

Demystifying Professional Regulation:

The Arizona Medical Board & Arizona Regulatory Board
of Physician Assistants

Raquel Rivera, MPH, CMBI
Investigations Manager

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Discussion

- Regulation
- What authority does the Board have to conduct investigations on licensed individuals?
- Investigations
- What are the possible outcomes of an investigation?
- What is the Physician Health Program?
- Friendly Reminders

Regulation

- Ensures public protection from incompetent or unethical practitioners.
- Provides assurance that practitioners can provide services in a safe and effective manner.
- Provide a means to discipline and or educate individuals who fail to comply with profession standards.

Administrative Law

- A branch of statutes, rules, policies, and court decisions that tell us how government agencies can and do operate.
- Functions:
 - Sets forth powers that can be exercised by administrative agencies.
 - Lays down principles governing the exercise of those powers.
 - Provides legal remedies to those aggrieved by administrative action

The Arizona Medical Board

Established 1913

Mission:

“To protect public safety through the judicious licensing, regulation, and education of all allopathic physicians.”

The Board may:

- Mandate remedial measures and/or limit or restrict the practice of physicians who are or may be unable to safely practice medicine.
- Permanently remove physicians from practice who cannot be, or refuse to be remediated, and/or those who demonstrate a repetitive pattern of errors that endanger the public and/or those who engage in egregious violations of the Medical Practice Act.
- Take appropriate remedial or disciplinary action against physicians who have made an isolated technical or judgment error.

Authority and Jurisdiction

- An administrative agency is a creature of statute and is only entitled to act within the jurisdiction created by legislation and in a manner the statute that created it prescribed.
- United States Constitution
- Arizona Revised Statutes
- Rules
- Substantive Policy Statements

Structure

- “90/10” agency
- Board Members
- Meetings

Board staff:

- Executive Director
- Deputy Director
- Assistant Attorney General
- Licensing specialists
- Investigators
- Administrative support staff

Professional License: Privilege or Property right?

- The granting of a license is considered a privilege, but once obtained, the license becomes a property right of the individual.

Substantive Due Process provides the following:

- Adequate notice of alleged wrongdoing
- Right to prepare and defend
- Right to participate in administrative proceedings
- Decision making by a fair and impartial tribunal
- Right to appeal adverse action

Investigations

- **The Arizona Medical Board (“Board”)** received over a thousand complaints last year against physicians who hold an Arizona license.
- The Board is obligated to investigate allegations **that are within the Board’s** jurisdiction.
- Legally Sufficient Complaint

Common Investigations

- Failing to meet the accepted standard of care
- Prescribing drugs in excess or without legitimate reason
- Actions taken by hospitals/employers
- Sexual Misconduct
- Failure to Maintain Adequate Medical Records
- Delegating Practice to an unlicensed individual
- Conviction of any felony and/or misdemeanor involving moral turpitude
- Dishonesty during the application process
- Alcohol and Substance Abuse
- Mental/Behavioral Health issues
- Actions taken by other states
- Medical malpractice settlements

Issues the Board CANNOT Address

- Anonymous Complaints
- Poor Bedside Manner
- *HIPAA Violations
- Incidents that Occurred over 4 Years Ago
- *Inmate Complaints
- *Billing/Insurance/Medicare Fraud
- *Independent Medical Examinations

*As of 1/1/2018- The statute of limitations changed to 4 years

Possible Resolutions from an Investigation

- Dismissed: No violation was found.
- Administratively Close: Investigation is closed but information is permanently **retained within the Board's** database and can be re-opened at a later time.
- Advisory Letter: Non-disciplinary action used for tracking purposes.
- Order for Continued Medical Education: This can be non-disciplinary or disciplinary
- Disciplinary Actions:
 - Letter of Reprimand
 - Decree of Censure
 - Probation
 - Restriction
 - Summary Suspension
 - Revocation

Complaint and Investigation Process Summary

Complaint Received

Within 5 days the Intake process is completed (*See Intake Process*)

Intake Process

Within 5 days of receipt of a complaint, the Intake Officer reviews the complaint to determine if it falls within the Board's jurisdiction, if so the complaint is referred to an investigator who assigns priority to the case based on the seriousness of the allegations.

Complaint Investigated

Complaint Investigation

The investigator assesses whether the complaint is about quality of care or professional conduct then contacts the complainant to confirm the allegations. The physician is notified that a response to the complaint is required and the investigator gathers relevant information including medical records.

Investigation Reviewed

Investigation findings are reviewed by a Supervisor who can request dismissal of complaint (*See Outcome 1*), request further investigation, or send to SIRC if violations are sustained

Professional conduct allegations are reviewed by the investigator. Quality of care complaints are reviewed by a Medical Consultant. The investigator/consultant writes a report opining on whether the investigation indicated violations of law or deviation from the standard of care.

Investigation Review

The Chief Medical Consultant reviews quality of care complaints and the Investigations Manager reviews professional conduct complaints to ensure the adequacy and completeness of investigations. These reviewers may recommend Executive Director dismissal or forward the complaint to SIRC

SIRC Review and Recommendation

SIRC reviews cases with sustained deviations and/or professional conduct violations and can request further investigation as needed

SIRC recommends one of three outcomes (*See outcomes below*) and notifies the licensee of their recommendations.

Sanction Options for Licensees

For disciplinary recommendations, other than license revocations and suspensions longer than 12 months, the licensee is notified that they may opt to sign a consent agreement for the recommended action, participate in a formal interview before the Board, or request that the complaint be heard by OAH.

Outcome 1:**Dismissal**

The Executive Director received a majority of dismissal recommendations and reviews the investigation materials to determine whether dismissal of the complaint is appropriate. Licensees and complainants are notified of the dismissal decision. Complainants may request that the Board review the Executive Director's decision to dismiss the complaint.

Outcome 2:**The Board considers the following:**

Some dismissal recommendations

Non-disciplinary recommendations, i.e., advisory letters and CME orders

Consent Agreements for discipline, i.e., Letters of Reprimand, Decrees of Censure, and/or probation, restrictions, suspensions, etc., signed by the physicians

Formal interviews after which the Board may do the following:

- a. Dismiss
- b. Issue an advisory letter or non-disciplinary order for CME
- c. Enter an order for discipline
- d. Refer to formal hearing if requesting revocation or suspension of more than 12 months

The Board can also review, approve, reject, or modify SIRC's recommendations, and/or return the case for further investigation.

Outcome 3:**Recommendation for Executive Director Referral to formal hearing**

All cases for which the ED or Board recommend license revocation or suspension for longer than 12 months are referred to formal hearing. The process is as follows:

1. Formal Complaint filed by AAG with OAH
2. Full evidentiary hearing before an ALJ
3. ALJ issues a recommended Decision (may include dismissal, non-discipline, or discipline)
4. Board may adopt, modify and adopt, or reject the ALJ's recommendation

If the Board enters an order for discipline after a formal interview or formal hearing, the physician may appeal. The process is as follows:

1. Request for Rehearing or Review (Board hears this request) – if the physician does not prevail



2. Judicial Review Action (Superior Court) – if the physician does not prevail



3. Notice of Appeal and briefing before the Court of Appeals – if the physician does not prevail



4. Petition for Review before the Arizona Supreme Court. (this court can choose whether or not to hear the appeal)

FY 2019 Statistics - MD

25,014 licensed MD's, 1,221 complaints opened

- Ended the Fiscal Year with 603 open investigations
- Average of 178 days to complete an investigation
- 92 cases resulted in discipline
- 94 cases resulted in non-disciplinary Advisory Letters
- 26 cases resulting in Advisory Letters with Non-Disciplinary CME
- 599 cases were either dismissed by the Executive Director (no violation) or the Board.

Physician Health Program (PHP)

The PHP is an Arizona Medical **Board (“Board”) sponsored program**, authorized by statute.

- substance abuse
- substance dependence
- medical, psychiatric, psychological or behavioral health disorders

Mission Statement

“**The** PHP ensures the protection of the public and safety through education, intervention, post-treatment monitoring and support for allopathic physicians and physician assistants who may suffer from health related issues.”

The PHP has four specific objectives:

1. To receive information from multiple sources about individuals who may be having difficulties with substance abuse or dependence disorders and other behavioral or mental health conditions.
2. To refer such individuals for a properly structured evaluation and/or treatment if indicated.
3. To monitor the initial treatment and assist the healthcare professional build a safe plan for their return to work.
4. To manage the chronic nature of addictive disorders in healthcare professionals through drug screen monitoring, self-help group attendance, psychotherapy as needed, and in general health and wellness.

Compliance

- The Board must monitor licensees under Board Orders.



**"If you think compliance is expensive,
try non-compliance."**

Former Deputy U.S. Attorney General Paul McNulty

- CME
- Prescribing restrictions
- Chart reviews
- Civil Penalties
- Formal Hearing Costs
- Quarterly reports from health care providers (SHA)
- Quarterly reports from PHP
- Out of state compliance
- Requests for modification or termination of Board Orders

Reporting Requirements

Criminal charges; mandatory reporting requirements; civil penalty

- A.R.S. § 32-3208(A)

“**A** health professional who has been charged with a *misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.”

*All allopathic physicians and physician assistants are required to contact the Board within 10 days following a charge pursuant to A.R.S. § 32-3208(A).

Duty to Report

- A.R.S. § 32-1451(A)

“**Any** person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.”

* *Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages*

Charges Involving Moral Turpitude

- Armed robbery
- Assault with a deadly weapon
- Attempted insurance fraud
- Embezzlement
- Fabricating and presenting false public claims
- False reporting to law enforcement
- Falsification of records of the court
- Forgery
- Fraud
- Hit and run
- Illegal sale and trafficking in controlled substances
- Indecent exposure
- Kidnapping
- Larceny
- Mann Act (Federal statute pertaining to the commercialization of women)
- Misleading sale of securities in connection with transfer of property
- Perjury
- Possession of heroin for sale/unlawful sale or dispensing of narcotics
- Sexual assault
- Shoplifting
- Soliciting prostitution
- Theft

A.R.S. § 32-1401(27)(d) -
Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude.



Noteworthy Reportable Misdemeanors

- DUI
- Assault
- Endangerment
- Indecent exposure
- Solicitation
- Theft
- Shoplifting
- Disorderly conduct
- Harassment
- Drug offenses
- Sexual offenses



*A complete list is available at www.azmd.gov

** All felony charges MUST be reported.

Physician Sexual Misconduct

Atlanta Journal Constitution: Doctors & Sex Abuse

- National investigation of doctor sex abuse cases.
- 3,100 accused doctors from 1999 to 2015.
- Arizona ranked 10th in the country in terms of how the state protects patients from abusive doctors.



A.R.S. § 32-1401(27)(aa) -

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 physician-patient relationship, was in a dating or engagement relationship with the licensee.

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

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

(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.

Reminders

- Duty to Report
- Self-report of all felony charges and reportable misdemeanors
- Self-report convictions of felonies and misdemeanors involving moral turpitude
- Update all contact information with the Board
- Ensure adequate and accurate documentation and record keeping
- Maintain appropriate patient boundaries
- Check and address CSPMP results
- Maintain communication during investigations
- Maintain annual Delegation Agreements with your PAs.
- Signing death certificates within 72 hours
- Be proactive about your health and wellness
- Medical Consultants Needed!

Summary

- By following up on complaints, disciplining and educating physicians, medical boards ensure public trust in the basic standards of competence and ethical behavior in their physicians.
- The Board has a repository of publicly available information about physicians.

Additional Information

- Arizona Medical Board www.azmd.gov

Investigations Manager

Raquel Rivera – 480-551-2769

Raquel.rivera@azmd.gov

Assistant Manager/PHP

Erinn Downey – 480-551-2732

Erinn.downey@azmd.gov