House Engrossed

**FILED**

**JANICE K. BREWER**
**SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
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**CHAPTER 46**

# HOUSE BILL 2006

AN ACT

AMENDING SECTIONS 32-2501, 32-2505, 32-2507 AND 32-2551, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2535; RELATING TO THE BOARD OF PHYSICIAN ASSISTANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-2501, Arizona Revised Statutes, is amended to read:

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular or temporary license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program that has been fully or provisionally accredited by the committee on allied health education and accreditation or by the commission on the accreditation for allied health education programs, or successor agencies, on the recommendation of the accreditation review committee on education for physician assistants.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

9. "Limit" means a nondisciplinary action THAT IS taken by the board AND that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.

12. "Notification of supervision" means a written notice that is provided to the board by a supervising physician and that notifies the board that the physician intends to supervise a physician assistant. The physician shall provide this notice on a form prescribed by the board before the physician assistant begins work.

13. "Physician" means a physician licensed pursuant to chapter 13 or 17 of this title.

14. "Physician assistant" means a person who is licensed pursuant to this chapter and who performs health care tasks pursuant to a dependent relationship with a physician.

15. "Primary place for meeting patients" includes the supervising physician's office, health care institutions in which the supervising physician's patients are located or homes of patients.

16. "Regular license" means a valid and existing license issued pursuant to section 32-2521 to perform health care tasks. Regular license does not include a temporary license.

17. "Restrict" means a disciplinary action THAT IS taken by the board AND that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

18. "Supervising physician" means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board. ~~For purposes of this paragraph, a limited license issued pursuant to section 32-1426, subsection C, before November 2, 1998 is not a restriction.~~

19. "Supervising physician's agent" means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence and is approved by the board. ~~For purposes of this~~

~~paragraph, a limited license issued pursuant to section 32-1426, subsection C, before November 2, 1998 is not a restriction.~~

20. "Supervision" means a physician's opportunity or ability to provide or exercise control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician or the supervising physician's agent is or can be easily in contact with the physician assistant by radio, telephone or telecommunication.

21. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violation of any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.

(c) Performing health care tasks that have not been delegated by the supervising physician.

(d) Habitual intemperance in the use of alcohol or habitual substance abuse.

(e) Signing a blank, undated or predated prescription form.

(f) Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violation of a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records on a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.

(u) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(v) Refusal, revocation, suspension, limitation or restriction of a certification or license by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(w) Sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(x) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(y) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.

(z) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(aa) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(bb) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(cc) Failing to submit to a body fluid examination AND OTHER EXAMINATIONS KNOWN TO DETECT THE PRESENCE OF ALCOHOL OR OTHER DRUGS pursuant to an agreement with the board or an order of the board.

(dd) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ee) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(ff) Allowing the use of the licensee's name in any way to enhance or permit the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(gg) False, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(hh) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathy within a group working together.

(ii) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy.

(jj) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(kk) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(ll) 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 professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(mm) PERFORMING HEALTH CARE TASKS UNDER A FALSE OR ASSUMED NAME IN THIS STATE.

Sec. 2. Section 32-2505, Arizona Revised Statutes, is amended to read:

32-2505. Personnel; consultants; compensation

A. The executive director employed by the Arizona medical board is the executive director of the Arizona regulatory board of physician assistants. The staff of the Arizona medical board shall carry out the administrative responsibilities of the Arizona regulatory board of physician assistants.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the physician assistant practice act for consideration by the legislature.

4. Appoint and employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.

7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.

10. Prepare an annual budget.

11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.

12. Initiate an investigation if evidence appears to demonstrate that a physician assistant may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice as a physician assistant.

13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.

14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.

15. Enter into contracts to procure goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.

16. Execute board directives.

17. Represent the board in matters with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.

18. Enter into stipulated agreements on behalf of the board with persons under the jurisdiction of the board for the treatment, rehabilitation or monitoring of chemical substance abuse or misuse.

19. Review all complaints filed pursuant to section 32-2551. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit.

20. If delegated by the board, directly refer cases to a formal hearing.

21. If delegated by the board, close cases resolved through mediation.

22. If delegated by the board, issue advisory letters.

23. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

24. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to this chapter.

25. If delegated by the board, refer cases to the board for a formal interview.

26. Perform all other administrative, licensing or regulatory duties required by the board.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery, or ~~certified mail~~ IF MAILED to that person's last known residence or place of business, WITHIN THIRTY-FIVE DAYS AFTER THE DATE ON THE NOTIFICATION. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

Sec. 3. Section 32-2507, Arizona Revised Statutes, is amended to read:

32-2507. Licensee profiles; civil penalty

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet web site and, if requested, in writing. The profile shall contain the following information:

1. A description of any conviction of a felony or a misdemeanor involving moral turpitude within the last five years. For THE purposes of this paragraph, a licensee is deemed to be convicted of a crime if the licensee pled guilty or was found guilty by a court of competent jurisdiction.

2. A description of any felony charges or misdemeanor charges involving moral turpitude within the last five years to which the licensee pled no contest.

3. The number of pending complaints and final board disciplinary and nondisciplinary actions~~, including dismissals,~~ within the last five years. Information concerning pending complaints shall contain the following statement:

> Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit and are dismissed.

4. All medical malpractice court judgments and all medical malpractice awards or settlements in which a payment is made to a complaining party within the last five years. Information concerning malpractice actions shall contain the following statement:

> The settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician assistant. A payment in settlement of a medical malpractice action does not create a presumption that medical malpractice occurred.

5. The name and location of the licensee's training and the date of graduation.

6. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A each year as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4. The board shall update immediately its internet web site to reflect changes in information relating to subsection A, paragraphs 1 through 4. The board shall update the internet web site information at least annually.

C. The board shall provide each licensee with a copy of the licensee's profile and give the licensee reasonable time to correct the profile before it is available to the public.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

Sec. 4. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding section 32-2535, to read:

32-2535. Emergency medical care; supervision

A. NOTWITHSTANDING THE REQUIREMENTS OF THIS ARTICLE, IN RESPONSE TO A NATURAL DISASTER, ACCIDENT OR OTHER EMERGENCY, A PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO THIS CHAPTER, LICENSED OR CERTIFIED BY ANOTHER REGULATORY JURISDICTION IN THE UNITED STATES OR CREDENTIALED AS A PHYSICIAN ASSISTANT BY A FEDERAL EMPLOYER MAY PROVIDE MEDICAL CARE AT ANY LOCATION AND WITH OR WITHOUT SUPERVISION.

B. A PHYSICIAN WHO SUPERVISES A PHYSICIAN ASSISTANT WHO IS PROVIDING MEDICAL CARE PURSUANT TO THIS SECTION IS NOT REQUIRED TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE RELATING TO SUPERVISING PHYSICIANS.

Sec. 5. Section 32-2551, Arizona Revised Statutes, is amended to read:

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

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

B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations including investigational interviews between representatives of the board and the physician assistant and the supervising physician as it deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. THESE EXAMINATIONS MAY INCLUDE BIOLOGICAL FLUID TESTING AND OTHER EXAMINATIONS KNOWN TO DETECT THE PRESENCE OF ALCOHOL OR OTHER DRUGS. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's

expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

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

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

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

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

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

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

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

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

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

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

4. File a letter of reprimand.

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

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

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

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

(c) Restitution of patient fees.

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

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

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

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

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

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

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

O. If during the course of an investigation the ARIZONA REGULATORY board OF PHYSICIAN ASSISTANTS determines that a criminal violation may have occurred involving the performance of health care tasks, it shall provide evidence of the violation to the appropriate criminal justice agency.

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

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

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

**APPROVED BY THE GOVERNOR APRIL 7, 2004.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2004.**