

House Engrossed
dental board; formal hearings

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2035

AN ACT

AMENDING SECTION 32-1263.02, 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 32-1263.02, Arizona Revised Statutes, is amended
3 to read:

4 32-1263.02. Investigation and adjudication of complaints;
5 disciplinary action; civil penalty; immunity;
6 subpoena authority; definitions

7 A. The board on its own motion, or the investigation committee if
8 established by the board, may investigate any evidence that appears to
9 show the existence of any of the causes or grounds for disciplinary action
10 as provided in section 32-1263. The board or investigation committee may
11 investigate any complaint that alleges the existence of any of the causes
12 or grounds for disciplinary action as provided in section 32-1263. The
13 board shall not act on its own motion or on a complaint received by the
14 board if the allegation of unprofessional conduct, unethical conduct or
15 any other violation of this chapter against a licensee occurred more than
16 four years before the complaint is received by the board. The four-year
17 time limitation does not apply to:

18 1. Medical malpractice settlements or judgments, allegations of
19 sexual misconduct or an incident or occurrence that involved a felony,
20 diversion of a controlled substance or impairment while practicing by the
21 licensee.

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

25 B. At the request of the complainant, the board or investigation
26 committee shall not disclose to the respondent the complainant name unless
27 the information is essential to proceedings conducted pursuant to this
28 article.

29 C. The board or investigation committee shall conduct necessary
30 investigations, including interviews between ~~THE INVESTIGATION COMMITTEE~~
31 ~~OR~~ representatives of the board ~~or investigation committee~~ and the
32 licensee with respect to any information obtained by or filed with the
33 board under subsection A of this section or obtained by the board or
34 investigation committee during the course of an investigation. The
35 results of the investigation conducted by the investigation committee,
36 including any recommendations from the investigation committee for
37 disciplinary action against any licensee, shall be forwarded to the board
38 for its review.

39 D. The board or investigation committee may designate one or more
40 persons of appropriate competence to assist the board or investigation
41 committee with any aspect of an investigation.

42 E. If, based on the information the board receives under subsection
43 A or C of this section, the board finds that the public health, safety or
44 welfare imperatively requires emergency action and incorporates a finding
45 to that effect in its order, the board may order a summary suspension of a

1 licensee's license pursuant to section 41-1092.11 pending proceedings for
2 revocation or other action.

3 F. If a complaint refers to quality of care, the patient may be
4 referred for a clinical evaluation at the discretion of the board or the
5 investigation committee.

6 G. If, after completing its investigation or review pursuant to
7 this section, the board finds that the information provided pursuant to
8 subsection A or C of this section is insufficient to merit disciplinary
9 action against a licensee, the board may take any of the following
10 actions:

11 1. Dismiss the complaint.

12 2. Issue a nondisciplinary letter of concern to the licensee.

13 3. Issue a nondisciplinary order requiring the licensee to complete
14 a prescribed number of hours of continuing education in an area or areas
15 prescribed by the board to provide the licensee with the necessary
16 understanding of current developments, skills, procedures or treatment.

17 4. Assess a nondisciplinary civil penalty in an amount not to
18 exceed \$500 if the complaint involves the licensee's failure to respond to
19 a board subpoena.

20 H. If, after completing its investigation or review pursuant to
21 this section, the board finds that the information provided pursuant to
22 subsection A or C of this section is sufficient to merit disciplinary
23 action against a licensee, the board may request that the licensee
24 participate in a formal interview before the board. If the licensee
25 refuses or accepts the invitation for a formal interview and the results
26 indicate that grounds may exist for revocation or suspension, the board
27 shall issue a formal complaint and order that a **FORMAL** hearing be held
28 pursuant to title 41, chapter 6, article 10. If, after completing a
29 formal interview, the board finds that the protection of the public
30 requires emergency action, it may order a summary suspension of the
31 license pursuant to section 41-1092.11 pending formal revocation
32 proceedings or other action authorized by this section.

33 **I. IF, AFTER COMPLETING ITS INVESTIGATION OR REVIEW PURSUANT TO
34 THIS SECTION, THE BOARD FINDS THAT THE INFORMATION PROVIDED PURSUANT TO
35 SUBSECTION A OR C OF THIS SECTION IS SUFFICIENT TO MERIT REVOCATION OR
36 SUSPENSION, THE BOARD MAY ISSUE A FORMAL COMPLAINT AND ORDER THAT A FORMAL
37 HEARING BE HELD PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.**

38 ~~I.~~ **J.** If, after completing a formal interview **OR FORMAL HEARING**,
39 the board finds that the information provided under subsection A or C of
40 this section is insufficient to merit suspension or revocation of the
41 license, it may take any of the following actions:

42 1. Dismiss the complaint.

43 2. Order disciplinary action pursuant to section 32-1263.01,
44 subsection A.

1 3. Enter into a consent agreement with the licensee for
2 disciplinary action.

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

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

6 ~~J.~~ K. A copy of the board's order issued pursuant to this section
7 shall be given to the complainant and to the licensee. Pursuant to title
8 41, chapter 6, article 10, the licensee may petition for rehearing or
9 review.

10 ~~K.~~ L. Any person who in good faith makes a report or complaint as
11 provided in this section to the board or to any person or committee acting
12 on behalf of the board is not subject to liability for civil damages as a
13 result of the report.

14 ~~L.~~ M. The board, through its president or the president's
15 designee, may issue subpoenas to compel the attendance of witnesses and
16 the production of documents and may administer oaths, take testimony and
17 receive exhibits in evidence in connection with an investigation initiated
18 by the board or a complaint filed with the board. In case of disobedience
19 to a subpoena, the board may invoke the aid of any court of this state in
20 requiring the attendance and testimony of witnesses and the production of
21 documentary evidence.

22 ~~M.~~ N. Patient records, including clinical records, medical
23 reports, laboratory statements and reports, files, films, reports or oral
24 statements relating to diagnostic findings or treatment of patients, any
25 information from which a patient or a patient's family may be identified
26 or information received and records kept by the board as a result of the
27 investigation procedures taken pursuant to this chapter, are not available
28 to the public.

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

32 ~~O.~~ P. The board may accept the surrender of an active license from
33 a licensee who is subject to a board investigation and who admits in
34 writing to any of the following:

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

38 ~~P.~~ Q. In determining the appropriate disciplinary action under
39 this section, the board may consider any previous nondisciplinary and
40 disciplinary actions against a licensee.

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

1 1. Notify the registered business entity in writing that the
2 licensee believes that the registered business entity has engaged in a
3 policy or practice that interferes with the clinical judgment of the
4 licensee or that compromises the licensee's ability to comply with the
5 requirements of this chapter. The licensee shall specify in the notice
6 the reasons for this belief.

7 2. Provide the registered business entity with at least ten
8 calendar days to respond in writing to the assertions made pursuant to
9 paragraph 1 of this subsection.

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

13 ~~S.~~ T. A registered business entity may not take any adverse
14 employment action against a licensee because the licensee complies with
15 the requirements of subsection ~~Q~~ R of this section.

16 ~~T.~~ U. For the purposes of this section:

17 1. "License" includes a certificate issued pursuant to this
18 chapter.

19 2. "Licensee" means a dentist, dental therapist, dental hygienist,
20 denturist, dental consultant, restricted permit holder or business entity
21 regulated pursuant to this chapter.