

REFERENCE TITLE: independent medical examinations; board complaints

State of Arizona  
Senate  
Fifty-second Legislature  
First Regular Session  
2015

## **SB 1290**

Introduced by  
Senators Ward, Yee; Representatives Cobb, Fann, Thorpe; Senator Driggs;  
Representative Petersen

AN ACT

AMENDING SECTIONS 23-1026, 32-852.01, 32-1451 AND 32-1855, ARIZONA REVISED  
STATUTES; RELATING TO INDEPENDENT MEDICAL EXAMINATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-1026, Arizona Revised Statutes, is amended to  
3 read:

4 23-1026. Periodical medical examination of employee; effect of  
5 refusal or obstruction of examination or treatment

6 A. An employee who may be entitled to compensation under this chapter  
7 shall submit himself for medical examination from time to time at a place  
8 reasonably convenient for the employee, if and when requested by the  
9 commission, his employer or the insurance carrier. A place is reasonably  
10 convenient even if it is not where the employee resides if it is the place  
11 where the employee was injured and the employer or the insurance carrier pays  
12 in advance the employee's reasonable travel expenses, including the cost of  
13 transportation, food, lodging and loss of pay, if applicable.

14 B. The request for the medical examination shall fix a time and place  
15 having regard to the convenience of the employee, his physical condition and  
16 his ability to attend. The employee may have a physician present at the  
17 examination if procured and paid for by ~~himself~~ THE EMPLOYEE.

18 C. If the employee refuses to submit to the medical examination or  
19 obstructs the examination, his right to compensation shall be suspended until  
20 the examination has been made, and no compensation shall be payable during or  
21 for such period.

22 D. A physician who makes or is present at the medical examination  
23 provided by this section may be required to testify as to the result ~~thereof~~  
24 OF THE EXAMINATION. THE PHYSICIAN IS NOT SUBJECT TO A COMPLAINT FOR  
25 UNPROFESSIONAL CONDUCT TO THE PHYSICIAN'S LICENSING BOARD IF THE COMPLAINT IS  
26 BASED ON A DISAGREEMENT WITH THE FINDINGS AND OPINIONS EXPRESSED BY THE  
27 PHYSICIAN AS A RESULT OF THE EXAMINATION.

28 E. ~~Upon~~ ON appropriate application and hearing, the commission may  
29 reduce or suspend the compensation of an employee who persists in unsanitary  
30 or injurious practices tending to imperil or retard his recovery, or who  
31 refuses to submit to medical or surgical treatment reasonably necessary to  
32 promote his recovery.

33 F. An employee shall be excused from attending a scheduled medical  
34 examination if the employee requests a protective order and the  
35 administrative law judge finds that the scheduled examination is unnecessary,  
36 would be cumulative or could reasonably be timely scheduled with an  
37 appropriate physician where the employee resides. If a protective order is  
38 requested the burden is on the employer or insurance carrier to establish  
39 that a medical examination should be scheduled at a place other than where  
40 the employee resides. If an employee has left this state and the employer or  
41 insurance carrier pays in advance the employee's reasonable travel expenses,  
42 including the cost of transportation, food, lodging and loss of pay, if  
43 applicable, the employer or insurance carrier is entitled to have the  
44 employee return to this state one time a year for examination or one time  
45 following the filing of a petition to reopen.

1 G. If a physician performs an examination under this section and is  
2 provided data from the Arizona state board of pharmacy pursuant to title 36,  
3 chapter 28, the physician may disclose that data to the employee, employer,  
4 insurance carrier and ~~the~~ commission.

5 Sec. 2. Section 32-852.01, Arizona Revised Statutes, is amended to  
6 read:

7 32-852.01. Investigations; duty to report; unprofessional  
8 conduct hearing; decision of board; appeal

9 A. The board on its own motion may investigate any evidence that  
10 appears to show that a podiatrist is or may be guilty of a violation of  
11 section 32-852. Any podiatrist or the Arizona podiatry association shall, or  
12 any other person may, report to the board any information the podiatrist,  
13 association or person may have that appears to show that a podiatrist is or  
14 may be guilty of unprofessional conduct or is or may be guilty of practice  
15 without regard for the safety and welfare of the public. **A PODIATRIST**  
16 **CONDUCTING A MEDICAL EXAMINATION PURSUANT TO SECTION 23-1026 IS NOT SUBJECT**  
17 **TO A COMPLAINT OF UNPROFESSIONAL CONDUCT BASED ON A DISAGREEMENT WITH THE**  
18 **FINDINGS AND OPINIONS EXPRESSED BY THE PODIATRIST AS A RESULT OF THE**  
19 **EXAMINATION.** Any podiatrist, association, health care institution or other  
20 person that reports or provides information to the board in good faith is not  
21 subject to civil liability and the name of the reporter shall not be  
22 disclosed unless the information is essential to the investigative  
23 proceedings conducted pursuant to this section. It is an act of  
24 unprofessional conduct for any podiatrist to fail to report as required by  
25 this subsection. The chief executive officer, the medical director or the  
26 medical chief of staff of a health care institution shall inform the board if  
27 the privileges of a podiatrist to practice in that health care institution  
28 are denied, revoked, suspended or limited because of actions by the  
29 podiatrist that appear to show that the podiatrist is or may be medically  
30 incompetent, is or may be guilty of unprofessional conduct or is or may be  
31 mentally or physically unable to safely engage in the practice of podiatry,  
32 along with a general statement of the reasons, including patient chart  
33 numbers, that led the health care institution to take the action. The chief  
34 executive officer, the medical director or the medical chief of staff of a  
35 health care institution shall inform the board if a podiatrist under  
36 investigation resigns or if a podiatrist resigns in lieu of disciplinary  
37 action by the health care institution. Notification shall include a general  
38 statement of the reasons for the resignation, including patient chart  
39 numbers. The board shall inform all appropriate health care institutions in  
40 this state as defined in section 36-401 and the Arizona health care cost  
41 containment system administration of a resignation, denial, revocation,  
42 suspension or limitation, and the general reason for that action, without  
43 divulging the name of the reporting health care institution. A person who  
44 reports information in good faith pursuant to this subsection is not subject  
45 to civil liability.

1           B. Based on information received pursuant to subsection A of this  
2 section, the board may order a summary suspension of a license pending formal  
3 proceedings for license revocation or other disciplinary action if the board  
4 finds that the protection of the public health or safety requires emergency  
5 action. The board shall serve the licensee with a written notice that states  
6 the charges and that the licensee is entitled to a formal hearing before the  
7 board or an administrative law judge within sixty days.

8           C. If the board finds after completing its investigation that the  
9 information provided pursuant to subsection A of this section is not of  
10 sufficient seriousness to merit direct action against the license of the  
11 podiatrist, it may take any of the following actions:

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

14           2. File a letter of concern.

15           3. 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           D. If the board finds after completing its investigation that the  
20 information is or may be true, the board may request an informal hearing with  
21 the licensee. If the licensee refuses the invitation or accepts the  
22 invitation and the results of the hearing indicate suspension or revocation  
23 of the license might be in order, the board shall issue a complaint and  
24 conduct a formal hearing pursuant to title 41, chapter 6, article 10. If the  
25 board finds at the informal hearing that the information provided under  
26 subsection A of this section is true but is not of sufficient seriousness to  
27 merit suspension or revocation of the license, it may take one or more of the  
28 following actions:

29           1. File a letter of concern.

30           2. Issue a decree of censure.

31           3. Fix a period and terms of probation best adapted to protect the  
32 public health and safety and rehabilitate the licensee. If a licensee fails  
33 to comply with the terms of probation the board may file a complaint and hold  
34 a formal hearing pursuant to this section.

35           4. Impose a civil penalty of not more than two thousand dollars for  
36 each violation. The board shall deposit, pursuant to sections 35-146 and  
37 35-147, all monies collected pursuant to this paragraph in the state general  
38 fund.

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           E. If the board believes that the charge is or may be true, the board  
44 shall serve on the licensee a summons and complaint that fully states the  
45 conduct or inability concerned and the time and place of the hearing. The

1 board shall schedule the hearing not less than thirty days after the date of  
2 the summons and complaint.

3 F. The board may require that the licensee under investigation undergo  
4 any mental and physical examination and may conduct any investigation,  
5 including the taking of depositions, necessary to fully inform itself with  
6 respect to the complaint.

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

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

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

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

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

26 L. A licensee who, after a hearing held pursuant to this section, is  
27 found to be guilty of a violation of section 32-852 or this section is  
28 subject to censure, probation as provided in this section, suspension of a  
29 license or revocation of a license, or any combination of these, for a period  
30 of time or permanently and under any conditions the board deems appropriate  
31 for the protection of the public health and safety and just in the  
32 circumstances. The board may file a letter of concern if it finds that the  
33 violation is not of sufficient seriousness to merit censure, probation or  
34 suspension or revocation of a license. The board may also issue a  
35 nondisciplinary order requiring the licensee to complete a prescribed number  
36 of hours of continuing education in an area or areas prescribed by the board  
37 to provide the licensee with the necessary understanding of current  
38 developments, skills, procedures or treatment.

39 M. Patient records, including clinical records, medical reports,  
40 laboratory statements and reports, any file, film, other report or oral  
41 statement relating to diagnostic findings or treatment of patients, any  
42 information from which a patient or the patient's family might be identified  
43 or information received and records kept by the board as a result of the  
44 investigation procedure outlined in this chapter are not available to the  
45 public.

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

4 O. This section and any other law relating to a privileged  
5 communication do not apply to investigations or proceedings conducted  
6 pursuant to this chapter. The board and its employees, agents and  
7 representatives shall keep in confidence the names of any patients whose  
8 records are reviewed during the course of investigations and proceedings  
9 pursuant to this chapter.

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

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

15 Sec. 3. Section 32-1451, Arizona Revised Statutes, is amended to read:  
16 32-1451. Grounds for disciplinary action; duty to report;  
17 immunity; proceedings; board action; notice  
18 requirements

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

40 B. The chief executive officer, the medical director or the medical  
41 chief of staff of a health care institution shall inform the board if the  
42 privileges of a doctor to practice in that health care institution are  
43 denied, revoked, suspended or limited because of actions by the doctor that  
44 appear to show that the doctor is or may be medically incompetent, is or may  
45 be guilty of unprofessional conduct or is or may be mentally or physically

1 unable to safely engage in the practice of medicine, along with a general  
2 statement of the reasons, including patient chart numbers, that led the  
3 health care institution to take the action. The chief executive officer, the  
4 medical director or the medical chief of staff of a health care institution  
5 shall inform the board if a doctor under investigation resigns or if a doctor  
6 resigns in lieu of disciplinary action by the health care institution.  
7 Notification shall include a general statement of the reasons for the  
8 resignation, including patient chart numbers. The board shall inform all  
9 appropriate health care institutions in this state as defined in section  
10 36-401 and the Arizona health care cost containment system administration of  
11 a resignation, denial, revocation, suspension or limitation, and the general  
12 reason for that action, without divulging the name of the reporting health  
13 care institution. A person who reports information in good faith pursuant to  
14 this subsection is not subject to civil liability.

15 C. The board or, if delegated by the board, the executive director  
16 shall require, at the doctor's expense, any combination of mental, physical  
17 or oral or written medical competency examinations and conduct necessary  
18 investigations, including investigational interviews between representatives  
19 of the board and the doctor to fully inform itself with respect to any  
20 information filed with the board under subsection A of this section. These  
21 examinations may include biological fluid testing and other examinations  
22 known to detect the presence of alcohol or other drugs. The board or, if  
23 delegated by the board, the executive director may require the doctor, at the  
24 doctor's expense, to undergo assessment by a board approved rehabilitative,  
25 retraining or assessment program. This subsection does not establish a cause  
26 of action against any person, facility or program that conducts an  
27 assessment, examination or investigation in good faith pursuant to this  
28 subsection.

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

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

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

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

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

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

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

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

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

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

32           2. Require the licensee to complete designated continuing medical  
33 education courses.

34           3. File an advisory letter. The licensee may file a written response  
35 with the board within thirty days after the licensee receives the advisory  
36 letter.

37           4. Enter into an agreement with the doctor to restrict or limit the  
38 doctor's practice or professional activities or to rehabilitate, retrain or  
39 assess the doctor in order to protect the public and ensure the doctor's  
40 ability to safely engage in the practice of medicine. The board may also  
41 require the doctor to successfully complete a board approved rehabilitative,  
42 retraining or assessment program at the doctor's own expense pursuant to  
43 subsection F of this section.

44           5. File a letter of reprimand.



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

5           7. Fix a period and terms of probation best adapted to protect the  
6 public health and safety and rehabilitate or educate the doctor concerned.  
7 Probation may include temporary suspension for not to exceed twelve months,  
8 restriction of the doctor's license to practice medicine, a requirement for  
9 restitution of fees to a patient or education or rehabilitation at the  
10 licensee's own expense. If a licensee fails to comply with the terms of  
11 probation, the board shall serve the licensee with a written notice that  
12 states that the licensee is subject to a formal hearing based on the  
13 information considered by the board at the formal interview and any other  
14 acts or conduct alleged to be in violation of this chapter or rules adopted  
15 by the board pursuant to this chapter, including noncompliance with the term  
16 of probation, a consent agreement or a stipulated agreement. A licensee  
17 shall pay the costs associated with probation monitoring each year during  
18 which the licensee is on probation. The board may adjust this amount on an  
19 annual basis. The board may allow a licensee to make payments on an  
20 installment plan if a financial hardship occurs. A licensee who does not pay  
21 these costs within thirty days after the due date prescribed by the board  
22 violates the terms of probation.

23           J. If the board finds that the information provided in subsection A of  
24 this section warrants suspension or revocation of a license issued under this  
25 chapter, it shall initiate formal proceedings pursuant to title 41, chapter  
26 6, article 10.

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

32           L. An advisory letter is a public document.

33           M. Any doctor of medicine who after a formal hearing is found by the  
34 board to be guilty of unprofessional conduct, to be mentally or physically  
35 unable safely to engage in the practice of medicine or to be medically  
36 incompetent is subject to censure, probation as provided in this section,  
37 suspension of license or revocation of license or any combination of these,  
38 including a stay of action, and for a period of time or permanently and under  
39 conditions as the board deems appropriate for the protection of the public  
40 health and safety and just in the circumstance. The board may charge the  
41 costs of formal hearings to the licensee who it finds to be in violation of  
42 this chapter.

43           N. If the board acts to modify any doctor of medicine's prescription  
44 writing privileges, the board shall immediately notify the state board of  
45 pharmacy of the modification.

1           0. If the board, during the course of any investigation, determines  
2 that a criminal violation may have occurred involving the delivery of health  
3 care, it shall make the evidence of violations available to the appropriate  
4 criminal justice agency for its consideration.

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

8           1. Dismiss the complaint if a committee determines that the complaint  
9 is without merit.

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

13          3. Conduct a formal interview pursuant to subsection H of this  
14 section. This includes initiating formal proceedings pursuant to  
15 subsection J of this section and imposing civil penalties pursuant to  
16 subsection K of this section.

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

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

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

26           S. A physician who submits an independent medical examination pursuant  
27 to an order by a court OR PURSUANT TO SECTION 23-1026 is not subject to a  
28 complaint for unprofessional conduct unless, ~~a~~ IN THE CASE OF A  
29 COURT-ORDERED EXAMINATION, THE complaint is made or referred by a court to  
30 the board, OR IN THE CASE OF AN EXAMINATION CONDUCTED PURSUANT TO SECTION  
31 23-1026, THE COMPLAINT ALLEGES UNPROFESSIONAL CONDUCT BASED ON SOME ACT OTHER  
32 THAN A DISAGREEMENT WITH THE FINDINGS AND OPINIONS EXPRESSED BY THE PHYSICIAN  
33 AS A RESULT OF THE EXAMINATION. For the purposes of this subsection,  
34 "independent medical examination" means a professional analysis of medical  
35 status THAT IS based on a person's past and present physical, MEDICAL and  
36 psychiatric history and conducted by a licensee or group of licensees on a  
37 contract basis for a court OR FOR A WORKERS' COMPENSATION CARRIER,  
38 SELF-INSURED EMPLOYER OR CLAIMS PROCESSING REPRESENTATIVE IF THE EXAMINATION  
39 WAS CONDUCTED PURSUANT TO SECTION 23-1026.

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

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

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

4 V. In determining the appropriate action under this section, the board  
5 may consider a direct or indirect competitive relationship between the  
6 complainant and the respondent as a mitigating factor.

7 Sec. 4. Section 32-1855, Arizona Revised Statutes, is amended to read:  
8 32-1855. Disciplinary action; duty to report; hearing; notice;  
9 independent medical examinations; surrender of  
10 license

11 A. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, the board on its  
12 own motion may investigate any information that appears to show that an  
13 osteopathic physician and surgeon is or may be guilty of unprofessional  
14 conduct or is or may be mentally or physically unable safely to engage in the  
15 practice of medicine. A PHYSICIAN WHO CONDUCTS AN INDEPENDENT MEDICAL  
16 EXAMINATION PURSUANT TO AN ORDER BY A COURT OR PURSUANT TO SECTION 23-1026 IS  
17 NOT SUBJECT TO A COMPLAINT FOR UNPROFESSIONAL CONDUCT UNLESS, IN THE CASE OF  
18 A COURT-ORDERED EXAMINATION, THE COMPLAINT IS MADE OR REFERRED BY A COURT TO  
19 THE BOARD, OR IN THE CASE OF AN EXAMINATION CONDUCTED PURSUANT TO SECTION  
20 23-1026, THE COMPLAINT ALLEGES UNPROFESSIONAL CONDUCT BASED ON SOME ACT OTHER  
21 THAN A DISAGREEMENT WITH THE FINDINGS AND OPINIONS EXPRESSED BY THE PHYSICIAN  
22 AS A RESULT OF THE EXAMINATION. Any osteopathic physician or surgeon or the  
23 Arizona osteopathic medical association or any health care institution as  
24 defined in section 36-401 shall, and any other person may, report to the  
25 board any information the physician or surgeon, association, health care  
26 institution or other person may have that appears to show that an osteopathic  
27 physician and surgeon is or may be guilty of unprofessional conduct or is or  
28 may be mentally or physically unable safely to engage in the practice of  
29 medicine. The board shall notify the doctor about whom information has been  
30 received as to the content of the information as soon as reasonable after  
31 receiving the information. Any person who reports or provides information to  
32 the board in good faith is not subject to civil damages as a result of that  
33 action. If requested the board shall not disclose the informant's name  
34 unless it is essential to the disciplinary proceedings conducted pursuant to  
35 this section. It is an act of unprofessional conduct for any osteopathic  
36 physician or surgeon to fail to report as required by this section. The  
37 board shall report any health care institution that fails to report as  
38 required by this section to that institution's licensing agency. A person  
39 who reports information in good faith pursuant to this subsection is not  
40 subject to civil liability. FOR THE PURPOSES OF THIS SUBSECTION,  
41 "INDEPENDENT MEDICAL EXAMINATION" MEANS A PROFESSIONAL ANALYSIS OF MEDICAL  
42 STATUS THAT IS BASED ON A PERSON'S PAST AND PRESENT PHYSICAL, MEDICAL AND  
43 PSYCHIATRIC HISTORY AND CONDUCTED BY A LICENSEE OR GROUP OF LICENSEES ON A  
44 CONTRACT BASIS FOR A COURT OR FOR A WORKERS' COMPENSATION CARRIER,

1 SELF-INSURED EMPLOYER OR CLAIMS PROCESSING REPRESENTATIVE IF THE EXAMINATION  
2 WAS CONDUCTED PURSUANT TO SECTION 23-1026.

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

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

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

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

26 2. File a letter of concern.

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

30 4. Issue a nondisciplinary order requiring the licensee to complete a  
31 prescribed number of hours of continuing education in an area or areas  
32 prescribed by the board to provide the licensee with the necessary  
33 understanding of current developments, skills, procedures or treatment.

34 E. If, in the opinion of the board, it appears that information  
35 provided pursuant to this section is or may be true, the board may request an  
36 investigative hearing with the physician concerned. At an investigative  
37 hearing the board may receive and consider sworn statements of persons who  
38 may be called as witnesses in a formal hearing and other pertinent  
39 documents. Legal counsel may be present and participate in the meeting. If  
40 the physician refuses the request or if the physician accepts the request and  
41 the results of the investigative hearing indicate suspension of more than  
42 twelve months or revocation of the license may be in order, a complaint shall  
43 be issued and an administrative hearing shall be held pursuant to title 41,  
44 chapter 6, article 10. If, after the investigative hearing and a mental,  
45 physical or medical competence examination as the board deems necessary, the

1 board finds the information provided pursuant to this section to be true but  
2 not of sufficient seriousness to merit suspension or revocation of the  
3 license, it may take any of the following actions:

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

6 2. File a letter of concern.

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

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

12 5. Fix a period and terms of probation best adapted to protect the  
13 public health and safety and rehabilitate or educate the physician  
14 concerned. Any costs incidental to the terms of probation are at the  
15 physician's own expense.

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

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

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

21 9. Issue a nondisciplinary order requiring the licensee to complete a  
22 prescribed number of hours of continuing education in an area or areas  
23 prescribed by the board to provide the licensee with the necessary  
24 understanding of current developments, skills, procedures or treatment.

25 10. Issue an administrative warning.

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

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

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

40 I. A physician who, after an investigative or administrative hearing,  
41 is found to be guilty of unprofessional conduct or is found to be mentally or  
42 physically unable safely to engage in the practice of osteopathic medicine is  
43 subject to any combination of censure, probation, suspension of license,  
44 revocation of license, an order to return patient fees, imposition of hearing  
45 costs, imposition of a civil penalty of not to exceed five hundred dollars

1 for each violation for a period of time, or permanently, and under conditions  
2 the board deems appropriate for the protection of the public health and  
3 safety and just in the circumstances. The board may charge the costs of an  
4 investigative or administrative hearing to the licensee if pursuant to that  
5 hearing the board determines that the licensee violated this chapter or board  
6 rules.

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

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

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

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