

REFERENCE TITLE: professions; disciplinary action; continuing education

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2115

Introduced by
Representatives Stump, Murphy, Senator Allen: Representatives Mason, Rios
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AN ACT

AMENDING SECTIONS 32-852.01, 32-924, 32-1263.01, 32-1551, 32-1744, 32-1855, 32-2081, 32-2234, 32-2551, 32-2821, 32-2934, 32-3281, 32-3442, 32-3553, 32-3951 AND 32-4254, ARIZONA REVISED STATUTES; RELATING TO HEALTH PROFESSIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-852.01, Arizona Revised Statutes, is amended to
3 read:
4 32-852.01. Investigations; duty to report; unprofessional
5 conduct hearing; decision of board; appeal
6 A. The board on its own motion may investigate any evidence ~~which~~ THAT
7 appears to show that a podiatrist is or may be guilty of a violation of
8 section 32-852. Any podiatrist or the Arizona podiatry association shall, or
9 any other person may, report to the board any information the podiatrist,
10 association or person may have ~~which~~ THAT appears to show that a podiatrist
11 is or may be guilty of unprofessional conduct or is or may be guilty of
12 practice without regard for the safety and welfare of the public. Any
13 podiatrist, association, health care institution or other person that reports
14 or provides information to the board in good faith is not subject to civil
15 liability and the name of the reporter shall not be disclosed unless the
16 information is essential to the investigative proceedings conducted pursuant
17 to this section. It is an act of unprofessional conduct for any podiatrist
18 to fail to report as required by this subsection.
19 B. Based on information received pursuant to subsection A of this
20 section, the board may order a summary suspension of a license pending formal
21 proceedings for license revocation or other disciplinary action if the board
22 finds that the protection of the public health or safety requires emergency
23 action. The board shall serve the licensee with a written notice that states
24 the charges and that the licensee is entitled to a formal hearing before the
25 board or an administrative law judge within sixty days.
26 C. If the board finds after completing its investigation that the
27 information provided pursuant to subsection A of this section is not of
28 sufficient seriousness to merit direct action against the license of the
29 podiatrist, it may take ~~either~~ ANY of the following actions:
30 1. Dismiss if, in the opinion of the board, the information is without
31 merit.
32 2. File a letter of concern.
33 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
34 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
35 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
36 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.
37 D. If the board finds after completing its investigation that the
38 information is or may be true, the board may request an informal interview
39 with the licensee. If the licensee refuses the invitation or accepts the
40 invitation and the results of the interview indicate suspension or revocation
41 of the license might be in order, the board shall issue a complaint and
42 conduct a formal hearing pursuant to title 41, chapter 6, article 10. If the
43 board finds at the informal interview that the information provided under
44 subsection A of this section is true but is not of sufficient seriousness to

1 merit suspension or revocation of the license, it may take one or more of the
2 following actions:

- 3 1. File a letter of concern.
- 4 2. Issue a decree of censure.
- 5 3. Fix a period and terms of probation best adapted to protect the
6 public health and safety and rehabilitate the licensee. If a licensee fails
7 to comply with the terms of probation the board may file a complaint and hold
8 a formal hearing pursuant to this section.
- 9 4. Impose a civil penalty of not more than two thousand dollars for
10 each violation. The board shall deposit, pursuant to sections 35-146 and
11 35-147, all monies collected pursuant to this paragraph in the state general
12 fund.

13 5. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
14 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
15 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
16 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

17 E. If the board believes that the charge is or may be true, the board
18 shall serve on the licensee a summons and complaint that fully states the
19 conduct or inability concerned and the time and place of the hearing. The
20 board shall schedule the hearing not less than thirty days after the date of
21 the summons and complaint.

22 F. The board may require that the licensee under investigation undergo
23 any mental and physical examination and may conduct any investigation,
24 including the taking of depositions, necessary to fully inform itself with
25 respect to the complaint.

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

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

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

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

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

1 L. A licensee who, after a hearing held pursuant to this section, is
2 found to be guilty of a violation of section 32-852 or this section is
3 subject to censure, probation as provided in this section, suspension of a
4 license or revocation of a license, or any combination of these, for a period
5 of time or permanently and under any conditions the board deems appropriate
6 for the protection of the public health and safety and just in the
7 circumstances. The board may file a letter of concern if it finds that the
8 violation is not of sufficient seriousness to merit censure, probation or
9 suspension or revocation of a license. **THE BOARD MAY ALSO ISSUE A**
10 **NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER**
11 **OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS PRESCRIBED BY THE BOARD**
12 **TO PROVIDE THE LICENSEE WITH THE NECESSARY UNDERSTANDING OF CURRENT**
13 **DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

14 M. Patient records, including clinical records, medical reports,
15 laboratory statements and reports, any file, film, other report or oral
16 statement relating to diagnostic findings or treatment of patients, any
17 information from which a patient or the patient's family might be identified
18 or information received and records kept by the board as a result of the
19 investigation procedure outlined in this chapter are not available to the
20 public.

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

24 O. This section and any other law relating to a privileged
25 communication do not apply to investigations or proceedings conducted
26 pursuant to this chapter. The board and its employees, agents and
27 representatives shall keep in confidence the names of any patients whose
28 records are reviewed during the course of investigations and proceedings
29 pursuant to this chapter.

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

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

35 Sec. 2. Section 32-924, Arizona Revised Statutes, is amended to read:
36 32-924. **Grounds for disciplinary action; hearing; civil**
37 **penalty; definition**

38 A. The following are grounds for disciplinary action, regardless of
39 where they occur:

- 40 1. Employment of fraud or deception in securing a license.
- 41 2. Practicing chiropractic under a false or assumed name.
- 42 3. Impersonating another practitioner.
- 43 4. Habitual use of alcohol, narcotics or stimulants to the extent of
44 incapacitating the licensee for the performance of professional duties.

- 1 5. Unprofessional or dishonorable conduct of a character likely to
2 deceive or defraud the public or tending to discredit the profession.
- 3 6. Conviction of a misdemeanor involving moral turpitude or of a
4 felony.
- 5 7. Gross malpractice, repeated malpractice or any malpractice
6 resulting in the death of a patient.
- 7 8. Representing that a manifestly incurable condition can be
8 permanently cured, or that a curable condition can be cured within a stated
9 time, if this is not true.
- 10 9. Offering, undertaking or agreeing to cure or treat a condition by a
11 secret means, method, device or instrumentality.
- 12 10. Refusing to divulge to the board on demand the means, method,
13 device or instrumentality used in the treatment of a condition.
- 14 11. Giving or receiving or aiding or abetting the giving or receiving
15 of rebates, either directly or indirectly.
- 16 12. Acting or assuming to act as a member of the board if this is not
17 true.
- 18 13. Advertising in a false, deceptive or misleading manner.
- 19 14. Refusal, revocation or suspension of a license by any other state
20 or country, unless it can be shown that the action was not taken for reasons
21 that relate to the ability to safely and skillfully practice chiropractic or
22 to any act of unprofessional conduct.
- 23 15. Any conduct or practice contrary to recognized standards in
24 chiropractic or any conduct or practice that constitutes a danger to the
25 health, welfare or safety of the patient or the public or any conduct,
26 practice or condition that impairs the ability of the licensee to safely and
27 skillfully practice chiropractic.
- 28 16. Violating or attempting to violate, directly or indirectly, or
29 assisting in or abetting the violation of or conspiring to violate any of the
30 provisions of this chapter or any board order.
- 31 17. Failing to sign the physician's name, wherever required, in any
32 capacity as "chiropractic doctor", "chiropractic physician" or "doctor of
33 chiropractic" or failing to use and affix the initials "D.C." after the
34 physician's name.
- 35 18. Failing to place or cause to be placed the word or words
36 "chiropractic", "chiropractor", "chiropractic doctor" or "chiropractic
37 physician" in any sign or advertising media.
- 38 19. Using physiotherapy without passing an examination in that subject
39 and without being certified in that specialty by the board.
- 40 20. Using acupuncture without passing an examination in that subject
41 and without being certified in that specialty by the board.
- 42 21. Engaging in sexual intercourse or oral sexual contact with a
43 patient in the course of treatment.

1 22. Billing or otherwise charging a patient or third party payor for
2 services, appliances, tests, equipment, an x-ray examination or other
3 procedures not actually provided.

4 23. Intentionally misrepresenting to or omitting a material fact from
5 the patient or third party payor concerning charges, services, appliances,
6 tests, equipment, an x-ray examination or other procedures offered or
7 provided.

8 24. Advertising chiropractic services, appliances, tests, equipment,
9 x-ray examinations or other procedures for a specified price without also
10 specifying the services, procedures or items included in the advertised
11 price.

12 25. Advertising chiropractic services, appliances, tests, equipment,
13 x-ray examinations or other procedures as free without also disclosing what
14 services or items are included in the advertised service or item.

15 26. Billing or charging a patient or third party payor a higher price
16 than the advertised price in effect at the time the services, appliances,
17 tests, equipment, x-ray examinations or other procedures were provided.

18 27. Advertising a specialty or procedure that requires a separate
19 examination or certificate of specialty, unless the licensee has satisfied
20 the applicable requirements of this chapter.

21 28. Solicitation by the licensee or by the licensee's compensated agent
22 of any person who is not previously known by the licensee or the licensee's
23 agent, and who at the time of the solicitation is vulnerable to undue
24 influence, including any person known to have experienced any of the
25 following within the last fifteen days:

26 (a) Involvement in a motor vehicle accident.

27 (b) Involvement in a work-related accident.

28 (c) Injury by, or as the result of actions of, another person.

29 B. The board on its own motion or on receipt of a complaint may
30 investigate any information that appears to show that a doctor of
31 chiropractic is or may be in violation of this chapter or board rules or is
32 or may be mentally or physically unable to safely engage in the practice of
33 chiropractic. The board shall notify the licensee as to the content of the
34 complaint as soon as is reasonable. Any person who reports or provides
35 information to the board in good faith is not subject to civil damages as a
36 result of that action.

37 C. The board may require a licensee under investigation pursuant to
38 this section to be interviewed by the board or its representatives. The
39 board may require a licensee who is under investigation pursuant to this
40 section to undergo, at the licensee's expense, any combination of medical,
41 physical or mental examinations that the board finds necessary to determine
42 the licensee's competence.

43 D. If the board finds based on the information it receives under
44 subsections B and C that the public health, safety or welfare imperatively
45 requires emergency action, and incorporates a finding to that effect in its

1 order, the board may order a summary suspension of a license pending
2 proceedings for revocation or other action. If the board takes this action
3 it shall also serve the licensee with a written notice that states the
4 charges and that the licensee is entitled to a formal hearing within sixty
5 days.

6 E. If, after completing its investigation, the board finds that the
7 information provided pursuant to this section is not of sufficient
8 seriousness to merit disciplinary action against the licensee, it may take
9 ~~either~~ ANY of the following actions:

10 1. Dismiss the complaint if in the board's opinion the information is
11 without merit or does not warrant sanction of the licensee.

12 2. Issue an advisory letter. An advisory letter is a nondisciplinary
13 action and is a public document.

14 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
15 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
16 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
17 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.
18 FAILURE TO COMPLETE A NONDISCIPLINARY ORDER REQUIRING CONTINUING EDUCATION IS
19 A VIOLATION OF SUBSECTION A, PARAGRAPH 16.

20 F. The board may request a formal interview with the licensee
21 concerned. At a formal interview the board may receive and consider
22 pertinent documents and sworn statements of persons who may be called as
23 witnesses in a formal hearing. Legal counsel may be present and participate
24 in the formal interview. If the licensee refuses the request or if the
25 licensee accepts the request and the results of the interview indicate
26 suspension or revocation of the license may be in order, the board shall
27 issue a complaint and order that a hearing be held pursuant to title 41,
28 chapter 6, article 10. If, after the formal interview, the board finds that
29 the information provided pursuant to this section is true but is not of
30 sufficient seriousness to merit suspension or revocation of the license, it
31 may take any of the following actions:

32 1. Dismiss the complaint if in the board's opinion the information is
33 without merit or does not warrant sanction of the licensee.

34 2. Issue an advisory letter. An advisory letter is a nondisciplinary
35 action and is a public document.

36 3. Issue an order to cease and desist.

37 4. Issue a letter of concern.

38 5. Issue an order of censure. An order of censure is an official
39 action against the licensee and may include a requirement for restitution of
40 fees to a patient resulting from a violation of this chapter or board rules.

41 6. Fix a period and terms of probation best adapted to protect the
42 public health and safety and to rehabilitate or educate the licensee. Any
43 costs incidental to the terms of probation are at the licensee's own expense.
44 Probation may include restrictions on the licensee's license to practice
45 chiropractic.

1 7. Impose a civil penalty of not more than one thousand dollars for
2 each violation of this chapter.

3 8. Refuse to renew a license.

4 9. **ISSUE A DISCIPLINARY OR NONDISCIPLINARY ORDER REQUIRING THE**
5 **LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN**
6 **AN AREA OR AREAS PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE**
7 **NECESSARY UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR**
8 **TREATMENT.**

9 G. If the board believes the charge is of such magnitude as to warrant
10 suspension or revocation of the license, the board shall immediately initiate
11 formal revocation or suspension proceedings pursuant to title 41, chapter 6,
12 article 10. The board shall notify a licensee of a complaint and hearing by
13 certified mail addressed to the licensee's last known address on record in
14 the board's files. The notice of a complaint and hearing is effective on the
15 date of its deposit in the mail. The board shall hold a formal hearing
16 within one hundred eighty days after that date.

17 H. If the licensee wishes to be present at the formal hearing in
18 person or by representation, or both, the licensee shall file with the board
19 an answer to the charges in the complaint. The answer shall be in writing,
20 verified under oath and filed within twenty days after service of the
21 complaint.

22 I. Any licensee who, after a hearing, is found to be in violation of
23 this chapter or board rules or is found to be mentally or physically unable
24 to safely engage in the practice of chiropractic is subject to any
25 combination of those disciplinary actions identified in subsection F or
26 suspension or revocation of the license. In addition, the board may order
27 the licensee to pay restitution or all costs incurred in the course of the
28 investigation and formal hearing in the matter, or both.

29 J. The board shall report allegations of evidence of criminal
30 wrongdoing to the appropriate criminal justice agency.

31 K. The board may accept the surrender of an active license from a
32 licensee who admits in writing to having violated this chapter or board
33 rules.

34 L. For **THE** purposes of this section, "solicitation" includes contact
35 in person, by telephone, telegraph or telefacsimile or by other communication
36 directed to a specific recipient and includes any written form of
37 communication directed to a specific recipient.

38 Sec. 3. Section 32-1263.01, Arizona Revised Statutes, is amended to
39 read:

40 **32-1263.01. Types of disciplinary action; letter of concern;**
41 **judicial review; notice; removal of notice;**
42 **classification**

43 A. The board may take any one or a combination of the following
44 disciplinary actions against any person licensed under this chapter:

45 1. Revocation of license to practice.

- 1 2. Suspension of license to practice.
2 3. Entering a decree of censure, which may require that restitution be
3 made to an aggrieved party.
4 4. Issuance of an order fixing a period and terms of probation best
5 adapted to protect the public health and safety and to rehabilitate the
6 licensed person. The order fixing a period and terms of probation may
7 require that restitution be made to the aggrieved party.
8 5. Imposition of an administrative penalty in an amount not to exceed
9 two thousand dollars for each violation of this chapter or rules adopted
10 under this chapter.
11 6. Imposition of a requirement for restitution of fees to the
12 aggrieved party.
13 7. Imposition of restrictions on the scope of practice.
14 8. Imposition of peer review and professional education requirements.
15 9. Imposition of community service.
16 B. The board may issue a letter of concern if a licensee's continuing
17 practices may cause the board to take disciplinary action. **THE BOARD MAY**
18 **ALSO ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A**
19 **PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS**
20 **PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY**
21 **UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**
22 C. Failure to comply with any final order of the board, including an
23 order of censure or probation, is cause for suspension or revocation of a
24 license.
25 D. Except as provided in section 41-1092.08, subsection H, final
26 decisions of the board are subject to judicial review pursuant to title 12,
27 chapter 7, article 6.
28 E. If the board acts to modify any dentist's prescription writing
29 privileges, it shall immediately notify the state board of pharmacy of the
30 modification.
31 F. The board may post a notice of its suspension or revocation of a
32 license at the licensee's place of business. This notice shall remain posted
33 for sixty days. A person who removes this notice without board or court
34 authority before that time is guilty of a class 3 misdemeanor.
35 G. A licensee or certificate holder shall respond in writing to the
36 board within twenty days after notice of hearing is served. A licensee who
37 fails to answer the charges in a complaint and notice of hearing issued
38 pursuant to this article and title 41, chapter 6, article 10 is deemed to
39 admit the acts charged in the complaint and the board may revoke or suspend
40 the license without a hearing.
41 Sec. 4. Section 32-1551, Arizona Revised Statutes, is amended to read:
42 **32-1551. Disciplinary action; duty to report; investigatory**
43 **powers; immunity; hearing; appeal; notice**
44 A. The board on its own motion may investigate any evidence that
45 appears to show that a doctor of naturopathic medicine is or may be medically

1 incompetent, is or may be guilty of unprofessional conduct or is or may be
2 mentally or physically unable to engage safely in the practice of
3 naturopathic medicine. Any person may, and a doctor of naturopathic
4 medicine, the Arizona naturopathic medical association, a component society
5 of that association and any health care institution shall, report to the
6 board any information that appears to show that a doctor of naturopathic
7 medicine is or may be medically incompetent, is or may be guilty of
8 unprofessional conduct or is or may be mentally or physically unable to
9 engage safely in the practice of naturopathic medicine. The board or the
10 executive director shall notify the doctor as to the content of the complaint
11 as soon as reasonable. Any person or entity that reports or provides
12 information to the board in good faith is not subject to an action for civil
13 damages. If requested, the board shall not disclose the name of a person who
14 supplies information regarding a licensee's drug or alcohol impairment. It
15 is an act of unprofessional conduct for any doctor of naturopathic medicine
16 to fail to report as required by this section. The board shall report any
17 health care institution that fails to report as required by this section to
18 that institution's licensing agency.

19 B. The board or, if delegated by the board, the executive director
20 shall require any combination of mental, physical or oral or written medical
21 competency examinations and conduct necessary investigations including
22 investigational interviews between representatives of the board and the
23 doctor to fully inform itself with respect to any information filed with the
24 board under this section. These examinations may include biological fluid
25 testing and psychological or psychiatric evaluation. The board or, if
26 delegated by the board, the executive director may require the doctor, at the
27 doctor's expense, to undergo assessment by a board approved rehabilitative,
28 retraining or assessment program.

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

37 D. If, after completing its investigation, the board finds that the
38 information provided pursuant to subsection A of this section is not of
39 sufficient seriousness to merit disciplinary action against the license of
40 the doctor, the board may take ~~either~~ ANY of the following actions:

- 41 1. Dismiss if, in the opinion of the board, the information is without
42 merit.
- 43 2. File a letter of concern.
- 44 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
45 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS

1 **PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY**
2 **UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

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

10 F. If after completing its investigation the board believes that the
11 information is or may be true, it may request a formal interview with the
12 doctor. If the doctor refuses the invitation or accepts and the results
13 indicate that grounds may exist for revocation or suspension of the doctor's
14 license for more than twelve months, the board may issue a formal complaint
15 and order that a hearing be held pursuant to title 41, chapter 6, article 10.
16 If after completing a formal interview the board finds the information
17 provided under this section is not of sufficient seriousness to merit
18 suspension for more than twelve months or revocation of the license, it may
19 take the following actions:

20 1. Dismiss if, in the opinion of the board, the complaint is without
21 merit.

22 2. File a letter of concern.

23 3. File a letter of reprimand.

24 4. Issue a decree of censure. A decree of censure is an official
25 action against the doctor's license and may include a requirement for
26 restitution of fees to a patient resulting from violations of this chapter or
27 rules adopted under this chapter.

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

40 6. Enter into an agreement with the doctor to restrict or limit the
41 doctor's practice or medical activities in order to rehabilitate, retrain or
42 assess the doctor, protect the public and ensure the physician's ability to
43 safely engage in the practice of naturopathic medicine. The board may also
44 require the doctor to successfully complete a board approved rehabilitative,

1 retraining or assessment program at the doctor's own expense pursuant to
2 subsection E of this section.

3 7. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
4 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
5 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
6 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

7 G. If the board finds that the information provided in an
8 investigation warrants suspension or revocation of a license issued under
9 this chapter, it must initiate formal proceedings pursuant to title 41,
10 chapter 6, article 10.

11 H. Any doctor of naturopathic medicine who after a formal hearing is
12 found by the board to be guilty of unprofessional conduct, to be mentally or
13 physically unable to safely engage in the practice of naturopathic medicine
14 or to be medically incompetent is subject to censure, probation as provided
15 in this section, suspension or revocation of a license or any combination of
16 these under any conditions as the board deems appropriate for the protection
17 of the public health and safety and just in the circumstance. The board may
18 charge the costs of formal hearings to the licensee who it finds to be in
19 violation of this chapter.

20 I. If the naturopathic physicians board of medical examiners acts to
21 modify any doctor's prescription writing privileges, it shall immediately
22 notify the Arizona state board of pharmacy of the modification.

23 J. If the board, during the course of any investigation, determines
24 that a criminal violation may have occurred involving the delivery of health
25 care, it shall make the evidence of violations available to the appropriate
26 criminal justice agency for its consideration.

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

30 L. Notice of a complaint and hearing is effective by a true copy of it
31 being sent by certified mail to the doctor's last known address of record in
32 the board's files. Notice of the complaint and hearing is complete on the
33 date of its deposit in the mail.

34 M. The board may accept the surrender of an active license from a
35 person who admits in writing to any of the following:

36 1. Being unable to safely engage in the practice of naturopathic
37 medicine.

38 2. Having committed an act of unprofessional conduct.

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

40 N. The board may administer the oath to all witnesses and shall keep a
41 written transcript of all oral testimony submitted at the hearing and the
42 original or a copy of all other evidence submitted. The board may waive the
43 technical rules of evidence at any hearing conducted under this section.

1 0. Except as provided in section 41-1092.08, subsection H, an appeal
2 to the superior court in Maricopa County may be taken from decisions of the
3 board pursuant to title 12, chapter 7, article 6.

4 Sec. 5. Section 32-1744, Arizona Revised Statutes, is amended to read:
5 32-1744. Board investigations; duty to report violations;
6 hearing; decision of board; informal settlement
7 conference

8 A. The board on its own motion shall investigate any evidence that
9 appears to show that a licensee may be guilty of a violation of section
10 32-1743. Any person may report to the board information the person may have
11 that appears to show that a licensee may be guilty of unprofessional conduct
12 or of practice without regard for the safety and welfare of the public. A
13 person who reports or provides information to the board in good faith is not
14 subject to civil damages as a result, and the name of the person reporting
15 shall not be disclosed unless the information is necessary to conduct an
16 investigation or is essential to disciplinary proceedings conducted pursuant
17 to this section.

18 B. The board, its designee or the executive director shall require a
19 licensee to provide a written response to a complaint within twenty days
20 after the licensee receives the notification of complaint.

21 C. Except as provided in subsection E of this section, if in the
22 opinion of the board it appears that information provided under subsection A
23 of this section may be accurate and a violation of this chapter, the board
24 shall request an informal interview with the licensee before proceeding to a
25 formal hearing. If the licensee refuses an invitation for an informal
26 interview, or if the licensee accepts the invitation and if the results of
27 the interview indicate suspension or revocation of license may be in order, a
28 complaint shall be issued and a formal hearing held pursuant to title 41,
29 chapter 6, article 10. If at the informal interview the board finds the
30 information provided under subsection A of this section is accurate but not
31 of sufficient seriousness to merit suspension exceeding thirty days or
32 revocation of the license, it may take any or all of the following actions:

33 1. Issue a decree of censure or written reprimand.

34 2. Fix a period and terms of probation best adapted to protect the
35 public health and safety and rehabilitate the licensee. Probation may
36 include a requirement for a refund of fees and charges to professional
37 services clients resulting from services performed in violation of this
38 chapter or rules adopted pursuant to this chapter, restriction of a license
39 to practice or temporary suspension not to exceed thirty days. Failure to
40 comply with probation is cause for filing a complaint and holding a formal
41 hearing pursuant to title 41, chapter 6, article 10.

42 3. Impose a civil penalty of not more than one thousand dollars for
43 each violation of this chapter.

44 4. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
45 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS

1 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
2 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

3 D. If the board determines that a reasonable basis exists to believe
4 that a violation of this chapter or rules adopted pursuant to this chapter
5 has occurred and the violation is not sufficiently serious to warrant
6 disciplinary action, it may send a letter of concern to the licensee. The
7 letter of concern shall advise the licensee of the possible violation and the
8 board's decision not to initiate proceedings. If violations occur after the
9 board sends a letter of concern, the board may initiate proceedings on all
10 violations, including the violation that was the subject of the letter of
11 concern.

12 E. If in the opinion of the board it appears that information provided
13 under subsection A of this section may be accurate, the board may issue a
14 complaint and hold a formal hearing pursuant to title 41, chapter 6, article
15 10 without first holding an informal interview if the probable violation
16 involves one or more of the following:

- 17 1. Gross negligence.
- 18 2. Fraud, forgery, unsworn falsification, false swearing or perjury.
- 19 3. Three or more repeated offenses.
- 20 4. Conviction of a felony.
- 21 5. Conviction of an offense involving moral turpitude.
- 22 6. Incompetence.
- 23 7. Failing to comply with a board order or consent agreement.
- 24 8. Wilfully and without legal justification failing to furnish in a

25 timely manner information necessary for the board to conduct an investigation
26 under this chapter that has been requested or subpoenaed by the board.

27 F. The board shall serve on the licensee a notice fully setting forth
28 the conduct or inability concerned and returnable at a hearing to be held
29 before the board or an administrative law judge in not less than thirty days,
30 stating the time and place of the hearing.

31 G. The board may require a mental and physical examination and make an
32 investigation, including, if necessary, the issuance of subpoenas, the
33 appointment of advisory committees, the employment of expert witnesses, the
34 taking of depositions or otherwise, as may be required fully to inform itself
35 with respect to the complaint.

36 H. A person may file a motion with the board for an expedited hearing
37 pursuant to section 41-1092.05.

38 I. If the licensee wishes to be present at the hearing in person or by
39 representation, or both, the licensee shall file with the board an answer to
40 the charges in the complaint. The answer shall be in writing, verified under
41 oath and filed within twenty days after service of the summons and complaint.

42 J. At the hearing held in compliance with subsection F of this
43 section, a licensee may be present in person together with any counsel and
44 witnesses the licensee chooses.

1 K. The board shall issue subpoenas for witnesses it may need and, at
2 the respondent's expense, for witnesses the respondent may request. All
3 provisions of law compelling a person under subpoena to testify are
4 applicable to a hearing held pursuant to this section.

5 L. The board shall serve every notice or decision under this article
6 by any method reasonably calculated to effect actual notice on the board and
7 every other party to the action to the party's last address of record with
8 the board. Each party shall inform the board of any change of address within
9 five days after the change.

10 M. A licensee who, after a hearing, is found to be guilty by the board
11 of a violation of this chapter is subject to censure, probation or civil
12 penalty as provided in subsection C of this section, suspension of license or
13 revocation of license, or any combination of these, and for the period of
14 time or permanently and under the conditions the board deems appropriate for
15 the protection of the public health and safety and just in the
16 circumstances. The board may charge the costs of formal hearings to the
17 licensee who is in violation of this chapter.

18 N. The board shall issue a written decision within twenty days after
19 the hearing is concluded. The written decision shall contain a concise
20 explanation of the reasons supporting the decision. The board shall serve a
21 copy of the decision on the licensee. On the licensee's request, the board
22 shall also transmit to the licensee the record of the hearing.

23 O. Except as provided in this subsection, all materials, documents and
24 evidence associated with a pending or resolved complaint or investigation are
25 confidential and are not public records. The following materials, documents
26 and evidence are not confidential and are public records if they are related
27 to resolved complaints and comply with subsection A of this section:

- 28 1. The complaint.
- 29 2. The response and any rebuttal statements submitted by the licensee.
- 30 3. Written or recorded board discussions of the complaint.
- 31 4. Written reports of an investigation of a complaint.
- 32 5. Disposition of the complaint, including any written comments of the
33 board.

34 P. This section or any other law making communications between a
35 licensee and the licensee's patient a privileged communication does not apply
36 to investigations or proceedings conducted pursuant to this chapter. The
37 board and its employees, agents and representatives shall keep in confidence
38 the names of any patients whose records are reviewed during the course of
39 investigations and proceedings pursuant to this chapter.

40 Q. Any action of the board shall be included in the minutes of the
41 meeting at which the action is taken, including any determination by the
42 board not to proceed under this section. The person reporting information to
43 the board shall receive a copy of any final decision.

44 R. Pursuant to sections 35-146 and 35-147, the board shall deposit
45 civil penalties collected pursuant to this chapter in the state general fund.

1 S. A licensee who is the subject of a disciplinary action may request
2 an informal settlement conference. The licensee must submit a request for an
3 informal settlement conference to the board in writing. The board shall hold
4 an informal settlement conference within fifteen days after it receives a
5 request to do so from the licensee. Only a person with the authority to act
6 on behalf of the board may represent the board at the informal settlement
7 conference. The board representative shall notify the licensee in writing
8 that any written or oral statement made by the licensee at the informal
9 settlement conference, including statements for the purpose of settlement
10 negotiations, is inadmissible in any subsequent hearing. A licensee who
11 participates in an informal settlement conference waives the right to object
12 to the participation of the board representative in the final administrative
13 decision.

14 Sec. 6. Section 32-1855, Arizona Revised Statutes, is amended to read:
15 32-1855. Disciplinary action; duty to report; hearing; notice;
16 independent medical examinations; surrender of
17 license

18 A. The board on its own motion may investigate any information that
19 appears to show that an osteopathic physician and surgeon is or may be guilty
20 of unprofessional conduct or is or may be mentally or physically unable
21 safely to engage in the practice of medicine. Any osteopathic physician or
22 surgeon or the Arizona osteopathic medical association or any health care
23 institution as defined in section 36-401 shall, and any other person may,
24 report to the board any information ~~such~~ **THE** physician or surgeon,
25 association, health care institution or other person may have that appears to
26 show that an osteopathic physician and surgeon is or may be guilty of
27 unprofessional conduct or is or may be mentally or physically unable safely
28 to engage in the practice of medicine. The board shall notify the doctor
29 about whom information has been received as to the content of the information
30 as soon as reasonable after receiving the information. Any person who
31 reports or provides information to the board in good faith is not subject to
32 civil damages as a result of that action. If requested the board shall not
33 disclose the informant's name unless it is essential to the disciplinary
34 proceedings conducted pursuant to this section. It is an act of
35 unprofessional conduct for any osteopathic physician or surgeon to fail to
36 report as required by this section. The board shall report any health care
37 institution that fails to report as required by this section to that
38 institution's licensing agency. A person who reports information in good
39 faith pursuant to this subsection is not subject to civil liability.

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

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

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

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

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

19 2. File a letter of concern.

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

23 4. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
24 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
25 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
26 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

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

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

44 2. File a letter of concern.

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

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

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

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

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

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

15 9. **ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A**
16 **PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS**
17 **PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY**
18 **UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

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

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

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

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

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

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

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

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

15 Sec. 7. Section 32-2081, Arizona Revised Statutes, is amended to read:
16 32-2081. Grounds for disciplinary action; duty to report;
17 immunity; proceedings; board action; notice
18 requirements; civil penalty

19 A. The board, on its own motion, may investigate evidence that appears
20 to show that a psychologist is psychologically incompetent, guilty of
21 unprofessional conduct or mentally or physically unable to safely engage in
22 the practice of psychology. A health care institution shall, and any other
23 person may, report to the board information that appears to show that a
24 psychologist is psychologically incompetent, guilty of unprofessional conduct
25 or mentally or physically unable to safely engage in the practice of
26 psychology. The board shall notify the psychologist about whom information
27 has been received as to the content of the information within one hundred
28 twenty days of receiving the information. A person who reports or provides
29 information to the board in good faith is not subject to an action for civil
30 damages. The board, if requested, shall not disclose the name of the person
31 providing information unless this information is essential to proceedings
32 conducted pursuant to this section. The board shall report a health care
33 institution that fails to report as required by this section to the
34 institution's licensing agency.

35 B. A health care institution shall inform the board ~~when~~ IF the
36 privileges of a psychologist to practice in that institution are denied,
37 revoked, suspended or limited because of actions by the psychologist that
38 appear to show that that person is psychologically incompetent, guilty of
39 unprofessional conduct or mentally or physically unable to safely engage in
40 the practice of psychology, along with a general statement of the reasons
41 that led the health care institution to take this action. A health care
42 institution shall inform the board if a psychologist under investigation
43 resigns the psychologist's privileges or if a psychologist resigns in lieu of
44 disciplinary action by the health care institution. Notification shall
45 include a general statement of the reasons for the resignation.

1 C. The board may require the licensee to undergo any combination of
2 mental, physical or psychological competence examinations at the licensee's
3 expense and shall conduct investigations necessary to determine the
4 competence and conduct of the licensee.

5 D. The chairman of the board shall appoint a complaint screening
6 committee of not less than three members of the board including a public
7 member. The complaint screening committee is subject to open meeting
8 requirements pursuant to title 38, chapter 3, article 3.1. The complaint
9 screening committee shall review all complaints, and based on the information
10 provided pursuant to subsection A or B of this section may take either of the
11 following actions:

12 1. Dismiss the complaint if the committee determines that the
13 complaint is without merit. Complaints dismissed by the complaint screening
14 committee shall not be disclosed in response to a telephone inquiry or placed
15 on the board's web site.

16 2. Refer the complaint to the full board for further review and
17 action.

18 E. If the board finds, based on the information it receives under
19 subsection A or B of this section, that the public health, safety or welfare
20 requires emergency action, the board may order a summary suspension of a
21 license pending proceedings for revocation or other action. If the board
22 issues this order, it shall serve the licensee with a written notice of
23 complaint and formal hearing pursuant to title 41, chapter 6, article 10,
24 setting forth the charges made against the licensee and the licensee's right
25 to a formal hearing before the board or an administrative law judge within
26 sixty days.

27 F. If the board finds that the information provided pursuant to
28 subsection A or B of this section is not of sufficient seriousness to merit
29 direct action against the licensee, it may take ~~either~~ ANY of the following
30 actions:

31 1. Dismiss if the board believes the information is without merit.

32 2. File a letter of concern.

33 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
34 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
35 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
36 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

37 G. If the board believes the information provided pursuant to
38 subsection A or B of this section is or may be true, it may request an
39 informal interview with the psychologist. If the licensee refuses to be
40 interviewed or if pursuant to an interview the board determines that cause
41 may exist to revoke or suspend the license, it shall issue a formal complaint
42 and hold a hearing pursuant to title 41, chapter 6, article 10. If as a
43 result of an informal interview or a hearing the board determines that the
44 facts do not warrant revocation or suspension of the license, it may take any
45 of the following actions:

1 1. Dismiss if the board believes the information is without merit.

2 2. File a letter of concern.

3 3. Issue a decree of censure.

4 4. Fix a period and terms of probation best adapted to protect the
5 public health and safety and to rehabilitate or educate the
6 psychologist. Probation may include temporary suspension for not to exceed
7 twelve months, restriction of the license or restitution of fees to a client
8 resulting from violations of this chapter. If a licensee fails to comply
9 with a term of probation the board may file a complaint and notice of hearing
10 pursuant to title 41, chapter 6, article 10 and take further disciplinary
11 action.

12 5. Enter into an agreement with the licensee to restrict or limit the
13 licensee's practice or activities in order to rehabilitate the psychologist,
14 protect the public and ensure the psychologist's ability to safely engage in
15 the practice of psychology.

16 6. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
17 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
18 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
19 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

20 H. If the board finds that the information provided pursuant to
21 subsection A or B of this section warrants suspension or revocation of a
22 license, it shall hold a hearing pursuant to title 41, chapter 6, article
23 10. Notice of a complaint and hearing is fully effective by mailing a true
24 copy to the licensee's last known address of record in the board's
25 files. Notice is complete at the time of its deposit in the mail.

26 I. The board may impose a civil penalty of at least three hundred
27 dollars but not more than three thousand dollars for each violation of this
28 chapter or a rule adopted under this chapter. The board shall deposit,
29 pursuant to sections 35-146 and 35-147, all monies it collects from civil
30 penalties pursuant to this subsection in the state general fund.

31 J. If the board determines after a hearing that a licensee has
32 committed an act of unprofessional conduct, is mentally or physically unable
33 to safely engage in the practice of psychology or is psychologically
34 incompetent, it may do any of the following in any combination and for any
35 period of time it determines necessary:

36 1. Suspend or revoke the license.

37 2. Censure the licensee.

38 3. Place the licensee on probation.

39 K. A licensee may submit a written response to the board within thirty
40 days after receiving a letter of concern. The response is a public document
41 and shall be placed in the licensee's file.

42 L. A letter of concern is a public document and may be used in future
43 disciplinary actions against a psychologist. A decree of censure is an
44 official action against the psychologist's license and may include a
45 requirement that the licensee return fees to a client.

1 M. Except as provided in section 41-1092.08, subsection H, a person
2 may appeal a final decision made pursuant to this section to the superior
3 court pursuant to title 12, chapter 7, article 6.

4 N. If during the course of an investigation the board determines that
5 a criminal violation may have occurred involving the delivery of
6 psychological services it shall inform the appropriate criminal justice
7 agency.

8 Sec. 8. Section 32-2234, Arizona Revised Statutes, is amended to read:

9 32-2234. Informal and formal hearings; censure or probation;
10 notice; consent agreements; rehearing; judicial
11 review

12 A. If the board receives information indicating that a veterinarian
13 may have engaged in unprofessional or dishonorable conduct, and if it appears
14 after investigation that the information may be true, the board may issue a
15 notice of formal hearing or the board may request an informal interview with
16 the veterinarian. If the veterinarian refuses the interview, and other
17 evidence indicates suspension or revocation of the veterinarian's license may
18 be in order, or if the veterinarian accepts and the results of the interview
19 indicate suspension or revocation of the veterinarian's license may be in
20 order, the board shall issue a notice of formal hearing and proceed pursuant
21 to title 41, chapter 6, article 10. If the veterinarian refuses the
22 interview, and other evidence relating to the veterinarian's professional
23 competence indicates that disciplinary action should be taken other than
24 suspension or revocation of the veterinarian's license, or if the
25 veterinarian accepts the informal interview and the informal interview and
26 other evidence relating to the veterinarian's professional competence
27 indicate that disciplinary action should be taken other than suspension or
28 revocation of the veterinarian's license, the board may take any or all of
29 the following actions:

30 1. Issue a decree of censure.

31 2. Fix ~~such~~ A period and terms of probation as are best adapted to
32 protect the public and rehabilitate or educate the veterinarian. The terms
33 of probation may include temporary suspension, for not to exceed thirty days,
34 or restriction of the veterinarian's license to practice. The failure to
35 comply with any term of the probation is cause to consider the entire case
36 plus any other alleged violations of this chapter at a formal hearing
37 pursuant to title 41, chapter 6, article 10.

38 3. Impose a civil penalty of not to exceed one thousand dollars per
39 violation.

40 B. If, as a result of information ascertained during an investigation,
41 informal interview or formal hearing of a veterinarian, the board has concern
42 for the veterinarian's conduct but has not found the veterinarian's conduct
43 in violation of section 32-2232, the board in its discretion may issue a
44 letter of concern to the veterinarian regarding the veterinarian's conduct **OR**
45 **ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED**

1 NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS PRESCRIBED BY THE
2 BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY UNDERSTANDING OF CURRENT
3 DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

4 C. Notwithstanding subsection A of this section, the board may enter
5 into a consent agreement with a veterinarian either before or after
6 conducting an informal interview. Pursuant to a consent agreement, the board
7 may take any of the disciplinary actions listed in subsection A, paragraphs
8 1, 2 and 3 of this section or may act to otherwise limit or restrict the
9 veterinarian's practice or to rehabilitate the veterinarian.

10 D. If the board finds, based on information it receives pursuant to
11 this section, that public or animal health, safety or welfare requires
12 emergency action, and incorporates a finding that emergency action is
13 necessary in its order, the board may order summary suspension of a license
14 pending proceedings for revocation or other action. If the board orders a
15 summary suspension, the board shall serve the licensee with a written notice
16 that states the charges and that the licensee is entitled to a formal hearing
17 before the board or an administrative law judge within sixty days pursuant to
18 title 41, chapter 6, article 10.

19 E. Before a permit or license may be revoked or suspended for any
20 cause provided by section 32-2233, other than by terms of probation, the
21 board must serve notice and conduct a hearing in the manner prescribed by
22 title 41, chapter 6, article 10.

23 F. After service of notice of the decision of the board suspending or
24 revoking a license, censuring a licensee, placing a licensee on probation or
25 dismissing the complaint, the licensee may apply for a rehearing or review by
26 filing a motion pursuant to title 41, chapter 6, article 10. The filing of a
27 motion for rehearing shall be a condition precedent to the right of appeal
28 provided by this section. The filing of a motion for rehearing shall suspend
29 the operation of the board's action in suspending or revoking a license or
30 censuring or placing a licensee on probation and shall allow the licensee to
31 continue to practice as a veterinarian pending denial or granting of the
32 motion and pending the decision of the board ~~upon~~ ON rehearing if the motion
33 is granted. The board may also grant a rehearing on its own motion, if it
34 finds newly discovered evidence or any other reason justifying a
35 reconsideration of the matter.

36 G. Except as provided in section 41-1092.08, subsection H, any party
37 aggrieved by a final order or decision of the board may appeal to the
38 superior court pursuant to title 12, chapter 7, article 6.

39 H. If the state veterinary medical examining board acts to modify any
40 veterinarian's prescription writing privileges, it shall immediately notify
41 the Arizona state board of pharmacy of the modification.

42 I. All notices ~~which~~ THAT the board is required to provide to any
43 person under this chapter are fully effective by personal service or by
44 mailing a true copy of the notice by certified, return receipt mail addressed
45 to the person's last known address of record in the board's files. Notice by

1 mail is complete at the time of its deposit in the mail. Service on any
2 person represented in a matter by an attorney is complete when the notice is
3 sent to the attorney at the last known address of record in the board's
4 files.

5 J. The board shall retain all complaint files for at least ten years
6 and shall retain all complaint files in which disciplinary action was taken
7 for at least twenty-five years.

8 Sec. 9. Section 32-2551, Arizona Revised Statutes, is amended to read:

9 32-2551. Grounds for disciplinary action; duty to report;
10 immunity; proceedings; board action; notice; civil
11 penalty

12 A. The board on its own motion may investigate any evidence that
13 appears to show that a physician assistant is or may be medically
14 incompetent, is or may be guilty of unprofessional conduct or is or may be
15 mentally or physically unable to carry out approved health care tasks. Any
16 physician, physician assistant or health care institution as defined in
17 section 36-401 shall, and any other person may, report to the board any
18 information the physician, physician assistant, health care institution or
19 other person has that appears to show that a physician assistant is or may be
20 medically incompetent, is or may be guilty of unprofessional conduct or is or
21 may be mentally or physically unable to carry out approved health care tasks.
22 The board or the executive director shall notify the physician assistant and
23 the approved supervising physician of the content of the reported information
24 in writing within one hundred twenty days of its receipt of the information.
25 Any physician, physician assistant, health care institution or other person
26 that reports or provides information to the board in good faith is not
27 subject to an action for civil damages as a result of reporting or providing
28 information, and, if requested, the name of the reporter shall not be
29 disclosed unless the information is essential to proceedings conducted
30 pursuant to this section.

31 B. The board or, if delegated by the board, the executive director may
32 require a mental, physical or medical competency examination or any
33 combination of those examinations or may make investigations including
34 investigational interviews between representatives of the board and the
35 physician assistant and the supervising physician as it deems necessary to
36 fully inform itself with respect to any information reported pursuant to
37 subsection A of this section. These examinations may include biological
38 fluid testing and other examinations known to detect the presence of alcohol
39 or other drugs. The board or, if delegated by the board, the executive
40 director may require the physician assistant, at the physician assistant's
41 expense, to undergo assessment by a board approved rehabilitative, retraining
42 or assessment program.

43 C. If the board finds, based on the information it receives under
44 subsections A and B of this section, that the public safety imperatively
45 requires emergency action, and incorporates a finding to that effect in its

1 order, the board may restrict a license or order a summary suspension of a
2 license pending proceedings for revocation or other action. If the board
3 acts pursuant to this subsection, the physician assistant shall also be
4 served with a written notice of complaint and formal hearing, setting forth
5 the charges, and is entitled to a formal hearing before the board or an
6 administrative law judge on the charges within sixty days pursuant to title
7 41, chapter 6, article 10.

8 D. If, after completing its investigation, the board finds that the
9 information provided pursuant to subsection A of this section is not of
10 sufficient seriousness to merit disciplinary action against the physician
11 assistant's license, it may take the following actions:

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

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

16 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
17 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
18 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
19 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

20 E. If the board finds that it can take rehabilitative or disciplinary
21 action without the presence of the physician assistant at a formal interview
22 it may enter into a consent agreement with the physician assistant to limit
23 or restrict the physician assistant's practice or to rehabilitate the
24 physician assistant, protect the public and ensure the physician assistant's
25 ability to safely practice. The board may also require the physician
26 assistant to successfully complete a board approved rehabilitative,
27 retraining or assessment program at the physician assistant's own expense.

28 F. The board shall not disclose the name of the person who provided
29 the information regarding a licensee's drug or alcohol impairment or the name
30 of the person who files a complaint if that person requests anonymity.

31 G. If, after completing its investigation, the board believes that the
32 information is or may be true and that the information may be of sufficient
33 seriousness to merit direct action against the physician assistant's license,
34 it may request a formal interview with the physician assistant and the
35 supervising physician. If the physician assistant refuses the invitation for
36 a formal interview, the board may issue a formal complaint and order that a
37 hearing be held pursuant to title 41, chapter 6, article 10. The board shall
38 notify the physician assistant in writing of the time, date and place of the
39 formal interview at least twenty days before the interview. The notice shall
40 include the right to be represented by counsel and shall fully set forth the
41 conduct or matters to be discussed.

42 H. After the formal interview, the board may take the following
43 actions:

44 1. Dismiss if, in the opinion of the board, the information is without
45 merit.

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

3 3. Enter into a stipulation with the physician assistant to restrict
4 or limit the physician assistant's practice or medical activities or to
5 rehabilitate, retrain or assess the physician assistant, in order to protect
6 the public and ensure the physician assistant's ability to safely perform
7 health care tasks. The board may also require the physician assistant to
8 successfully complete a board approved rehabilitative, retraining or
9 assessment program at the physician assistant's own expense as prescribed in
10 subsection E of this section.

11 4. File a letter of reprimand.

12 5. Issue a decree of censure. A decree of censure is a disciplinary
13 action against the physician assistant's license and may include a
14 requirement for restitution of fees to a patient resulting from violations of
15 this chapter or rules adopted under this chapter.

16 6. Fix a period and terms of probation best adapted to protect the
17 public health and safety and rehabilitate or educate the physician
18 assistant. Failure to comply with any terms of probation is cause for
19 initiating formal proceedings pursuant to title 41, chapter 6, article
20 10. Probation may include:

21 (a) Restrictions on the health care tasks the physician assistant may
22 perform.

23 (b) Temporary suspension for not to exceed twelve months.

24 (c) Restitution of patient fees.

25 (d) Education or rehabilitation at the licensee's own expense.

26 7. **ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A**
27 **PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS**
28 **PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY**
29 **UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

30 I. If the board finds that the information provided pursuant to
31 subsection A of this section warrants suspension or revocation of a physician
32 assistant's license, it shall immediately initiate formal proceedings for the
33 suspension or revocation of the license as provided in title 41, chapter 6,
34 article 10. The notice of complaint and hearing is fully effective by
35 mailing a true copy of the notice of complaint and hearing by certified mail
36 addressed to the physician assistant's last known address of record in the
37 board's files. The notice of complaint and hearing is complete at the time
38 of its deposit in the mail.

39 J. A physician assistant who after a formal hearing pursuant to title
40 41, chapter 6, article 10 is found to be medically incompetent, guilty of
41 unprofessional conduct or mentally or physically unable to safely carry out
42 the physician assistant's approved health care tasks, or any combination of
43 these, is subject to censure, probation, suspension or revocation, or any
44 combination of these, for a period of time or permanently and under

1 conditions the board deems appropriate for the protection of the public
2 health and safety.

3 K. In a formal interview pursuant to subsection G of this section or
4 in a hearing pursuant to subsection I of this section, the board in addition
5 to any other action may impose a civil penalty in the amount of not less than
6 three hundred dollars nor more than ten thousand dollars for each violation
7 of this chapter or a rule adopted under this chapter.

8 L. An advisory letter is a public document and may be used in future
9 disciplinary actions against a physician assistant.

10 M. The board may charge the costs of a formal hearing to the licensee
11 if it finds the licensee in violation of this chapter.

12 N. If the board acts to modify a physician assistant's prescription
13 writing privileges, the Arizona regulatory board of physician assistants
14 shall immediately notify the Arizona state board of pharmacy and the United
15 States drug enforcement administration of this modification.

16 O. If during the course of an investigation the Arizona regulatory
17 board of physician assistants determines that a criminal violation may have
18 occurred involving the performance of health care tasks, it shall provide
19 evidence of the violation to the appropriate criminal justice agency.

20 P. The board may accept the surrender of an active license from a
21 person who admits in writing to any of the following:

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

25 Q. In determining the appropriate disciplinary action under this
26 section, the board shall consider all previous nondisciplinary and
27 disciplinary actions against a licensee.

28 Sec. 10. Section 32-2821, Arizona Revised Statutes, is amended to
29 read:

30 32-2821. Revocation or suspension of certificate; other
31 disciplines; grounds; procedures; penalty; judicial
32 review

33 A. The certificate of a technologist or permit holder may be suspended
34 for a fixed period, or may be revoked, or ~~such~~ THE technologist may be
35 censured, reprimanded or otherwise disciplined, if after a hearing pursuant
36 to title 41, chapter 6, article 10 it is determined that the holder of the
37 certificate or permit:

38 1. Is guilty of any fraud or deceit in activities as a technologist or
39 has been guilty of any fraud or deceit in procuring or maintaining a
40 certificate.

41 2. Has been convicted in a court of competent jurisdiction, ~~either~~
42 ~~within or without this state,~~ of a crime involving moral turpitude. If the
43 conviction has been reversed and the holder of the certificate or permit has
44 been discharged or acquitted or if the holder of the certificate or permit

1 has been pardoned or the holder's civil rights have been restored, the
2 certificate may be restored.

3 3. Is an habitual drunkard or is addicted to the use of morphine,
4 cocaine or other drugs having similar effect, is insane or uses
5 hallucinogens.

6 4. Has knowingly aided or abetted a person, not otherwise authorized,
7 who is not a certified technologist or has not been issued a special permit
8 in engaging in the activities of a technologist.

9 5. Has undertaken or engaged in any practice beyond the scope of the
10 authorized activities of a certified technologist or permit holder pursuant
11 to this chapter.

12 6. Has impersonated a duly certified technologist or permit holder or
13 former duly certified technologist or permit holder or is engaging in the
14 activities of a technologist or permit holder under an assumed name.

15 7. Has been guilty of unethical professional conduct.

16 8. Has continued to practice without obtaining a certificate renewal
17 or a special permit renewal.

18 9. Has applied ionizing radiation to a human being when not operating
19 in each particular case under the direction of a duly licensed practitioner
20 or to any person or part of the human body other than specified in the law
21 under which the practitioner is licensed.

22 10. Has acted or is acting as an owner, co-owner or employer in any
23 enterprise engaged in the application of ionizing radiation to human beings
24 for the purpose of diagnostic interpretation or the treatment of disease,
25 without being under the direction of a licensed practitioner.

26 11. Has used or is using the prefix "Dr.", the word "doctor" or any
27 prefix or suffix to indicate or imply that the person is a duly licensed
28 practitioner ~~when not so licensed~~ IF THIS IS NOT TRUE.

29 12. Is or has been guilty of incompetence or negligence in activities
30 as a technologist.

31 13. Is or has been afflicted with any medical problem, disability or
32 addiction, that the board determines impairs the certificate or permit
33 holder's professional competence.

34 14. Has interpreted a diagnostic image for a physician, a patient, the
35 patient's family or the public.

36 B. Proceedings pursuant to this section against any certified
37 technologist or permit holder shall begin by filing with the board a written
38 charge or charges under oath against the technologist or permit holder. The
39 charges may be preferred by any person, corporation, association or public
40 officer or by the board on its own motion. A copy of the charges, together
41 with a report of ~~such~~ THE investigation as the board deems proper, shall be
42 referred to the chairman of the board for review. If the chairman decides
43 that the charges should be heard, the chairman shall designate three or more
44 members of the board as a committee to hear and report on the charges and
45 shall set a time and place for the hearing pursuant to title 41, chapter 6,

1 article 10. A copy of the charges, together with a notice of the time and
2 place of hearing, shall be served on the person charged either personally or
3 by certified mail at least twenty days before the date fixed for the hearing.
4 The board or its committee ~~shall have power to~~ MAY issue subpoenas for the
5 appearance of witnesses and to take testimony under oath.

6 C. If the certificate of any person has been revoked or suspended the
7 board may, after the expiration of two years, entertain an application for
8 restoration of the certificate under conditions to be prescribed by the board
9 for each individual case.

10 D. The board may impose a penalty of not to exceed two hundred fifty
11 dollars for each violation of this section. The board shall deposit,
12 pursuant to sections 35-146 and 35-147, monies collected pursuant to this
13 subsection in the state general fund.

14 E. Except as provided in section 41-1092.08, subsection H, a person
15 may appeal a final board decision to the superior court pursuant to title 12,
16 chapter 7, article 6.

17 F. THE BOARD MAY ISSUE A NONDISCIPLINARY ORDER REQUIRING THE
18 CERTIFICATE HOLDER OR PERMIT HOLDER TO COMPLETE A PRESCRIBED NUMBER OF HOURS
19 OF CONTINUING EDUCATION IN AN AREA OR AREAS PRESCRIBED BY THE BOARD TO
20 PROVIDE THE CERTIFICATE HOLDER OR PERMIT HOLDER WITH THE NECESSARY
21 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

22 Sec. 11. Section 32-2934, Arizona Revised Statutes, is amended to
23 read:

24 32-2934. Grounds for suspension or revocation of license; duty
25 to report; unprofessional conduct hearing; decision
26 of board

27 A. The board on its own motion may investigate any evidence ~~which~~ THAT
28 appears to show that a homeopathic physician is or may be medically
29 incompetent, guilty of unprofessional conduct or mentally or physically
30 unable to engage safely in the practice of medicine. Any homeopathic
31 physician, the Arizona homeopathic medical association or any health care
32 institution as defined in section 36-401 shall, and any other person may,
33 report to the board any information the person may have ~~which~~ THAT appears to
34 show that a homeopathic physician is or may be medically incompetent, guilty
35 of unprofessional conduct or mentally or physically unable to engage safely
36 in the practice of medicine. The board shall notify the homeopathic
37 physician about whom information is received as to the content of the
38 information within one hundred twenty days after receipt of the information.
39 Any person who reports or provides information to the board in good faith is
40 not subject to an action for civil damages as a result of reporting or
41 providing the information, and the person's name shall not be disclosed
42 unless the person's testimony is essential to the disciplinary proceedings
43 conducted pursuant to this section. It is an act of unprofessional conduct
44 for any homeopathic physician to fail to report as required by this section.

1 Any health care institution ~~which~~ THAT fails to report as required by this
2 section shall be reported by the board to the institution's licensing agency.

3 B. A health care institution shall inform the board ~~when~~ IF the
4 privileges of a homeopathic physician to practice in the health care
5 institution are denied, revoked, suspended or limited because of actions by
6 the homeopathic physician ~~which~~ THAT jeopardized patient health and welfare
7 or if the physician resigns during pending proceedings for revocation,
8 suspension or limitation of privileges. A report to the board pursuant to
9 this subsection shall contain a general statement of the reasons the health
10 care institution denied or took action to revoke, suspend or limit a
11 homeopathic physician's privileges.

12 C. The board may conduct investigations necessary to fully inform
13 itself with respect to any evidence filed with the board under subsection A
14 of this section. As part of this investigation, the board may require the
15 physician under investigation to be interviewed by board representatives or
16 to undergo any combination of mental, physical, oral or written medical
17 competency examinations.

18 D. If the information gathered under subsections A and B of this
19 section indicates that the protection of public health requires that the
20 board take emergency action, it may order the summary suspension of a license
21 pending the outcome of a formal disciplinary hearing pursuant to title 41,
22 chapter 6, article 10. The board shall serve the suspended licensee with a
23 written notice of the specific charges and the time and place of the formal
24 hearing. The board shall hold this hearing within sixty days of the
25 suspension unless the board for good reason shown by the licensee grants an
26 extension on the hearing date.

27 E. If, after completing its investigation, the board finds that the
28 information provided pursuant to subsection A of this section is not of
29 sufficient seriousness to merit direct action against the license of the
30 homeopathic physician it may take ~~either~~ ANY of the following actions:

31 1. Dismiss if, in the opinion of the board, the information is without
32 merit.

33 2. File a letter of concern.

34 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
35 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
36 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
37 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

38 F. If after completing its initial investigation under subsection A of
39 this section the board determines that rehabilitative or disciplinary action
40 can be taken without the presence of the licensee at an informal interview,
41 the board and the licensee may enter into a stipulated agreement to limit or
42 restrict the licensee's practice or to rehabilitate the licensee, protect the
43 public and ensure the licensee's ability to safely engage in the practice of
44 homeopathic medicine.

1 G. If after completing its investigation the board believes that this
2 information is or may be true, the board may request an informal interview
3 with the homeopathic physician. If the homeopathic physician refuses the
4 invitation or accepts the invitation and the results of the interview
5 indicate that suspension or revocation of the license may be in order, the
6 board shall issue a formal complaint and conduct a formal hearing pursuant to
7 title 41, chapter 6, article 10. If after completing the informal interview
8 the board finds that the information provided under subsection A of this
9 section is not of sufficient seriousness to merit suspension or revocation of
10 the license, it may take the following actions:

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

13 2. File a letter of concern.

14 3. Issue a decree of censure. A DECREE OF CENSURE which constitutes
15 an official action against the homeopathic physician's license and which may
16 include a requirement for restitution of fees to a patient resulting from
17 violations of this chapter or board rules.

18 4. Fix a period and terms of probation best adapted to protect the
19 public health and safety and rehabilitate or educate the homeopathic
20 physician. The probation, if deemed necessary, may include temporary
21 suspension of the license for not to exceed twelve months, restriction of the
22 homeopathic physician's license to practice medicine or a requirement for
23 restitution of fees to a patient resulting from violations of this chapter or
24 board rules. If a licensee fails to comply with the terms of probation the
25 board may file a summons, complaint and notice of hearing pursuant to title
26 41, chapter 6, article 10 based on the information considered by the board at
27 the informal interview and any other acts or conduct alleged to be in
28 violation of this chapter or board rules.

29 5. Enter into an agreement with the homeopathic physician to restrict
30 or limit the homeopathic physician's practice or medical activities in order
31 to rehabilitate the homeopathic physician, protect the public and insure
32 ENSURE the homeopathic physician's ability to safely engage in the practice
33 of medicine.

34 6. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
35 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
36 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
37 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

38 H. In an informal interview or a formal hearing the board, in addition
39 to any other action that it may take, may impose an administrative penalty in
40 an amount of not less than five hundred dollars but not to exceed two
41 thousand dollars on a homeopathic physician who violates this chapter or a
42 board rule. Actions to enforce the collection of these penalties shall be
43 brought in the name of this state by the attorney general or the county
44 attorney in the justice court or the superior court in the county in which

1 the violation occurred. Penalties imposed under this section are in addition
2 to and not in limitation of other penalties imposed pursuant to this chapter.

3 I. If in the opinion of the board it appears that the allegations
4 concerning a homeopathic physician are of a magnitude as to warrant
5 suspension or revocation of the license, the board shall serve on the
6 physician a summons and a complaint fully setting forth the conduct or
7 inability concerned and setting a date, time and place for a hearing pursuant
8 to title 41, chapter 6, article 10 to be held before the board in not less
9 than sixty days from the date of the notice.

10 J. A licensee who wishes to be present at the hearing in person or by
11 representation, or both, shall file a verified answer with the board within
12 twenty days after receiving service of the summons and complaint. The
13 licensee may present witnesses at this hearing.

14 K. The board shall issue subpoenas for witnesses as it may need and
15 for witnesses as the physician may request. Any person refusing to obey a
16 subpoena shall be certified by the board to the superior court in the county
17 in which service was made, and the court may institute proceedings for
18 contempt of court.

19 L. Service of the summons and complaint shall be as required in civil
20 cases.

21 M. Service of subpoenas for witnesses shall be as provided by law for
22 the service of subpoenas generally.

23 N. Any homeopathic physician who after a hearing is found to be guilty
24 of unprofessional conduct or is found to be mentally or physically unable to
25 engage safely in the practice of homeopathic medicine is subject to any
26 combination of censure, probation or suspension of license or revocation of
27 the license for a prescribed period of time or permanently and under
28 conditions that the board deems appropriate for the protection of the public
29 health and safety and just in the circumstances.

30 O. If the board acts to modify any homeopathic physician's
31 prescription writing privileges, it shall immediately notify the Arizona
32 state board of pharmacy of the modification.

33 P. Notwithstanding section 32-2906, subsection A, the board shall
34 deposit, pursuant to sections 35-146 and 35-147, all monies collected from
35 administrative penalties paid pursuant to this section in the state general
36 fund.

37 Q. A letter of concern is a nondisciplinary public document that the
38 board may use in future disciplinary actions.

39 Sec. 12. Section 32-3281, Arizona Revised Statutes, is amended to
40 read:

41 32-3281. Disciplinary action; hearings; civil penalty

42 A. A credentialing committee, on its own motion or on a complaint, may
43 investigate any evidence that appears to show that a licensee is or may be
44 incompetent, is or may be guilty of unprofessional conduct or is or may be
45 mentally or physically unable to safely engage in the practice of behavioral

1 health. As part of its investigation, a credentialing committee may hold an
2 investigational meeting pursuant to this chapter. Any person may, and a
3 licensee and any entity licensed by the office of behavioral health licensure
4 shall, report to the board any information that would cause a reasonable
5 licensee to believe that another licensee is guilty of unprofessional conduct
6 or is physically or mentally unable to provide behavioral health services
7 competently or safely. Any person or entity that reports or provides
8 information to the board in good faith is not subject to an action for civil
9 damages. It is an act of unprofessional conduct for any licensee to fail to
10 report as required by this section. The board shall report to the office of
11 behavioral health licensure in the department of health services any entity
12 licensed by the office of behavioral health licensure that fails to report as
13 required by this section.

14 B. A credentialing committee shall require any combination of mental,
15 physical or oral or written competency examinations, at the licensee's own
16 expense, and conduct necessary investigations, including investigational
17 interviews between representatives of the board and the licensee, to fully
18 inform itself with respect to any information filed with the board under
19 subsection A of this section. These examinations may include biological
20 fluid testing. The credentialing committee may require the licensee, at the
21 licensee's expense, to undergo assessment by a rehabilitative, retraining or
22 assessment program approved by the credentialing committee.

23 C. If the board finds, based on the information received pursuant to
24 subsection A or B of this section, that the public health, safety or welfare
25 imperatively requires emergency action, and incorporates a finding to that
26 effect in its order, the board may restrict, limit or order a summary
27 suspension of a license pending proceedings for revocation or other
28 action. If the board takes action pursuant to this subsection, it must also
29 serve the licensee with a written notice that states the charges and that the
30 licensee is entitled to a formal hearing before the board or an
31 administrative law judge within sixty days.

32 D. If after completing an investigational meeting the credentialing
33 committee finds that the information provided is not of sufficient
34 seriousness to merit disciplinary action against the licensee, the
35 credentialing committee shall either:

36 1. Dismiss the complaint if, in the opinion of the credentialing
37 committee, the complaint is without merit.

38 2. Recommend ~~either~~ ANY of the following actions to the board:

39 (a) Dismiss if, in the opinion of the credentialing committee, the
40 complaint is without merit.

41 (b) File a letter of concern and dismiss the complaint.

42 (c) ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
43 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
44 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
45 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

1 E. A complaint dismissed by the credentialing committee pursuant to
2 subsection D, paragraph 1 of this section is not a complaint of
3 unprofessional conduct and shall not be disclosed by the board as a complaint
4 on the licensee's complaint history.

5 F. If after completing its investigation the credentialing committee
6 believes that the information is or may be true, the credentialing committee
7 may recommend that the board enter into a consent agreement with the licensee
8 to limit or restrict the licensee's practice or to rehabilitate the licensee,
9 protect the public and ensure the licensee's ability to safely engage in the
10 practice of behavioral health. A consent agreement may also require the
11 licensee to successfully complete a board approved rehabilitative, retraining
12 or assessment program.

13 G. If on receipt of a credentialing committee's recommendation the
14 board finds that the information provided pursuant to subsection A of this
15 section is not of sufficient seriousness to merit direct action against the
16 licensee, the board may take ~~either~~ ANY of the following actions:

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

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

22 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
23 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
24 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
25 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

26 H. If on receipt of a credentialing committee's recommendation the
27 board finds that the information provided pursuant to subsection A of this
28 section is or may be true, the board may enter into an agreement with the
29 licensee to limit or restrict the licensee's practice or to rehabilitate the
30 licensee, protect the public and ensure the licensee's ability to safely
31 engage in the practice of behavioral health. The board may also require the
32 licensee to successfully complete a board approved rehabilitative, retraining
33 or assessment program.

34 I. If on receipt of a credentialing committee's recommendation the
35 board finds that the information provided pursuant to subsection A of this
36 section is or may be true, the board may request a formal interview with the
37 licensee. If the licensee refuses the invitation for a formal interview or
38 accepts and the results indicate that grounds may exist for revocation or
39 suspension of the licensee's license for more than twelve months, the board
40 shall issue a formal complaint and order that a hearing be held pursuant to
41 title 41, chapter 6, article 10. If after completing a formal interview the
42 board finds that the protection of the public requires emergency action, the
43 board may order a summary suspension of the licensee's license pending formal
44 revocation proceedings or other action authorized by this section.

1 J. If after completing the formal interview the board finds the
2 information provided is not of sufficient seriousness to merit suspension for
3 more than twelve months or revocation of the license, the board may take the
4 following actions:

5 1. Dismiss if, in the opinion of the board, the information is without
6 merit.

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

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

14 4. Fix a period and terms of probation best adapted to protect the
15 public health and safety and rehabilitate or educate the licensee concerned.
16 Probation may include temporary suspension not to exceed twelve months,
17 restriction of the licensee's license to practice behavioral health, a
18 requirement for restitution of fees to a client or education or
19 rehabilitation at the licensee's own expense. If a licensee fails to comply
20 with the terms of probation, the board shall serve the licensee with a
21 written notice that states that the licensee is subject to a formal hearing
22 based on the information considered by the board at the formal interview and
23 any other acts or conduct alleged to be in violation of this chapter or rules
24 adopted by the board pursuant to this chapter, including noncompliance with
25 the terms of probation or a consent agreement.

26 5. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
27 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
28 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
29 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

30 K. If the board finds that the information provided in subsection A or
31 I of this section warrants suspension or revocation of a license issued under
32 this chapter, the board shall initiate formal proceedings pursuant to title
33 41, chapter 6, article 10.

34 L. In a formal interview pursuant to subsection I of this section or
35 in a hearing pursuant to subsection K of this section, the board in addition
36 to any other action may impose a civil penalty not to exceed one thousand
37 dollars for each violation of this chapter or a rule adopted under this
38 chapter.

39 M. A letter of concern is a public document.

40 N. A licensee who after a formal hearing is found by the board to be
41 guilty of unprofessional conduct, to be mentally or physically unable to
42 safely engage in the practice of behavioral health or to be professionally
43 incompetent is subject to censure, probation as provided in this section,
44 suspension of license or revocation of license or any combination of these,
45 including a stay of action, and for a period of time or permanently and under

1 conditions as the board deems appropriate for the protection of the public
2 health and safety and just in the circumstance. The board may charge all
3 costs incurred in the course of the investigation and formal hearing to the
4 licensee it finds is in violation of this chapter. The board shall deposit,
5 pursuant to sections 35-146 and 35-147, monies collected pursuant to this
6 subsection in the board of behavioral health examiners fund established by
7 section 32-3254.

8 O. If the board during the course of any investigation determines that
9 a criminal violation may have occurred involving the delivery of behavioral
10 health services, the board shall make the evidence of violations available to
11 the appropriate criminal justice agency for its consideration.

12 P. The board shall deposit, pursuant to sections 35-146 and 35-147,
13 all monies collected from civil penalties paid pursuant to this chapter in
14 the state general fund.

15 Q. Notice of a complaint and hearing is effective by a true copy of
16 the notice being sent by certified mail to the licensee's last known address
17 of record in the board's files. Notice of the complaint and hearing is
18 complete on the date of its deposit in the mail.

19 R. In determining the appropriate disciplinary action under this
20 section, the board shall consider all previous nondisciplinary and
21 disciplinary actions against a licensee.

22 S. The board may defer action with regard to an impaired licensee who
23 voluntarily signs an agreement, in a form satisfactory to the board, agreeing
24 to practice restrictions and treatment and monitoring programs deemed
25 necessary by the board to protect the public health and safety. A licensee
26 who is impaired and who does not agree to enter into an agreement with the
27 board is subject to other action as provided pursuant to this chapter.

28 T. Subject to an order duly entered by the board, a person whose
29 license to practice behavioral health has been suspended or restricted
30 pursuant to this chapter, whether voluntarily or by action of the board, may
31 at reasonable intervals apply to the board for reinstatement of the
32 license. The person shall submit the application in writing and in the form
33 prescribed by the board. After conducting an investigation and hearing, the
34 board may grant or deny the application or modify the original finding to
35 reflect any circumstances that have changed sufficiently to warrant
36 modification. The board may require the applicant to pass an examination or
37 complete board imposed continuing education requirements or may impose any
38 other sanctions the board deems appropriate for reentry into the practice of
39 behavioral health.

40 U. A person whose license is revoked, suspended or not renewed must
41 return the license to the offices of the board within ten days after notice
42 of that action.

43 V. The board may enforce a civil penalty imposed pursuant to this
44 section in the superior court in Maricopa county.

1 W. For complaints being brought before a credentialing committee or
2 the full board, the information released to the public regarding an ongoing
3 investigation must clearly indicate that the investigation is a pending
4 complaint and must include the following statement:

5 Pending complaints represent unproven allegations. On
6 investigation, many complaints are found to be without merit or
7 not of sufficient seriousness to merit disciplinary action
8 against the licensee and are dismissed.

9 Sec. 13. Section 32-3442, Arizona Revised Statutes, is amended to
10 read:

11 32-3442. Disciplinary action; interviews; hearings; penalties;
12 files

13 A. The board may investigate any evidence and determine whether a
14 licensee is or may be guilty of unprofessional conduct or is or may be
15 incompetent. Any occupational therapist, occupational therapy assistant or
16 health care institution as defined in section 36-401 shall, and any other
17 person may, report to the board any information the occupational therapist,
18 occupational therapy assistant, health care institution or individual may
19 have that appears to show that an occupational therapist or an occupational
20 therapy assistant is or may be guilty of unprofessional conduct or is or may
21 be incompetent. A person who provides information to the board in good faith
22 is not subject to an action in civil damages as a result of providing the
23 information. If requested, the board shall not disclose the identity of a
24 person who provides information unless the information or the name of a
25 person making a complaint is essential to proceedings conducted pursuant to
26 this section or unless required by a court of law.

27 B. Within sixty days of receipt the board shall notify the licensee
28 about whom information as described in subsection A of this section has been
29 received as to the content of the information. The board shall keep a
30 complaint confidential until it verifies or substantiates the complaint.

31 C. If, in the opinion of the board, it appears that a licensee is or
32 may be in violation of this chapter, the board may request an informal
33 interview with the licensee concerned. If the licensee refuses the
34 invitation or if the licensee accepts the invitation and if the results of
35 the interview indicate that a civil penalty or suspension or revocation of a
36 license may be in order, the board shall hold a hearing pursuant to title 41,
37 chapter 6, article 10. If, at the informal interview, the board finds a
38 violation of this chapter, but not of sufficient seriousness to merit a civil
39 penalty or suspension or revocation of A license, it may take one or more of
40 the following actions:

41 1. Issue a decree of censure.

42 2. Fix a period and terms of probation best adapted to protect the
43 public health and safety and rehabilitate or educate the licensee concerned.
44 Probation may include:

1 (a) Submission of the licensee to examinations to determine the mental
2 or physical condition or professional competence of the licensee.

3 (b) Occupational therapy training or education ~~which~~ THAT the board
4 believes to be necessary to correct deficiencies found either pursuant to a
5 hearing or through an examination pursuant to this section.

6 (c) Review or supervision of the licensee's practice ~~which~~ THAT the
7 board finds necessary to identify and correct deficiencies in the practice.

8 (d) Restrictions ~~upon~~ ON the nature and scope of practice to ensure
9 that the licensee does not practice beyond the limits of the licensee's
10 capabilities.

11 3. Issue a letter of concern. For the purposes of this paragraph,
12 "letter of concern" means a nondisciplinary advisory letter to notify a
13 licensee that, while there is insufficient evidence to support disciplinary
14 action, the board believes that the licensee should modify or eliminate
15 certain practices and that continuation of the activities that led to the
16 information being submitted to the board may result in action against the
17 licensee's license.

18 4. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
19 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
20 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
21 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

22 D. Probation, if deemed necessary, may also include temporary
23 suspension or restriction of the licensee's license to practice. Failure to
24 comply with probation is cause for a hearing pursuant to title 41, chapter 6,
25 article 10, based ~~upon~~ ON failure to comply with probation or any other acts
26 or conduct in violation of this chapter and rules adopted pursuant to this
27 chapter.

28 E. If, in the opinion of the board, it appears that a licensee is or
29 may be in violation of this chapter, the board may hold a hearing in
30 accordance with title 41, chapter 6, article 10 in lieu of or in addition to
31 an informal interview as provided in subsection C of this section.

32 F. At the licensee's expense the board may require any combination of
33 a physical, mental or occupational therapy competence examination as part of
34 a board investigation, including, if necessary, the taking of depositions as
35 may be required to fully inform itself with respect to the allegations
36 presented by the complaint. These examinations may include biological fluid
37 testing.

38 G. Any licensee who, after a hearing, is found guilty of
39 unprofessional conduct or incompetence is subject to a decree of censure,
40 probation as provided in this section, suspension of license, revocation of
41 license, imposition of a civil penalty of not less than two hundred fifty
42 dollars nor more than ten thousand dollars for each violation of this chapter
43 or any combination of these sanctions for a period of time or permanently and
44 under conditions as the board deems appropriate for the protection of the
45 public health and safety and as is just in the circumstances.

1 H. A revoked or suspended license shall be returned to the board
2 within fifteen days after it is revoked or suspended.

3 Sec. 14. Section 32-3553, Arizona Revised Statutes, is amended to
4 read:

5 32-3553. Disciplinary action; duty to report; immunity;
6 proceedings; board action

7 A. The board on its own motion may investigate any evidence that
8 relates to a licensee and that appears to show the existence of any of the
9 causes for disciplinary action prescribed in section 32-3552 or that a
10 licensed respiratory care practitioner is or may be professionally
11 incompetent or is or may be mentally or physically unable to engage safely in
12 the practice of respiratory care. A licensed respiratory care practitioner
13 or a health care institution as defined in section 36-401 shall, and any
14 other person may, report to the board information the licensed respiratory
15 practitioner, health care institution, ~~or~~ or individual may have ~~which~~ THAT
16 appears to show the existence of any of the causes for disciplinary action
17 prescribed in section 32-3552 or that a licensed respiratory care
18 practitioner is or may be professionally incompetent or is or may be mentally
19 or physically unable to engage safely in the practice of respiratory care.

20 B. A licensed respiratory care practitioner, a health care institution
21 or any other person that reports or provides information to the board in good
22 faith is not subject to an action for civil damages as a result of reporting
23 the information, and on request the name of the reporter shall not be
24 disclosed unless the information is essential to proceedings conducted
25 pursuant to this section. The board shall report a health care institution
26 ~~which~~ THAT fails to report as required by this section to the institution's
27 licensing agency.

28 C. Within ninety days of receipt of information, the board shall
29 notify the licensed respiratory care practitioner about whom information has
30 been received as to the content of the information.

31 D. A health care institution shall inform the board ~~when~~ IF a licensed
32 respiratory care practitioner is terminated due to a cause listed in section
33 32-3552, along with a general statement of the reasons ~~which~~ THAT led the
34 health care institution to take the action.

35 E. If the board finds, based on the information it receives pursuant
36 to this section, that the public health, safety or welfare imperatively
37 requires emergency action, and incorporates a finding to that effect in its
38 order, the board may order a summary suspension of a license pending
39 proceedings for revocation or other action. If an order of summary
40 suspension is issued, the licensee shall also be served with a written notice
41 of complaint and formal hearing pursuant to title 41, chapter 6, article 10,
42 setting forth the charges made against the licensee, and is entitled to a
43 formal hearing before the board on the charges within sixty days.

44 F. If, after completing its investigation, the board finds that the
45 information provided pursuant to this section is not of sufficient

1 seriousness to merit direct action against the license of the licensed
2 respiratory care practitioner, it may take ~~either~~ ANY of the following
3 actions:

4 1. Dismiss the complaint if the board believes that the information is
5 without merit.

6 2. File a letter of concern if the board believes that while there is
7 insufficient evidence to support direct action against the license of the
8 licensed respiratory care practitioner there is sufficient evidence for the
9 board to notify the licensee that continuing the activities ~~which~~ THAT led to
10 the information being submitted to the board may result in action against the
11 license.

12 3. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
13 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
14 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
15 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

16 G. If after completing the investigation the board believes that the
17 information provided pursuant to this section is or may be true, the board
18 may request an interview with the licensee. If the licensee refuses this
19 request or is interviewed and the results indicate that suspension or
20 revocation of the license might be in order, the board shall issue a formal
21 complaint and hold a formal hearing pursuant to title 41, chapter 6, article
22 10. If, after completing the informal interview, the board finds that the
23 information provided pursuant to this section is not of sufficient
24 seriousness to merit suspension or revocation of the license, it may either
25 dismiss the complaint if it believes it is without merit or take any
26 combination of the following actions:

27 1. File a letter of concern if the board believes that while there is
28 insufficient evidence to support direct action against the license there is
29 sufficient evidence for the board to notify the licensee that continuation of
30 the activities ~~which~~ THAT led to the information being submitted to the board
31 may result in action against that person's license.

32 2. Issue a decree of censure, which constitutes an official action
33 against the respiratory care practitioner's license.

34 3. Fix a period and terms of probation best adapted to protect the
35 public health and safety and rehabilitate or educate the licensed respiratory
36 care practitioner concerned.

37 4. Restrict the licensee's practice to specific settings in a manner
38 the board determines best protects the public health and safety.

39 5. ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
40 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
41 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
42 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

43 H. Failure to comply with probation is cause for initiation of a
44 formal proceeding for suspension or revocation of a license pursuant to this
45 section based on the information considered by the board at the informal

1 interview and any other acts or conduct alleged to be in violation of this
2 chapter or rules adopted pursuant to this chapter.

3 I. If the board finds that the information provided pursuant to this
4 section warrants suspension or revocation of a license issued under this
5 chapter, the board shall immediately initiate formal proceedings for the
6 revocation or suspension of the license as provided in title 41, chapter 6,
7 article 10. At the conclusion of that hearing the board may dismiss the
8 complaint or revoke or suspend the license and may take any combination of
9 actions listed in subsection G of this section.

10 J. In connection with the board investigation the board or its duly
11 authorized agents or employees at all reasonable times may examine and copy
12 any documents, reports, records or other physical evidence of any person
13 being investigated, or the reports, the records and any of the documents
14 maintained by and in the possession of any hospital, clinic, physician's
15 office, or other public or private agency, and any health care institution as
16 defined in section 36-401, that relate to the person's professional
17 competence, unprofessional conduct or mental or physical ability to safely
18 practice respiratory care. These requests shall be made in writing.

19 K. Patient records, hospital records, medical staff records, medical
20 staff review committee records, clinical records, medical reports, laboratory
21 statements and reports, any file, film, other report or oral statement
22 relating to the care of patients, any information from which a patient or a
23 patient's family may be identified or information received or reports kept by
24 the board as a result of the investigation procedure prescribed in this
25 chapter and testimony concerning these records and proceedings relating to
26 their creation are not available to the public, shall be kept confidential by
27 the board and are subject to the same provisions concerning discovery and use
28 and legal actions as are the original records in the possession and control
29 of the hospital, the health care institutions or health care providers or
30 other individual, practitioner or agency from which they are secured. The
31 board shall use ~~such~~ THE records and testimony during the course of
32 investigations and proceedings pursuant to this chapter.

33 Sec. 15. Section 32-3951, Arizona Revised Statutes, is amended to
34 read:

35 32-3951. Denial, revocation or suspension of license; hearings;
36 alternative sanctions

37 A. The board may deny, revoke or suspend a license issued under this
38 chapter for any of the following reasons:

39 1. Conviction of a felony or a misdemeanor involving moral turpitude.
40 The record of the conviction or a certified copy from the clerk of the court
41 where the conviction occurred or from the judge of that court is sufficient
42 evidence of conviction.

43 2. Securing a license under this chapter through fraud or deceit.

44 3. Unprofessional conduct or incompetence in the conduct of the
45 licensee's practice.

1 4. Using a false name or alias in the practice of the licensee's
2 profession.

3 5. Violating this chapter or board rules.

4 B. If the board determines pursuant to a hearing that grounds exist to
5 revoke or suspend a license, the board may do so permanently or for a fixed
6 period of time and may impose conditions prescribed by the board. The board
7 may also impose a civil penalty of not more than ten thousand dollars for
8 each violation of this chapter. The board shall deposit, pursuant to
9 sections 35-146 and 35-147, civil penalties collected pursuant to this
10 subsection in the state general fund.

11 C. The board may deny a license without holding a hearing. After
12 receiving notification of the denial, the applicant may request a hearing to
13 review the denial.

14 D. The board shall conduct any hearing to revoke or suspend a license
15 pursuant to title 41, chapter 6, article 10. Any person appearing before the
16 board may be represented by an attorney.

17 E. Instead of denying, revoking or suspending a license the board may
18 file a letter of concern, issue a decree of censure, prescribe a period of
19 probation or restrict or limit the practice of a licensee. **THE BOARD MAY
20 ALSO ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A
21 PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS
22 PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY
23 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

24 F. The board shall promptly notify a licensee's employer if the
25 director initiates a disciplinary action against the licensee.

26 G. The board may appoint an investigator to provide information to the
27 board concerning an alleged violation of this chapter.

28 H. The board on its own initiative or on application of any person
29 involved in an investigation or proceeding conducted by the board may issue
30 subpoenas compelling the attendance and testimony of witnesses or demanding
31 the production for examination or copying of documents, reports, records or
32 any other evidence relating to a board investigation or proceeding.

33 Sec. 16. Section 32-4254, Arizona Revised Statutes, is amended to
34 read:

35 32-4254. Investigative powers; emergency action; disciplinary
36 proceedings; formal interview; hearing; civil
37 penalty

38 A. The board on its own motion may investigate any evidence that
39 appears to show that a licensee is or may be incompetent or is or may be
40 subject to discipline under this chapter. On written request of a
41 complainant, the board shall review a complaint and take any action it deems
42 appropriate. The board or the executive director shall notify the licensee
43 as to the content of the complaint as soon as reasonable. A licensee shall,
44 and any other person may, report to the board any information the person may
45 have that appears to show grounds for disciplinary action against a

1 licensee. Any person or entity that reports or provides information to the
2 board in good faith is not subject to an action for civil damages. If
3 requested, the board shall not disclose the name of a person who supplies
4 information regarding a licensee's drug or alcohol impairment. It is an act
5 of unprofessional conduct for any licensee to fail to report as required by
6 this section.

7 B. If the board finds, based on the information it receives under
8 subsection A of this section, that the public health, safety or welfare
9 requires emergency action and incorporates a finding to that effect in its
10 order, the board may restrict, limit or order a summary suspension of a
11 license pending proceedings for revocation or other action. If the board
12 takes action pursuant to this subsection, it shall also serve the licensee
13 with a written notice that states the charges and that the licensee is
14 entitled to a formal hearing before the board or an administrative law judge
15 within sixty days.

16 C. If, after completing its investigation, the board finds that the
17 information provided pursuant to subsection A of this section is not of
18 sufficient seriousness to merit disciplinary action against the license of
19 the licensee, the board or a board committee may take ~~either~~ ANY of the
20 following nondisciplinary actions:

21 1. Dismiss if, in the opinion of the board, the information is without
22 merit.

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

25 3. **ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A**
26 **PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS**
27 **PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY**
28 **UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

29 D. If the board finds that it can take rehabilitative or disciplinary
30 action without the presence of the licensee at a formal interview it may
31 enter into a consent agreement with the licensee to limit or restrict the
32 licensee's practice or to rehabilitate the licensee, protect the public and
33 ensure the licensee's ability to safely engage in the practice of massage
34 therapy. The board may also require the licensee to successfully complete a
35 board approved rehabilitative, retraining, continuing education or assessment
36 program.

37 E. If, after completing its investigation, the board believes that the
38 information is or may be true, it may request a formal interview with the
39 licensee. If the licensee refuses the invitation for a formal interview or
40 accepts and the results indicate that grounds may exist for revocation or
41 suspension of the licensee's license for more than twelve months, the board
42 shall issue a formal complaint and order that a hearing be held pursuant to
43 title 41, chapter 6, article 10. If, after completing a formal interview,
44 the board finds that the protection of the public requires emergency action,

1 it may order a summary suspension of the license pending formal revocation
2 proceedings or other action authorized by this section.

3 F. If, after completing the formal interview, the board finds the
4 information provided under subsection A of this section is not of sufficient
5 seriousness to merit suspension for more than twelve months or revocation of
6 the license, it may take one or more of the following actions:

7 1. Dismiss if, in the opinion of the board, the complaint is without
8 merit.

9 2. File an advisory letter. The licensee may file a written response
10 with the board within thirty days after the licensee receives the advisory
11 letter.

12 3. File a letter of reprimand.

13 4. Issue a decree of censure. A decree of censure is an official
14 action against the licensee's license.

15 5. Fix a period and terms of probation best adapted to protect the
16 public health and safety and to rehabilitate or educate the licensee
17 concerned. Probation may include temporary suspension not to exceed twelve
18 months or restriction of the licensee's license to practice massage
19 therapy. If a licensee fails to comply with the terms of probation the board
20 shall serve the licensee with a written notice that states that the licensee
21 is subject to a formal hearing based on the information considered by the
22 board at the formal interview and on any other acts or conduct alleged to be
23 in violation of this chapter or rules adopted pursuant to this chapter,
24 including noncompliance with the terms of probation, a consent agreement or a
25 stipulated agreement.

26 6. Enter into an agreement with the licensee to restrict or limit the
27 licensee's practice in order to rehabilitate, retrain or assess the licensee,
28 protect the public and ensure the licensee's ability to safely engage in the
29 practice of massage therapy.

30 7. Order the payment of restitution, including an order to repay fees
31 paid by a massage therapy client and for the cost of the investigation.

32 8. **ISSUE A NONDISCIPLINARY ORDER REQUIRING THE LICENSEE TO COMPLETE A**
33 **PRESCRIBED NUMBER OF HOURS OF CONTINUING EDUCATION IN AN AREA OR AREAS**
34 **PRESCRIBED BY THE BOARD TO PROVIDE THE LICENSEE WITH THE NECESSARY**
35 **UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.**

36 G. If the board finds that the information provided in subsection A or
37 ~~F~~ E of this section warrants suspension or revocation of a license issued
38 pursuant to this chapter, it shall initiate formal proceedings pursuant to
39 title 41, chapter 6, article 10. If after a formal proceeding the board
40 finds that a licensee has been convicted of prostitution, solicitation or
41 another similar offense, the board shall revoke the license.

42 H. In a formal interview pursuant to subsection E of this section or
43 in a hearing pursuant to subsection G of this section, the board in addition
44 to any other action may impose a civil penalty of at least one thousand

1 dollars but not more than ten thousand dollars for each violation of this
2 chapter or a rule adopted pursuant to this chapter.

3 I. An advisory letter is a public document.

4 J. A licensee who after a formal hearing is found by the board to be
5 subject to discipline pursuant to this chapter is subject to censure,
6 probation or restitution as provided in this section, suspension or
7 revocation of license or any combination of these, including a stay of
8 action, for a period of time or permanently and under conditions the board
9 deems appropriate for the protection of the public health and safety and just
10 in the circumstance. The board may charge the costs of formal hearings to a
11 licensee who it finds to be in violation of this chapter.

12 K. If the board, during the course of any investigation, determines
13 that a criminal violation involving the practice of massage therapy may have
14 occurred, it shall make the evidence of a violation available to the
15 appropriate criminal justice agency for its consideration.

16 L. The board shall deposit, pursuant to sections 35-146 and 35-147,
17 all monies it collects from civil penalties paid pursuant to this section in
18 the state general fund.

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

24 N. The board may accept the surrender of a license from a person who
25 admits in writing to any of the following:

- 26 1. Being unable to safely engage in the practice of massage therapy.
27 2. Having committed an act subject to discipline pursuant to this
28 chapter.

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

30 O. In determining the appropriate disciplinary action under this
31 section, the board shall consider all previous nondisciplinary and
32 disciplinary actions against a licensee.