

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2754

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 32-1451, Arizona Revised Statutes, is amended to  
3 read:

4 32-1451. Grounds for disciplinary action; duty to report;  
5 immunity; proceedings; board action; notice  
6 requirements

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

1           B. The chief executive officer, the medical director or the medical  
2 chief of staff of a health care institution shall inform the board if the  
3 privileges of a doctor to practice in that health care institution are  
4 denied, revoked, suspended or limited because of actions by the doctor that  
5 appear to show that the doctor is or may be medically incompetent, is or may  
6 be guilty of unprofessional conduct or is or may be mentally or physically  
7 unable to safely engage in the practice of medicine, along with a general  
8 statement of the reasons, including patient chart numbers, that led the  
9 health care institution to take the action. The chief executive officer, the  
10 medical director or the medical chief of staff of a health care institution  
11 shall inform the board if a doctor under investigation resigns or if a doctor  
12 resigns in lieu of disciplinary action by the health care institution.  
13 Notification shall include a general statement of the reasons for the  
14 resignation, including patient chart numbers. The board shall inform all  
15 appropriate health care institutions in this state as defined in section  
16 36-401 and the Arizona health care cost containment system administration of  
17 a resignation, denial, revocation, suspension or limitation, and the general  
18 reason for that action, without divulging the name of the reporting health  
19 care institution. A person who reports information in good faith pursuant to  
20 this subsection is not subject to civil liability.

21           C. The board or, if delegated by the board, the executive director  
22 shall require, at the doctor's expense, any combination of mental, physical  
23 or oral or written medical competency examinations and conduct necessary  
24 investigations, including investigational interviews between representatives  
25 of the board and the doctor to fully inform itself with respect to any  
26 information filed with the board under subsection A of this section. These  
27 examinations may include biological fluid testing and other examinations  
28 known to detect the presence of alcohol or other drugs. The board or, if  
29 delegated by the board, the executive director may require the doctor, at the  
30 doctor's expense, to undergo assessment by a board approved rehabilitative,  
31 retraining or assessment program. ~~Nothing in~~ This subsection ~~creates~~ **DOES**  
32 **NOT ESTABLISH** a cause of action against any person, facility or program that

1 conducts an assessment, examination or investigation in good faith pursuant  
2 to this subsection.

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

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

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

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

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

23 F. If the board finds that it can take rehabilitative or disciplinary  
24 action without the presence of the doctor at a formal interview, it may enter  
25 into a consent agreement with the doctor to limit or restrict the doctor's  
26 practice or to rehabilitate the doctor in order to protect the public and  
27 ensure the doctor's ability to safely engage in the practice of medicine.  
28 The board may also require the doctor to successfully complete a board  
29 approved rehabilitative, retraining or assessment program at the doctor's own  
30 expense.

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

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

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

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

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

22           3. File an advisory letter. The licensee may file a written response  
23 with the board within thirty days after the licensee receives the advisory  
24 letter.

25           4. Enter into an agreement with the doctor to restrict or limit the  
26 doctor's practice or professional activities or to rehabilitate, retrain or  
27 assess the doctor in order to protect the public and ensure the doctor's  
28 ability to safely engage in the practice of medicine. The board may also  
29 require the doctor to successfully complete a board approved rehabilitative,  
30 retraining or assessment program at the doctor's own expense pursuant to  
31 subsection F of this section.

32           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.

1           M. Any doctor of medicine who after a formal hearing is found by the  
2 board to be guilty of unprofessional conduct, to be mentally or physically  
3 unable safely to engage in the practice of medicine or to be medically  
4 incompetent is subject to censure, probation as provided in this section,  
5 suspension of license or revocation of license or any combination of these,  
6 including a stay of action, and for a period of time or permanently and under  
7 conditions as the board deems appropriate for the protection of the public  
8 health and safety and just in the circumstance. The board may charge the  
9 costs of formal hearings to the licensee who it finds to be in violation of  
10 this chapter.

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

14           O. If the board, during the course of any investigation, determines  
15 that a criminal violation may have occurred involving the delivery of health  
16 care, it shall make the evidence of violations available to the appropriate  
17 criminal justice agency for its consideration.

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

21           1. Dismiss the complaint if a committee determines that the complaint  
22 is without merit.

23           2. Issue an advisory letter. The licensee may file a written response  
24 with the board within thirty days after the licensee receives the advisory  
25 letter.

26           3. Conduct a formal interview pursuant to subsection H of this  
27 section. This includes initiating formal proceedings pursuant to  
28 subsection J of this section and imposing civil penalties pursuant to  
29 subsection K of this section.

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

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

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

9 S. A physician who submits an independent medical examination pursuant  
10 to an order by a court is not subject to a complaint for unprofessional  
11 conduct unless a complaint is made or referred by a court to the board. For  
12 the purposes of this subsection, "independent medical examination" means a  
13 professional analysis of medical status based on a person's past and present  
14 physical and psychiatric history and conducted by a licensee or group of  
15 licensees on a contract basis for a court.

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

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

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

24 V. IN DETERMINING THE APPROPRIATE ACTION UNDER THIS SECTION, THE BOARD  
25 MAY CONSIDER BIAS OR IMPROPER MOTIVE ON THE PART OF THE COMPLAINANT AS A  
26 MITIGATING FACTOR."

27 Amend title to conform

KIMBERLY YEE

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8:40 AM  
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