Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 138

HOUSE BILL 2344

AN ACT

AMENDING SECTIONS 32-1801, 32-1822, 32-1823, 32-1825, 32-1826, 32-1831, 32-1854, 32-1855 AND 32-1861, ARIZONA REVISED STATUTES; REPEALING SECTION 32-1855.02, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF OSTEOPATHIC EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-1801, Arizona Revised Statutes, is amended to read:

32-1801. Arizona board of osteopathic examiners in medicine and surgery

A. There shall be an Arizona board of osteopathic examiners in medicine and surgery which shall consist of seven members appointed by the governor. One member of the board shall be appointed each year for a term of five years, to begin and end on April 15.

B. Two members of the board shall be public members who shall not be in any manner connected with, or have an interest in, any school of medicine or any person practicing any form of healing or treatment of bodily or mental ailments and who has demonstrated an interest in the health problems of the state. The other five members of the board shall have engaged in the practice of medicine as an osteopathic physician in this state for at least five years preceding their appointments, ~~and~~ hold active licenses in good standing AND, AT THE TIME OF APPOINTMENT, BE PRACTICING MEDICINE WITH DIRECT PATIENT CONTACT. In making appointments of each professional member of the board, the governor shall consider a list of qualified persons submitted by the Arizona osteopathic medical association and recommendations by any other person. Members of the board shall continue in office until their successors are appointed and qualified. Each board member, prior to entering upon his duties, shall take an oath prescribed by law and in addition thereto shall make an oath as to his qualifications as prescribed in this section. No board member may serve more than two consecutive five year terms.

C. Board members may be removed by the governor if they fail to attend three or more board meetings within twelve months. This does not include telephonic meetings of the board. The governor may also remove board members for malfeasance, misfeasance or incompetence in their office, unprofessional or dishonorable conduct in their office or unprofessional or dishonorable conduct. The governor shall appoint a qualified replacement to fill a vacant position for the unexpired portion of the term.

Sec. 2. Section 32-1822, Arizona Revised Statutes, is amended to read:

32-1822. Qualifications of applicant; application; fees

A. ON A FORM AND IN A MANNER PRESCRIBED BY THE BOARD, an applicant for licensure shall SUBMIT PROOF THAT THE APPLICANT:

1. IS THE PERSON NAMED ON THE APPLICATION AND ON ALL SUPPORTING DOCUMENTS SUBMITTED.

~~1.~~ 2. ~~Be~~ IS a citizen of the United States or a resident alien.

~~2.~~ 3. ~~Be~~ IS a graduate of a board approved school of osteopathic medicine.

~~3. Submit to the board the following:~~

~~(a) The applicant's full name and all aliases and other names ever used, current address, social security number and date and place of birth.~~

~~(b) A recent photograph signed by the applicant.~~

~~(c) The originals of all documents and credentials required by the board or notarized photocopies or other verification acceptable to the board of these documents and credentials.~~

~~(d) Affidavits from three physicians and surgeons who are in active practice and who can attest to the applicant's fitness to practice medicine and surgery as an osteopathic physician and surgeon and submit to any other investigation deemed necessary by the board.~~

~~(e) A diploma conferring the degree of doctor of osteopathy or doctor of osteopathic medicine that was issued by a board approved school of medicine that at the time it issued the degree met the requirements prescribed by the American osteopathic association for that year. If the applicant cannot find the diploma the applicant shall submit proof satisfactory to the board that the applicant received a degree that meets these requirements.~~

~~(f) Proof that the applicant has served a board approved internship of at least one year or an approved residency or the equivalent as determined by the board.~~

~~(g) A verified application, on forms furnished by the board, stating, in addition to other information requested, that the applicant is the person named in the diploma, that the applicant obtained the diploma without fraud or misrepresentation and that the applicant's license to practice medicine and surgery as an osteopathic physician and surgeon has never been revoked, suspended or denied by any regulatory jurisdiction within the United States or in any other country.~~

~~4. Successfully pass an examination approved by the board or possess a currently active and unrestricted license to practice as an osteopathic physician and surgeon issued under the authority of any state, district or territory that has standards that are comparable to those prescribed in this chapter.~~

4. HAS COMPLETED AN APPROVED INTERNSHIP, THE FIRST YEAR OF AN APPROVED MULTIPLE YEAR RESIDENCY OR BOARD APPROVED EQUIVALENCY.

5. HAS PASSED THE APPROVED EXAMINATIONS FOR LICENSURE WITHIN SEVEN YEARS OF APPLICATION OR HAS THE BOARD APPROVED EQUIVALENCY OF PRACTICE EXPERIENCE.

6. HAS NOT ENGAGED IN ANY CONDUCT THAT, IF IT OCCURRED IN THIS STATE, WOULD BE CONSIDERED UNPROFESSIONAL CONDUCT OR, IF THE APPLICANT HAS ENGAGED IN UNPROFESSIONAL CONDUCT, IS REHABILITATED FROM THE UNDERLYING CONDUCT.

7. IS PHYSICALLY, MENTALLY AND EMOTIONALLY ABLE TO PRACTICE MEDICINE, OR, IF LIMITED, RESTRICTED OR IMPAIRED IN THE ABILITY TO PRACTICE MEDICINE, CONSENTS TO CONTINGENT LICENSURE PURSUANT TO SUBSECTION E OF THIS SECTION OR TO ENTRY INTO A PROGRAM PRESCRIBED IN SECTION 32-1861.

~~5.~~ B. AN APPLICANT MUST submit with the application the application fee prescribed in section 32-1826 and pay the prescribed license ISSUANCE fee to the board at the time the license is issued. ~~All fees shall be paid by certified check, by money order or by cash.~~

~~6. Receive a score of at least seventy-five per cent on an examination that is prescribed by the board and that covers this chapter and board rules.~~

~~B.~~ C. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental evaluation or any combination of these at a reasonable time and place as prescribed by the board if the board determines that this is necessary to provide the board adequate information regarding the applicant's ability to meet the licensure requirements of this chapter. An interview may include medical knowledge questions and other matters that are relevant to licensure.

~~C.~~ D. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter ~~and~~ OR as determined by a competent domestic or foreign jurisdiction.

~~D.~~ E. The board may issue a license that is contingent on the applicant entering into a stipulated order that may include a period of probation or a restriction on the licensee's practice.

~~E.~~ F. The executive director may issue licenses to applicants who meet the requirements of this section.

~~F.~~ G. A person whose license has been revoked, denied or surrendered IN THIS OR ANY OTHER STATE may apply for licensure NOT SOONER THAN two years after the revocation, ~~or~~ denial OR SURRENDER.

H. A LICENSE ISSUED PURSUANT TO THIS SECTION IS VALID FOR THE REMAINDER OF THE CALENDAR YEAR IN WHICH IT WAS ISSUED, AT WHICH TIME IT IS ELIGIBLE FOR RENEWAL.

Sec. 3. Section 32-1823, Arizona Revised Statutes, is amended to read:

32-1823. Locum tenens registration; application; term

A. A doctor of osteopathy licensed to practice osteopathic medicine and surgery by another state may be registered to provide locum tenens medical services to substitute for or temporarily assist a doctor of osteopathy who holds an active license pursuant to this chapter or a doctor of medicine who holds an active license pursuant to chapter 13 of this title under the following conditions:

1. The applicant provides on forms and in a manner prescribed by the board proof that he meets the applicable requirements of section 32-1822.

~~2. The license of the applicant for registration under this section from the state in which he regularly practices osteopathic medicine is current and unrestricted and has not been revoked or suspended for any reason and there are no unresolved complaints or formal charges filed against the applicant with any licensing board.~~

~~3.~~ 2. The doctor of medicine or doctor of osteopathy for whom the applicant is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.

B. On completion of the registration form prescribed by the board and payment of the required fees, the executive director may register a qualifying doctor of osteopathy by locum tenens registration and authorize ~~him~~ THE DOCTOR to provide locum tenens services.

C. Locum tenens registration granted pursuant to this section is valid for ~~thirty~~ NINETY days and may be extended once for an additional ~~thirty~~ NINETY days on written request by the doctor of medicine or doctor of osteopathy who originally initiated the request for this registration, stating the reason extension is necessary, and by submitting the appropriate fees and other documents requested by the executive director.

Sec. 4. Section 32-1825, Arizona Revised Statutes, is amended to read:

32-1825. Renewal of licenses; continuing medical education; failure to renew; penalty; reinstatement; waiver of continuing medical education

A. Each licensee shall renew the license every other year on or before January 1 ON AN APPLICATION FORM APPROVED BY THE BOARD. At least sixty days before that RENEWAL date the executive director shall notify each licensee of this requirement. The executive director shall send this notification by first class mail to the licensee at the LICENSEE'S address ~~the licensee last provided to the executive director~~.

B. WITH THE APPLICATION PRESCRIBED PURSUANT TO SUBSECTION A OF THIS SECTION, the licensee shall furnish to the executive director a statement of having attended before the license renewal date educational programs, approved by the board, totaling at least ~~forty~~ TWENTY clock hours ~~and shall pay to the board~~ DURING EACH OF THE TWO PRECEDING YEARS, AND A STATEMENT THAT THE LICENSEE REPORTED ANY CONDUCT THAT MAY CONSTITUTE UNPROFESSIONAL CONDUCT IN THIS STATE OR ELSEWHERE. THE APPLICATION MUST ALSO INCLUDE the prescribed renewal fee. The executive director shall then issue a renewal receipt to the licensee. The board may require a licensee to submit documentation of continuing medical education.

C. The board shall not renew the license of a licensee who does not fully document the licensee's compliance with the continuing education requirements of subsection B of this section unless that person receives a waiver of those requirements. The board may waive the continuing education requirements of subsection B of this section for a particular period if it is satisfied that the licensee's noncompliance was due to the licensee's disability, military service or absence from the United States or to other circumstances beyond the control of the licensee. If a licensee fails to attend the required number of clock hours for reasons other than those specified in this subsection, the board may grant an extension until May 1 of that year for the licensee to comply.

D. Unless the board grants an extension pursuant to subsection C of this section, a licensee who fails to renew the license within thirty days after the renewal date shall pay a penalty fee and a reimbursement fee in addition to the prescribed renewal fee. Except as provided in section 32-3202, a license expires if a person does not renew the license within four months after the renewal date. A person who practices osteopathic medicine after that time is in violation of this chapter. A person whose license expires may reapply for a license pursuant to this chapter.

Sec. 5. Section 32-1826, Arizona Revised Statutes, is amended to read:

32-1826. Fees; penalty

A. The board by a formal vote at its annual January meeting shall establish fees of not to exceed the following:

1. For an application to practice osteopathic medicine, four hundred dollars.

2. For issuance of a license, two hundred dollars, PRORATED BY EACH MONTH REMAINING IN THE CALENDAR YEAR OF ISSUANCE.

3. For BIENNIAL renewal of a license, eight hundred dollars.

4. For locum tenens registration OR EXTENSION, three hundred dollars.

5. For issuance of a duplicate license, one hundred dollars.

6. For annual registration of an approved internship, residency, clinical fellowship program or short-term residency program, one hundred dollars.

7. For an annual teaching license issued pursuant to section 32-1831, four hundred dollars.

8. For a five day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, two hundred dollars.

9. For the sale of those copies of the annual osteopathic medical directory that are not distributed free of charge, seventy-five dollars.

10. For the sale of computerized tapes or diskettes that do not require programming, one hundred dollars.

11. For initial and annual registration to dispense drugs and devices, two hundred fifty dollars, PRORATED BY EACH MONTH REMAINING IN THE CALENDAR YEAR OF ISSUANCE.

B. The board shall charge a one hundred fifty dollar penalty fee for late renewal of a license and a twenty-five dollar reimbursement fee to cover the board's expenses in collecting late renewal fees. The board shall deposit this fee in the board fund.

C. The board may charge additional fees for services the board determines are necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the services.

Sec. 6. Section 32-1831, Arizona Revised Statutes, is amended to read:

32-1831. Teaching licenses; definitions

A. A doctor of osteopathic medicine who is not licensed in this state may be employed as a full-time faculty member by a board approved ~~college~~ SCHOOL of osteopathic medicine in this state or a teaching hospital's accredited graduate medical education program in this state to provide professional education through lectures, clinics or demonstrations if the doctor holds a teaching license issued pursuant to this section.

B. An applicant for a teaching license shall:

1. Submit a completed application as prescribed by the board.

2. Pay all fees prescribed by the board.

3. Meet the basic requirements of section 32-1822~~, wi~~
~~of subsection A, paragraph 3, subdivision (f)~~.

C. A person licensed pursuant to this section shall not
or designate a place to meet patients or receive calls re
practice of osteopathic medicine in this state outside of the
programs of the approved school or teaching hospital.

D. A person licensed pursuant to this section shall co
requirements of this chapter, with the exception of those th
training and examinations.

E. A license issued pursuant to this section is valid fc
A doctor of osteopathic medicine may apply for licensure onc
years.

F. For the purposes of this section:

1. "Accredited" means that the school or teaching hospi
internship, fellowship or residency training program that is acc
the accreditation council for graduate medical education, the
osteopathic association or a similar body that is approved by the

2. "Full-time faculty member" means a full-time faculty
prescribed by the school of osteopathic medicine or the teaching h

Sec. 7. Section 32-1854, Arizona Revised Statutes, is amended

32-1854. Definition of unprofessional conduct

FOR THE PURPOSES OF THIS CHAPTER, "unprofessional conduct" incl
llowing acts, whether occurring in this state or elsewhere:

1. ~~Willfully~~ WILFULLY betraying a professional secret or w
lating a privileged communication except as either of these may ot
required by law. This paragraph does not prevent members of the
n exchanging information with the licensing and disciplinary boa
r states, territories or districts of the United States or with fo
tries or with osteopathic medical organizations located in this sta
ny state, district or territory of this country or in any fo
ry.

2. Committing a felony, whether or not involving moral turpitude
lemeanor involving moral turpitude. In either case conviction by
of competent jurisdiction is conclusive evidence of the commissio

3. Practicing medicine while under the influence of alcohol, narco
otic drugs or any substance that impairs or may impair the license
to safely and skillfully practice medicine.

. Being diagnosed by a physician licensed under this chapter
13 of this title or a psychologist licensed under chapter 19.1 o
ie as excessively or illegally using alcohol or a controlle
.

Prescribing, dispensing or administering controlled substances or
ion only drugs for other than accepted therapeutic purposes.

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

7. Impersonating another physician.

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

9. Procuring, RENEWING or attempting to procure OR RENEW a license to practice osteopathic medicine by fraud or misrepresentation.

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

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

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

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

14. Charging a fee for services not rendered or dividing a professional fee for patient referrals.

15. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine ~~except as the same may be necessary for accepted therapeutic purposes~~ OR WHEN APPLYING FOR OR RENEWING PRIVILEGES AT A HEALTH CARE INSTITUTION OR A HEALTH CARE PROGRAM.

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

17. Representing or holding oneself out as being an osteopathic medical specialist if the physician has not satisfied the applicable requirements of this chapter or board rules.

18. The ~~refusal, revocation or suspension of~~ DENIAL OF OR DISCIPLINARY ACTION AGAINST a license by any other state, territory, district or country, unless it can be shown that this occurred for reasons that did not relate to the person's ability to safely and skillfully practice osteopathic medicine or to any act of unprofessional conduct as provided in this section.

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

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

21. Failing or refusing to ESTABLISH AND maintain adequate records on a patient as follows:

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

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

(c) If the patient dies before the expiration of the dates prescribed in subdivision (a) or (b) of this paragraph, for at least three years after the patient's death.

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

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

~~24. Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513 including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year.~~

~~25.~~ 24. Nontherapeutic use of injectable amphetamines.

~~26.~~ 25. Violating a formal order, probation or a stipulation issued by the board under this chapter.

~~27.~~ 26. Charging or collecting an inappropriate fee. This paragraph does not apply to a fee which is fixed in a written contract between the physician and the patient and entered into before treatment begins.

~~28.~~ 27. Using experimental forms of therapy without adequate informed patient consent or without conforming to generally accepted criteria and complying with federal and state statutes and regulations governing experimental therapies.

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

~~30.~~ 29. Failing to allow properly authorized board personnel to have~~, on demand~~, ON PRESENTATION OF A SUBPOENA, access to any documents, reports or records that are maintained by the physician and that relate to the physician's medical practice or medically related activities pursuant to section 32-1855.01.

~~31.~~ 30. Signing a blank, undated or predated prescription form.

~~32.~~ 31. Obtaining a fee by fraud, deceit or misrepresentation.

~~33. Falsely claiming attendance at continuing medical education programs to meet license renewal requirements.~~

~~34.~~ 32. Failing to report to the board an osteopathic physician and surgeon who is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.

~~35.~~ 33. Referring a patient to a diagnostic or treatment facility or prescribing goods and services without disclosing that the physician has a direct pecuniary interest in the facility, goods or services to which the patient has been referred or prescribed. This paragraph does not apply to a referral by one physician to another physician within a group of physicians practicing together.

~~36.~~ 34. Lack of or inappropriate direction, collaboration or supervision of a licensed, certified or registered health care provider or office personnel employed by or assigned to the physician in the medical care of patients.

~~37.~~ 35. Violating a federal law, a state law or a rule applicable to the practice of medicine.

~~38.~~ 36. Prescribing or dispensing controlled substances or prescription-only medications without ESTABLISHING AND maintaining adequate ~~and appropriate~~ patient records.

~~39.~~ 37. Failing to dispense drugs and devices in compliance with article 4 of this chapter.

~~40.~~ 38. Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

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

~~42.~~ 40. With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

~~43.~~ 41. Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

~~44. Sexual intimacies with a patient.~~

42. ENGAGING IN SEXUAL CONDUCT WITH A CURRENT PATIENT OR WITH A FORMER PATIENT WITHIN SIX MONTHS AFTER THE LAST MEDICAL CONSULTATION UNLESS THE PATIENT WAS THE LICENSEE'S SPOUSE AT THE TIME OF THE CONTACT OR, IMMEDIATELY PRECEDING THE PHYSICIAN-PATIENT RELATIONSHIP, WAS IN A DATING OR ENGAGEMENT RELATIONSHIP WITH THE LICENSEE. FOR THE PURPOSES OF THIS PARAGRAPH, "SEXUAL CONDUCT" INCLUDES:

(a) ENGAGING IN OR SOLICITING SEXUAL RELATIONSHIPS, WHETHER CONSENSUAL OR NONCONSENSUAL.

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

~~45.~~ 43. Fetal experiments conducted in violation of section 36-2302.

~~46.~~ 44. Conduct that the board determines constitutes gross egligence, repeated negligence or negligence that results in harm or death ıf a patient.

~~47.~~ 45. Conduct in the practice of medicine which evidences moral ınfitness to practice medicine.

~~48. Wilfully harassing, abusing or intimidating a patient either physically or verbally.~~

~~49. Failing to furnish legally requested information to the board or its investigators in a timely manner.~~

46. ENGAGING IN DISRUPTIVE OR ABUSIVE BEHAVIOR IN A PROFESSIONAL SETTING.

~~50.~~ 47. Failing to disclose to a patient that the licensee has a direct financial interest in a prescribed treatment, good or service if the treatment, good or service is available on a competitive basis. This paragraph does not apply to a referral by one licensee to another licensee within a group of licensees who practice together. A licensee meets the disclosure requirements of this paragraph if all of the following are true:

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

(b) The patient or the patient's guardian or parent acknowledges b signing the form that the licensee has disclosed the licensee's direc financial interest.

~~51.~~ 48. Prescribing, dispensing or furnishing a prescriptic medication or a prescription-only device to a person if the licensee has n conducted a physical examination of that person or has not previous established a physician-patient relationship. This paragraph does not app to emergencies.

~~52. Failing to inform the board in writing within ten days after a change of the licensee's address of record.~~

~~53.~~ 49. If a licensee provides medical care by computer, failing disclose the licensee's license number and the board's address and teleph number.

Sec. 8. Section 32-1855, Arizona Revised Statutes, is amended to re

32-1855. Disciplinary action; duty to report; hearing; notice; independent medical examinations; surrender of license

A. The board on its own motion may investigate any information appears to show that an osteopathic physician and surgeon is or may be gu of unprofessional conduct or is or may be mentally or physically un safely to engage in the practice of medicine. Any osteopathic physicia surgeon or the Arizona osteopathic medical association or any health institution as defined in section 36-401 shall, and any other person report to the board any information such physician or surgeon, associa health care institution or other person may have that appears to show an osteopathic physician and surgeon is or may be guilty of unprofess

conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board shall notify the doctor about whom information has been received as to the content of the information as soon as reasonable after receiving the information. Any person who reports or provides information to the board in good faith is not subject to civil damages as a result of that action. If requested the board shall not disclose the informant's name unless it is essential to the disciplinary proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any osteopathic physician or surgeon to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

B. The board may require a physician under investigation pursuant to subsection A of this section to be interviewed by the board or its representatives. The board or the executive director may require a licensee who is under investigation pursuant to subsection A of this section to undergo at the licensee's expense any combination of medical, physical or mental examinations the board finds necessary to determine the physician's competence.

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

D. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit direct action against the physician's license, it may take ~~either of~~ ANY COMBINATION OF the following actions:

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

2. File a letter of concern.

3. IN ADDITION TO THE REQUIREMENTS OF SECTION 32-1825, REQUIRE CONTINUING MEDICAL EDUCATION ON SUBJECTS AND WITHIN A TIME PERIOD DETERMINED BY THE BOARD.

E. If, in the opinion of the board, it appears information provided pursuant to this section is or may be true, the board may request an investigative hearing with the physician concerned. At an investigative hearing the board may receive and consider sworn statements of persons who may be called as witnesses in a formal hearing and other pertinent documents.

Legal counsel may be present and participate in the meeting. If the physician refuses the request or if the physician accepts the request and the results of the ~~interview~~ INVESTIGATIVE HEARING indicate suspension OF MORE THAN TWELVE MONTHS or revocation of the license may be in order, a complaint shall be issued and ~~a formal~~ AN ADMINISTRATIVE hearing shall be held pursuant to title 41, chapter 6, article 10. If, after the investigative hearing and a mental, physical or medical competence examination as the board deems necessary, the board finds the information provided pursuant to this section to be true but not of sufficient seriousness to merit suspension or revocation of the license, it may take any of the following actions:

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

2. File a letter of concern.

3. IN ADDITION TO THE REQUIREMENTS OF SECTION 32-1825, REQUIRE CONTINUING MEDICAL EDUCATION ON SUBJECTS AND WITHIN A TIME PERIOD DETERMINED BY THE BOARD.

~~3.~~ 4. Issue a decree of censure, which constitutes an official action against a physician's license.

~~4.~~ 5. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician concerned. Any costs incidental to the terms of probation are at the physician's own expense. ~~Probation may include temporary suspension for not more than twelve months or restriction of the physician's license to practice osteopathic medicine and surgery. Failure to comply with any probation is cause for filing a summons, complaint and notice of hearing pursuant to subsection F of this section based on the information considered by the board at the informal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted pursuant to this chapter.~~

6. RESTRICT OR LIMIT THE PHYSICIAN'S PRACTICE IN A MANNER AND FOR A TIME DETERMINED BY THE BOARD.

7. SUSPEND THE PHYSICIAN'S LICENSE FOR NOT MORE THAN TWELVE MONTHS.

~~5.~~ 8. Impose a civil penalty of not to exceed five hundred dollars for each violation of this chapter.

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

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

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

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

J. If the board acts to modify ~~any osteopathic~~ A physician's prescription writing privileges, it shall immediately notify the state board of pharmacy and the federal drug enforcement administration in the United States department of justice of the modification.

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

~~L. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from penalties it imposes under this chapter in the state general fund.~~

~~M.~~ L. Notice of a complaint and ADMINISTRATIVE hearing is effective when a true copy of the notice is sent by certified mail to the licensee's last known address of record in the board's files and is complete on the date of its deposit in the mail. The board shall hold ~~a formal~~ AN ADMINISTRATIVE hearing within one hundred twenty days after that date.

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

Sec. 9. Repeal

Section 32-1855.02, Arizona Revised Statutes, is repealed.

Sec. 10. Section 32-1861, Arizona Revised Statutes, is amended to read:

32-1861. Substance abuse treatment and rehabilitation program; private contract; funding

A. The board may establish a program for the treatment and rehabilitation of licensees who are impaired by substance abuse. This program may include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Quarterly reports to the board regarding each physician's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired physician who the treating organization believes to be ~~a danger to the public or himself~~ INCAPABLE OF SAFELY PRACTICING MEDICINE.

~~5. Reports to the board, as soon as possible, of the name of a physician who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.~~

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the ~~annual~~ renewal of licenses pursuant to section 32-1826 for the administration of the program established by this section.

~~D. An impaired licensee shall comply with a board order regarding the licensee's participation in a substance abuse treatment and rehabilitation program. A licensee who refuses to comply with a stipulated order is subject to disciplinary action by the board.~~

APPROVED BY THE GOVERNOR APRIL 23, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2004.