

REFERENCE TITLE: dental board; investigation committees; delegation

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1369

Introduced by
Senator Pace

AN ACT

AMENDING SECTIONS 32-1206, 32-1207, 32-1263.02 AND 32-1263.03, ARIZONA
REVISED STATUTES; RELATING TO THE STATE BOARD OF DENTAL EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1206, Arizona Revised Statutes, is amended to
3 read:

4 32-1206. Compensation of board members; investigation
5 committee members

6 A. Members of the board are entitled to receive compensation in the
7 amount of ~~two hundred fifty dollars~~ \$250 for each day actually spent in
8 performing necessary work authorized by the board and all expenses
9 necessarily and properly incurred while performing this work.

10 B. MEMBERS OF AN INVESTIGATION COMMITTEE ESTABLISHED BY THE BOARD
11 MAY RECEIVE COMPENSATION IN THE AMOUNT OF \$100 FOR EACH COMMITTEE MEETING.

12 Sec. 2. Section 32-1207, Arizona Revised Statutes, is amended to
13 read:

14 32-1207. Powers and duties; executive director; immunity;
15 fees; definitions

16 A. The board shall:

17 1. Adopt rules that are not inconsistent with this chapter for
18 regulating its own conduct, for holding examinations and for regulating
19 the practice of dentists and supervised personnel and registered business
20 entities, provided THAT:

21 (a) Regulation of supervised personnel is based on the degree of
22 education and training of the supervised personnel, the state of
23 scientific technology available and the necessary degree of supervision of
24 the supervised personnel by dentists.

25 (b) Except as provided pursuant to sections 32-1276.03 and 32-1281,
26 only licensed dentists may perform diagnosis and treatment planning,
27 prescribe medication and perform surgical procedures on hard and soft
28 tissues.

29 (c) Only a licensed dentist, a dental therapist either under the
30 direct supervision of a dentist or pursuant to a written collaborative
31 practice agreement or a dental hygienist in consultation with a dentist
32 may perform examinations, oral health assessments and treatment sequencing
33 for dental hygiene procedures.

34 2. Adopt a seal.

35 3. Maintain a record that is available to the board at all times of
36 its acts and proceedings, including the issuance, denial, renewal,
37 suspension or revocation of licenses and the disposition of complaints.
38 The existence of a pending complaint or investigation shall not be
39 disclosed to the public. Records of complaints shall be available to the
40 public, except only as follows:

41 (a) If the board dismisses or terminates a complaint, the record of
42 the complaint shall not be available to the public.

1 (b) If the board has issued a nondisciplinary letter of concern,
2 the record of the complaint shall be available to the public only for a
3 period of five years after the date the board issued the letter of
4 concern.

5 (c) If the board has required additional nondisciplinary continuing
6 education pursuant to section 32-1263.01 but has not taken further action,
7 the record of the complaint shall be available to the public only for a
8 period of five years after the licensee satisfies this requirement.

9 (d) If the board has assessed a nondisciplinary civil penalty
10 pursuant to section 32-1208 but has not taken further action, the record
11 of the complaint shall be available to the public only for a period of
12 five years after the licensee satisfies this requirement.

13 4. Establish a uniform and reasonable standard of minimum
14 educational requirements consistent with the accreditation standards of
15 the American dental association commission on dental accreditation to be
16 observed by dental schools, dental therapy schools and dental hygiene
17 schools in order to be classified as recognized dental schools, dental
18 therapy schools or dental hygiene schools.

19 5. Establish a uniform and reasonable standard of minimum
20 educational requirements that are consistent with the accreditation
21 standards of the United States department of education or the council on
22 higher education accreditation and that must be observed by denture
23 technology schools in order to be classified as recognized denture
24 technology schools.

25 6. Determine the reputability and classification of dental schools,
26 dental therapy schools, dental hygiene schools and denture technology
27 schools in accordance with their compliance with the standard set forth in
28 paragraph 4 or 5 of this subsection, whichever is applicable.

29 7. Issue licenses to persons who the board determines are eligible
30 for licensure pursuant to this chapter.

31 8. Determine the eligibility of applicants for restricted permits
32 and issue restricted permits to those found eligible.

33 9. Pursuant to section 32-1263.02, investigate charges of
34 misconduct on the part of licensees and persons to whom restricted permits
35 have been issued.

36 10. Issue a letter of concern, which is not a disciplinary action
37 but refers to practices that may lead to a violation and to disciplinary
38 action.

39 11. Issue decrees of censure, fix periods and terms of probation,
40 suspend or revoke licenses, certificates and restricted permits, as the
41 facts may warrant, and reinstate licenses, certificates and restricted
42 permits in proper cases.

43 12. Collect and disburse monies.

1 13. Perform all other duties that are necessary to enforce this
2 chapter and that are not specifically or by necessary implication
3 delegated to another person.

4 14. Establish criteria for the renewal of permits issued pursuant
5 to board rules relating to general anesthesia and sedation.

6 B. The board may:

7 1. Sue and be sued.

8 2. Issue subpoenas, including subpoenas to the custodian of patient
9 records, compel attendance of witnesses, administer oaths and take
10 testimony concerning all matters within the board's jurisdiction. If a
11 person refuses to obey a subpoena issued by the board, the refusal shall
12 be certified to the superior court and proceedings shall be instituted for
13 contempt of court.

14 3. Adopt rules:

15 (a) Prescribing requirements for continuing education for renewal
16 of all licenses issued pursuant to this chapter.

17 (b) Prescribing educational and experience prerequisites for ~~the~~
18 ~~administration of~~ ADMINISTERING intravenous or intramuscular drugs for the
19 purpose of sedation or for ~~use of~~ USING general anesthetics in conjunction
20 with a dental treatment procedure.

21 (c) Prescribing requirements for obtaining licenses for retired
22 licensees or licensees who have a disability, including the triennial
23 license renewal fee.

24 4. Hire consultants to assist the board in the performance of its
25 duties and employ persons to provide investigative, professional and
26 clerical assistance as the board deems necessary.

27 5. Contract with other state or federal agencies as required to
28 carry out the purposes of this chapter.

29 6. If determined by the board, order physical, psychological,
30 psychiatric and competency evaluations of licensed dentists, dental
31 therapists and dental hygienists, certified denturists and applicants for
32 licensure and certification at the expense of those individuals.

33 7. ESTABLISH AN INVESTIGATION COMMITTEE CONSISTING OF NOT MORE THAN
34 ELEVEN LICENSEES WHO ARE IN GOOD STANDING, WHO ARE APPOINTED BY THE BOARD
35 AND WHO SERVE AT THE PLEASURE OF THE BOARD TO INVESTIGATE ANY COMPLAINT
36 SUBMITTED TO THE BOARD, INITIATED BY THE BOARD OR DELEGATED BY THE BOARD
37 TO THE INVESTIGATION COMMITTEE PURSUANT TO THIS CHAPTER.

38 C. The executive director or the executive director's designee may:

39 1. Issue and renew licenses, certificates and permits to applicants
40 who meet the requirements of this chapter.

41 2. Initiate an investigation if evidence appears to demonstrate
42 that a dentist, dental therapist, dental hygienist, denturist or
43 restricted permit holder may be engaged in unprofessional conduct or may
44 be unable to safely practice dentistry.

1 3. Initiate an investigation if evidence appears to demonstrate
2 that a business entity may be engaged in unethical conduct.

3 4. Subject to board approval, enter into a consent agreement with a
4 dentist, dental therapist, denturist, dental hygienist or restricted
5 permit holder if there is evidence of unprofessional conduct.

6 5. Subject to board approval, enter into a consent agreement with a
7 business entity if there is evidence of unethical conduct.

8 6. Refer cases to the board for a formal interview.

9 7. If delegated by the board, enter into a stipulation agreement
10 with a person under the board's jurisdiction for the treatment,
11 rehabilitation and monitoring of chemical substance abuse or misuse.

12 D. Members of the board are personally immune from liability with
13 respect to all acts done and actions taken in good faith and within the
14 scope of their authority.

15 E. The board by rule shall require that a licensee obtain a permit
16 for ~~the application of~~ APPLYING general anesthesia, semiconscious sedation
17 or conscious sedation, shall establish and collect a fee of not more than
18 ~~three hundred dollars~~ \$300 to cover administrative costs connected with
19 issuing the permit and shall conduct inspections to ensure compliance.

20 F. The board by rule may establish and collect fees for license
21 verification, board meeting agendas and minutes, published lists and
22 mailing labels.

23 G. This section does not prohibit the board from conducting its
24 authorized duties in a public meeting.

25 H. For the purposes of this section: ~~;~~

26 1. "GOOD STANDING" MEANS THAT A PERSON'S LICENSE HAS NOT BEEN
27 SUSPENDED OR REVOKED PURSUANT TO THIS CHAPTER.

28 2. "Record of complaint" means the document reflecting the final
29 disposition of a complaint or investigation.

30 Sec. 3. Section 32-1263.02, Arizona Revised Statutes, is amended to
31 read:

32 32-1263.02. Investigation and adjudication of complaints;
33 disciplinary action; civil penalty; immunity;
34 subpoena authority; definitions

35 A. The board on its OWN motion, or the ~~executive director~~
36 INVESTIGATION COMMITTEE if ~~delegated~~ ESTABLISHED by the board, may
37 investigate any evidence that appears to show the existence of any of the
38 causes or grounds for disciplinary action as provided in section 32-1263.
39 The board OR INVESTIGATION COMMITTEE may investigate any complaint that
40 alleges the existence of any of the causes or grounds for disciplinary
41 action as provided in section 32-1263. The board shall not act on its own
42 motion or on a complaint received by the board if the allegation of
43 unprofessional conduct, unethical conduct or any other violation of this
44 chapter against a ~~professional who holds an Arizona license~~ LICENSEE

1 occurred more than four years before the complaint is received by the
2 board. The four-year time limitation does not apply to:

3 1. Medical malpractice settlements or judgments, allegations of
4 sexual misconduct or an incident or occurrence that involved a felony,
5 diversion of a controlled substance or impairment while practicing by the
6 licensee.

7 2. The board's consideration of the specific unprofessional conduct
8 related to the licensee's failure to disclose conduct or a violation as
9 required by law.

10 B. At the request of the complainant, the board OR INVESTIGATION
11 COMMITTEE shall not disclose to the respondent the complainant name unless
12 the information is essential to proceedings conducted pursuant to this
13 article.

14 C. The board or ~~its designees~~ INVESTIGATION COMMITTEE shall conduct
15 necessary investigations, including interviews between representatives of
16 the board OR INVESTIGATION COMMITTEE and the licensee with respect to any
17 information obtained by or filed with the board under subsection A of this
18 section OR OBTAINED BY THE BOARD OR INVESTIGATION COMMITTEE DURING THE
19 COURSE OF AN INVESTIGATION. The results of the investigation conducted by
20 ~~a designee~~ THE INVESTIGATION COMMITTEE, INCLUDING ANY RECOMMENDATIONS FROM
21 THE INVESTIGATION COMMITTEE FOR DISCIPLINARY ACTION AGAINST ANY LICENSEE,
22 shall be forwarded to the board for its review.

23 D. THE BOARD OR INVESTIGATION COMMITTEE MAY DESIGNATE ONE OR MORE
24 PERSONS OF APPROPRIATE COMPETENCE TO ASSIST THE BOARD OR INVESTIGATION
25 COMMITTEE WITH ANY ASPECT OF AN INVESTIGATION.

26 ~~D.~~ E. If, based on the information ~~it~~ THE BOARD receives under
27 subsection A OR C of this section, the board finds that the public health,
28 safety or welfare imperatively requires emergency action and incorporates
29 a finding to that effect in its order, the board may order a summary
30 suspension of ~~the respondent's~~ A LICENSEE'S license pursuant to section
31 41-1092.11 pending proceedings for revocation or other action.

32 ~~E.~~ F. If a complaint refers to quality of care, the patient may be
33 referred for a clinical evaluation at the discretion of the board OR THE
34 INVESTIGATION COMMITTEE.

35 ~~F.~~ G. If, after completing its investigation OR REVIEW PURSUANT TO
36 THIS SECTION, the board finds that the information provided pursuant to
37 subsection A OR C of this section is insufficient to merit disciplinary
38 action against ~~the~~ A licensee, the board may take any of the following
39 actions:

- 40 1. Dismiss the complaint.
- 41 2. Issue a nondisciplinary letter of concern to the licensee.
- 42 3. Issue a nondisciplinary order requiring the licensee to complete
43 a prescribed number of hours of continuing education in an area or areas
44 prescribed by the board to provide the licensee with the necessary
45 understanding of current developments, skills, procedures or treatment.

1 4. Assess a nondisciplinary civil penalty in an amount not to
2 exceed ~~five hundred dollars~~ \$500 if the complaint involves the licensee's
3 failure to respond to a board subpoena.

4 ~~H.~~ H. If, after completing its investigation OR REVIEW PURSUANT TO
5 THIS SECTION, the board finds that the information provided pursuant to
6 subsection A OR C of this section is sufficient to merit disciplinary
7 action against ~~the~~ A licensee, the board may request that the licensee
8 participate in a formal interview before the board. If the licensee
9 refuses or accepts the invitation for a formal interview and the results
10 indicate that grounds may exist for revocation or suspension, the board
11 shall issue a formal complaint and order that a hearing be held pursuant
12 to title 41, chapter 6, article 10. If, after completing a formal
13 interview, the board finds that the protection of the public requires
14 emergency action, it may order a summary suspension of the license
15 pursuant to section 41-1092.11 pending formal revocation proceedings or
16 other action authorized by this section.

17 ~~H.~~ I. If, after completing a formal interview, the board finds
18 that the information provided under subsection A OR C of this section is
19 insufficient to merit suspension or revocation of the license, it may take
20 any of the following actions:

21 1. Dismiss the complaint.

22 2. Order disciplinary action pursuant to section 32-1263.01,
23 subsection A.

24 3. Enter into a consent agreement with the licensee for
25 disciplinary action.

26 4. Order nondisciplinary continuing education pursuant to section
27 32-1263.01, subsection B.

28 5. Issue a nondisciplinary letter of concern to the licensee.

29 ~~I.~~ J. A copy of the board's order issued pursuant to this section
30 shall be given to the complainant and to the licensee. Pursuant to title
31 41, chapter 6, article 10, the licensee may petition for rehearing or
32 review.

33 ~~J.~~ K. Any person who in good faith makes a report or complaint as
34 provided in this section to the board or to any person or committee acting
35 on behalf of the board is not subject to liability for civil damages as a
36 result of the report.

37 ~~K.~~ L. The board, through its president or the president's
38 designee, may issue subpoenas to compel the attendance of witnesses and
39 the production of documents and may administer oaths, take testimony and
40 receive exhibits in evidence in connection with an investigation initiated
41 by the board or a complaint filed with the board. In case of disobedience
42 to a subpoena, the board may invoke the aid of any court of this state in
43 requiring the attendance and testimony of witnesses and the production of
44 documentary evidence.

1 ~~L~~ M. Patient records, including clinical records, medical
2 reports, laboratory statements and reports, files, films, reports or oral
3 statements relating to diagnostic findings or treatment of patients, any
4 information from which a patient or a patient's family may be identified
5 or information received and records kept by the board as a result of the
6 investigation procedures taken pursuant to this chapter, are not available
7 to the public.

8 ~~M~~ N. The board may charge the costs of formal hearings conducted
9 pursuant to title 41, chapter 6, article 10 to a licensee it finds to be
10 in violation of this chapter.

11 ~~N~~ O. The board may accept the surrender of an active license from
12 a licensee who is subject to a board investigation and who admits in
13 writing to any of the following:

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

17 ~~O~~ P. In determining the appropriate disciplinary action under
18 this section, the board may consider any previous nondisciplinary and
19 disciplinary actions against a licensee.

20 ~~P~~ Q. If a licensee who is currently providing dental services for
21 a registered business entity believes that the registered business entity
22 has engaged in unethical conduct as defined pursuant to section 32-1263,
23 subsection D, paragraph 16, the licensee must do both of the following
24 before filing a complaint with the board:

- 25 1. Notify the registered business entity in writing that the
26 licensee believes that the registered business entity has engaged in a
27 policy or practice that interferes with the clinical judgment of the
28 licensee or that compromises the licensee's ability to comply with the
29 requirements of this chapter. The licensee shall specify in the notice
30 the reasons for this belief.
- 31 2. Provide the registered business entity with at least ten
32 calendar days to respond in writing to the assertions made pursuant to
33 paragraph 1 of this subsection.

34 ~~Q~~ R. A licensee who files a complaint pursuant to subsection ~~P~~ Q
35 of this section shall provide the board with a copy of the licensee's
36 notification and the registered business entity's response, if any.

37 ~~R~~ S. A registered business entity may not take any adverse
38 employment action against a licensee because the licensee complies with
39 the requirements of subsection ~~P~~ Q of this section.

40 ~~S~~ T. For the purposes of this section:

- 41 1. "License" includes a certificate issued pursuant to this
42 chapter.
- 43 2. "Licensee" means a dentist, dental therapist, dental hygienist,
44 denturist, dental consultant, restricted permit holder or business entity
45 regulated pursuant to this chapter.

