA REVISED
STATUTES; RELATING TO THE ARIZONA MEDICAL BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1422, Arizona Revised Statutes, is amended to
3 read:

4 32-1422. Basic requirements for granting a license to practice
5 medicine

6 A. An applicant for a license to practice medicine in this state
7 pursuant to this article shall meet each of the following basic requirements:

8 1. Graduate from an approved school of medicine or receive a medical
9 education ~~which~~ THAT the board deems to be of equivalent quality.

10 2. Successfully complete an approved twelve month hospital internship,
11 residency or clinical fellowship program.

12 3. Have the physical and mental capability to safely engage in the
13 practice of medicine.

14 4. Have a professional record ~~which~~ THAT indicates that the applicant
15 has not committed any act or engaged in any conduct ~~which~~ THAT would
16 constitute grounds for disciplinary action against a licensee under this
17 chapter.

18 5. ~~Has~~ Not HAVE had a license to practice medicine revoked by a
19 medical regulatory board in another jurisdiction in the United States for an
20 act that occurred in that jurisdiction that constitutes unprofessional
21 conduct pursuant to this chapter.

22 6. ~~Is~~ Not BE currently under investigation, suspension or restriction
23 by a medical regulatory board in another jurisdiction in the United States
24 for an act that occurred in that jurisdiction that constitutes unprofessional
25 conduct pursuant to this chapter. If the applicant is under investigation by
26 a medical regulatory board in another jurisdiction, the board shall suspend
27 the application process and may not issue or deny a license to the applicant
28 until the investigation is resolved.

29 7. ~~Has~~ Not HAVE surrendered, ~~relinquished or given up~~ a license to
30 practice medicine in lieu of disciplinary action by a medical regulatory
31 board in another jurisdiction in the United States for an act that occurred
32 in that jurisdiction that constitutes unprofessional conduct pursuant to this
33 chapter.

34 8. Pay all fees required by the board.

35 9. Complete the application as required by the board.

36 10. SUCCESSFULLY COMPLETE A TRAINING UNIT AS PRESCRIBED BY THE BOARD
37 RELATING TO THE REQUIREMENTS OF THIS CHAPTER AND BOARD RULES.

38 B. The board may require the submission of ~~such~~ credentials or other
39 evidence, written and oral, and make any investigation it deems necessary to
40 adequately inform itself with respect to an applicant's ability to meet the
41 requirements prescribed by this section, including a requirement that the
42 applicant for licensure undergo a physical examination, a mental evaluation
43 and an oral competence examination and interview, or any combination thereof,
44 as the board deems proper.

1 C. In determining if the requirements of subsection A, paragraph 4
2 have been met, if the board finds that the applicant committed an act or
3 engaged in conduct that would constitute grounds for disciplinary action, the
4 board shall determine to its satisfaction that the conduct has been
5 corrected, monitored and resolved. If the matter has not been resolved, the
6 board shall determine to its satisfaction that mitigating circumstances exist
7 ~~which~~ THAT prevent its resolution.

8 D. In determining if the requirements of subsection A, paragraph 6
9 have been met, if another jurisdiction has taken disciplinary action against
10 an applicant, the board shall determine to its satisfaction that the cause
11 for the action was corrected and the matter resolved. If the matter has not
12 been resolved by that jurisdiction, the board shall determine to its
13 satisfaction that mitigating circumstances exist ~~which~~ THAT prevent its
14 resolution.

15 E. The board may delegate authority to the executive director to deny
16 licenses if applicants do not meet the requirements of this section.

17 Sec. 2. Section 32-1430, Arizona Revised Statutes, is amended to read:
18 32-1430. License renewal; expiration

19 A. Each person holding an active license to practice medicine in this
20 state shall renew the license every other year on or before the licensee's
21 birthday and shall pay the fee required by this article, accompanied by a
22 completed renewal form. A licensee who does not renew an active license as
23 required by this subsection on or before thirty days after the licensee's
24 birthday must also pay a penalty fee as required by this article for late
25 renewal. A licensee's license automatically expires if the licensee does not
26 renew an active license within four months after the licensee's birthday. A
27 person who practices medicine in this state after that person's active
28 license has expired is in violation of this chapter.

29 B. A person renewing an active license to practice medicine in this
30 state shall attach to the completed renewal form a report of disciplinary
31 actions, restrictions or any other action placed on or against that person's
32 license or practice by another state licensing or disciplinary board or AN
33 agency of the federal government. This action may include denying a license
34 or failing the special purpose licensing examination. The report shall
35 include the name and address of the sanctioning agency or health care
36 institution, the nature of the action taken and a general statement of the
37 charges leading to the action taken.

38 C. THE LICENSEE SHALL ATTACH TO THE RENEWAL FORM DOCUMENTATION OF
39 HAVING SUCCESSFULLY COMPLETED A TRAINING UNIT AS PRESCRIBED BY THE BOARD
40 RELATING TO THE REQUIREMENTS OF THIS CHAPTER AND BOARD RULES.

41 ~~C.~~ D. A person whose license has expired may reapply for a license to
42 practice medicine as provided in this chapter.

1 Sec. 3. Section 32-1451, Arizona Revised Statutes, is amended to read:
2 32-1451. Grounds for disciplinary action; duty to report;
3 immunity; proceedings; board action; notice
4 requirements

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

26 B. The chief executive officer, the medical director or the medical
27 chief of staff of a health care institution shall inform the board if the
28 privileges of a doctor to practice in that health care institution are
29 denied, revoked, suspended or limited because of actions by the doctor that
30 appear to show that the doctor is or may be medically incompetent, is or may
31 be guilty of unprofessional conduct or is or may be mentally or physically
32 unable to safely engage in the practice of medicine, along with a general
33 statement of the reasons, including patient chart numbers, that led the
34 health care institution to take the action. The chief executive officer, the
35 medical director or the medical chief of staff of a health care institution
36 shall inform the board if a doctor under investigation resigns or if a doctor
37 resigns in lieu of disciplinary action by the health care institution.
38 Notification shall include a general statement of the reasons for the
39 resignation, including patient chart numbers. The board shall inform all
40 appropriate health care institutions in this state as defined in section
41 36-401 and the Arizona health care cost containment system administration of
42 a resignation, denial, revocation, suspension or limitation, and the general
43 reason for that action, without divulging the name of the reporting health
44 care institution. A person who reports information in good faith pursuant to
45 this subsection is not subject to civil liability.

1 C. The board or, if delegated by the board, the executive director
2 shall require, at the doctor's expense, any combination of mental, physical
3 or oral or written medical competency examinations and conduct necessary
4 investigations, including investigational interviews between representatives
5 of the board and the doctor to fully inform itself with respect to any
6 information filed with the board under subsection A of this section. These
7 examinations may include biological fluid testing and other examinations
8 known to detect the presence of alcohol or other drugs. The board or, if
9 delegated by the board, the executive director may require the doctor, at the
10 doctor's expense, to undergo assessment by a board approved rehabilitative,
11 retraining or assessment program. ANY PERSON, FACILITY OR PROGRAM THAT
12 CONDUCTS AN ASSESSMENT, EXAMINATION OR INVESTIGATION IN GOOD FAITH PURSUANT
13 TO THIS SUBSECTION IS NOT SUBJECT TO CIVIL LIABILITY.

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

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

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

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

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

34 F. If the board finds that it can take rehabilitative or disciplinary
35 action without the presence of the doctor at a formal interview it may enter
36 into a consent agreement with the doctor to limit or restrict the doctor's
37 practice or to rehabilitate the doctor in order to protect the public and
38 ensure the doctor's ability to safely engage in the practice of medicine.
39 The board may also require the doctor to successfully complete a board
40 approved rehabilitative, retraining or assessment program at the doctor's own
41 expense.

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

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

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

15 1. Dismiss if, in the opinion of the board, the complaint is without
16 merit.

17 2. Require the licensee to complete designated continuing medical
18 education courses.

19 3. File an advisory letter. The licensee may file a written response
20 with the board within thirty days after the licensee receives the advisory
21 letter.

22 4. Enter into an agreement with the doctor to restrict or limit the
23 doctor's practice or professional activities or to rehabilitate, retrain or
24 assess the doctor in order to protect the public and ensure the doctor's
25 ability to safely engage in the practice of medicine. The board may also
26 require the doctor to successfully complete a board approved rehabilitative,
27 retraining or assessment program at the doctor's own expense pursuant to
28 subsection F of this section.

29 5. File a letter of reprimand.

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

34 7. Fix a period and terms of probation best adapted to protect the
35 public health and safety and rehabilitate or educate the doctor concerned.
36 Probation may include temporary suspension for not to exceed twelve months,
37 restriction of the doctor's license to practice medicine, a requirement for
38 restitution of fees to a patient or education or rehabilitation at the
39 licensee's own expense. If a licensee fails to comply with the terms of
40 probation, the board shall serve the licensee with a written notice that
41 states that the licensee is subject to a formal hearing based on the
42 information considered by the board at the formal interview and any other
43 acts or conduct alleged to be in violation of this chapter or rules adopted
44 by the board pursuant to this chapter including noncompliance with the term
45 of probation, a consent agreement or a stipulated agreement. A licensee

1 shall pay the costs associated with probation monitoring each year during
2 which the licensee is on probation. The board may adjust this amount on an
3 annual basis. The board may allow a licensee to make payments on an
4 installment plan if a financial hardship occurs. A licensee who does not pay
5 these costs within thirty days after the due date prescribed by the board
6 violates the terms of probation.

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

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

16 L. An advisory letter is a public document.

17 M. Any doctor of medicine who after a formal hearing is found by the
18 board to be guilty of unprofessional conduct, to be mentally or physically
19 unable safely to engage in the practice of medicine or to be medically
20 incompetent is subject to censure, probation as provided in this section,
21 suspension of license or revocation of license or any combination of these,
22 including a stay of action, and for a period of time or permanently and under
23 conditions as the board deems appropriate for the protection of the public
24 health and safety and just in the circumstance. The board may charge the
25 costs of formal hearings to the licensee who it finds to be in violation of
26 this chapter.

27 N. If the board acts to modify any doctor of medicine's prescription
28 writing privileges the board shall immediately notify the state board of
29 pharmacy of the modification.

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

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

37 1. Dismiss the complaint if a committee determines that the complaint
38 is without merit.

39 2. Issue an advisory letter. The licensee may file a written response
40 with the board within thirty days after the licensee receives the advisory
41 letter.

42 3. Conduct a formal interview pursuant to subsection H of this
43 section. This includes initiating formal proceedings pursuant to
44 subsection J of this section and imposing civil penalties pursuant to
45 subsection K of this section.

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

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

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

10 S. A physician who submits an independent medical examination pursuant
11 to an order by a court is not subject to a complaint for unprofessional
12 conduct unless a complaint is made or referred by a court to the board. For
13 THE purposes of this subsection, "independent medical examination" means a
14 professional analysis of medical status based on a person's past and present
15 physical and psychiatric history and conducted by a licensee or group of
16 licensees on a contract basis for a court.

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

- 19 1. Being unable to safely engage in the practice of medicine.
20 2. Having committed an act of unprofessional conduct.
21 3. Having violated this chapter or a board rule.

22 U. In determining the appropriate disciplinary action under this
23 section, the board shall consider all previous nondisciplinary and
24 disciplinary actions against a licensee.

25 Sec. 4. Section 41-1005, Arizona Revised Statutes, is amended to read:
26 41-1005. Exemptions

27 A. This chapter does not apply to any:

28 1. Rule that relates to the use of public works, including streets and
29 highways, under the jurisdiction of an agency if the effect of the order is
30 indicated to the public by means of signs or signals.

31 2. Order of the Arizona game and fish commission that opens, closes or
32 alters seasons or establishes bag or possession limits for wildlife.

33 3. Rule relating to section 28-641 or to any rule regulating motor
34 vehicle operation that relates to speed, parking, standing, stopping or
35 passing enacted pursuant to title 28, chapter 3.

36 4. Rule concerning only the internal management of an agency that does
37 not directly and substantially affect the procedural or substantive rights or
38 duties of any segment of the public.

39 5. Rule that only establishes specific prices to be charged for
40 particular goods or services sold by an agency.

41 6. Rule concerning only the physical servicing, maintenance or care of
42 agency owned or operated facilities or property.

43 7. Rule or substantive policy statement concerning inmates or
44 committed ~~youth~~ YOUTHS of a correctional or detention facility in secure
45 custody or patients admitted to a hospital, if made by the state department

1 of corrections, the department of juvenile corrections, the board of
2 executive clemency or the department of health services or a facility or
3 hospital under the jurisdiction of the state department of corrections, the
4 department of juvenile corrections or the department of health services.

5 8. Form whose contents or substantive requirements are prescribed by
6 rule or statute, and instructions for the execution or use of the form.

7 9. Capped fee-for-service schedule adopted by the Arizona health care
8 cost containment system administration pursuant to title 36, chapter 29.

9 10. Fees prescribed by section 6-125.

10 11. Order of the director of water resources adopting or modifying a
11 management plan pursuant to title 45, chapter 2, article 9.

12 12. Fees established under section 3-1086.

13 13. Fee-for-service schedule adopted by the department of economic
14 security pursuant to section 8-512.

15 14. Fees established under sections 41-2144 and 41-2189.

16 15. Rule or other matter relating to agency contracts.

17 16. Fees established under section 32-2067 or 32-2132.

18 17. Rules made pursuant to section 5-111, subsection A.

19 18. Rules made by the Arizona state parks board concerning the
20 operation of the Tonto natural bridge state park, the facilities located in
21 the Tonto natural bridge state park and the entrance fees to the Tonto
22 natural bridge state park.

23 19. Fees or charges established under section 41-511.05.

24 20. Emergency medical services protocols except as provided in section
25 36-2205, subsection C.

26 21. Fee schedules established pursuant to section 36-3409.

27 22. Procedures of the state transportation board as prescribed in
28 section 28-7048.

29 23. Rules made by the state department of corrections.

30 24. Fees prescribed pursuant to section 32-1436 OR 32-1527.

31 25. Rules made by the department of economic security pursuant to
32 section 46-805.

33 26. Schedule of fees prescribed ~~by~~ PURSUANT TO section 23-908.

34 27. Procedure that is established pursuant to title 23, chapter 6,
35 article 5 or 6.

36 B. Notwithstanding subsection A, paragraph ~~23~~ 22 of this section, at
37 such time as the federal highway administration authorizes the privatization
38 of rest areas, the state transportation board shall make rules governing the
39 lease or license by the department of transportation to a private entity for
40 the purposes of privatization of a rest area.

41 C. Coincident with the making of a rule pursuant to an exemption under
42 this section, the agency shall file a copy of the rule with the secretary of
43 state for publication pursuant to section 41-1012.

1 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
2 chapter do not apply to the Arizona board of regents and the institutions
3 under its jurisdiction, except that the Arizona board of regents shall make
4 policies or rules for the board and the institutions under its jurisdiction
5 that provide, as appropriate under the circumstances, for notice of and
6 opportunity for comment on the policies or rules proposed.

7 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
8 chapter do not apply to the Arizona state schools for the deaf and the blind,
9 except that the board of directors of all the state schools for the deaf and
10 the blind shall adopt policies for the board and the schools under its
11 jurisdiction that provide, as appropriate under the circumstances, for notice
12 of and opportunity for comment on the policies proposed for adoption.

13 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
14 chapter do not apply to the state board of education, except that the state
15 board of education shall adopt policies or rules for the board and the
16 institutions under its jurisdiction that provide, as appropriate under the
17 circumstances, for notice of and opportunity for comment on the policies or
18 rules proposed for adoption. In order to implement or change any rule, the
19 state board of education shall provide at least two opportunities for public
20 comment.