

Explanation Of Board Actions And Overview Of Complaint Categories

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ARIZONA MEDICAL BOARD
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EXPLANATION OF BOARD ACTIONS AND OVERVIEW OF COMPLAINT CATEGORIES (SPS 9)

The Board has adopted disciplinary rules to inform the public and licensees of possible sanctions for acts of unprofessional conduct. The Board has prepared this explanation of Board actions and overview of complaint categories to further assist the public and licensees by explaining the actions the Board may take, defining what those actions are and presenting an overview of the complaint categories the Board adjudicates.

The actions of the Board may be broadly defined as follows:>

- a. Mandating remedial measures and/or limiting or restricting the practice of physicians who are or may be unable to safely practice medicine.
- b. Permanently removing from practice physicians 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.
- c. Taking appropriate remedial or disciplinary action against physicians who have made an isolated technical or judgment error.
- d. Taking appropriate disciplinary or non-disciplinary measures against physicians who violate statutes not involving quality of care.
- e. Remediating or removing from practice physicians who lack the moral and ethical standards

B) DEFINITIONS

Board Action Definitions

Advisory Letter: a *non-disciplinary* letter to notify a physician that either:

- a. While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against a physician.
- b. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
- c. While a physician has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the Board believes that repetition of the activities that led to the investigation may result in further Board action against a physician.

The issuance of an advisory letter is not an appealable action. However, a physician may file a written response to the advisory letter. The response becomes a part of the physician's file.

Probation: a disciplinary action designed to assist a physician in remediating violations of the Medical Practice Act, and/or to provide the Board and the public with a mechanism for monitoring a physician's continuing practice to assure that the issues of concern are rectified and are not repetitive. Probation may be ordered as an independent disciplinary action or:

- a. in combination with additional continuing medical education; or
- b. in combination with another disciplinary action.

Letter of Reprimand: a disciplinary action issued for violations of the standard of care and/or other violations of the Medical Practice Act, including violations of a technical nature and isolated violations. The violations may or may not involve patient harm and generally do not involve issues of serious moral or ethical lapses in conduct or repetitive issues.

Decree of Censure: a disciplinary action issued for serious or repetitive deviations from the standard of care and/or the Medical Practice Act on the part of a physician that may, or did, cause serious harm to a patient or to the public. A Decree of Censure may also be issued when there have been serious moral and ethical lapses in conduct.

Summary Restriction: (“Cease and Desist”): a disciplinary action that immediately suspends an aspect of a physician’s practice pending a formal hearing.

Suspension: a disciplinary action that prohibits a physician from practicing for a defined period of time that may be imposed when a physician has not remediated prior unprofessional conduct or when a specific act is particularly egregious. Suspension may also be used when a physician commits an act of medical fraud and/or derives monetary benefit from the unprofessional conduct. Suspension is also used when there is a serious quality of care or behavioral issue requiring remediation prior to the resumption of active practice. A suspension can be imposed for up to 12 months without a formal hearing.

Inactive With Cause: A disciplinary action for a physician who is impaired by drug or alcohol abuse and who was under a Board Stipulation or Probationary Order that is no longer in effect. The Board may reactivate the license upon the physician’s successful completion of a diversion program.

Surrender: a disciplinary action entered into voluntarily by a physician and voted upon by the Board that immediately surrenders a physician’s license. A physician must admit to being unable to safely engage in the practice of medicine, to having committed an act of unprofessional conduct, or to having violated the Medical Practice Act or a Board rule. In order to again practice medicine in Arizona, a physician must wait 5 years and reapply for a license. Surrender is an alternative to Revocation.

Summary Suspension: a disciplinary action that immediately removes a physician from practice pending a formal hearing when there is evidence of an imminent danger to the public health and safety if a physician were to remain in practice during the normal complaint resolution or formal hearing process.

Revocation: a disciplinary action that rescinds a physician’s license when a violation of the Medical Practice Act involves severe moral turpitude or ethical misconduct, or the physician is unable to safely practice medicine and other remedial actions have either failed or are unlikely to be successful. The Board also revokes a license in instances of gross or repetitive incompetence and/or gross or repetitive negligence.

Other Definitions

Disciplinary Action: An action taken by the Board against a physician when there is evidence that the physician violated the Medical Practice Act.

Standard of Care: The care and treatment of patients that demonstrates a level of skill, judgment, knowledge, and documentation ordinarily exercised by a physician with similar background, training, and experience in a similar practice setting. Standard of care does not require perfection.

Moral turpitude: Conduct on the part of a physician that is contrary to justice, honesty, modesty or good morals. Moral Turpitude is described as "an act of depravity and baseness". It usually connotes a fraudulent or dishonest intent. [\(a\)](#)

Negligence: Failure to exercise that degree of care, skill and learning expected of a reasonably prudent physician or specialist in Arizona acting in the same or similar circumstances. See A.R.S. § 12-563.

Gross Negligence: Is an extreme departure from the standard of care; or conduct the physician knows or should know involves a high degree of probability that substantial harm will result; or is the product of reckless indifference to the results of an act.

Incompetence: Lacking sufficient knowledge or skills, or both, to a degree likely to endanger the health of patients. It is also the inability to perform physically or mentally.

Remediation: A program or probationary term requiring physician retraining in current standards of care in the practice of medicine. Typically, the remediation period reflects the level of retraining necessary in order to protect the public's health and safety.

Consent Agreement: A written agreement between a physician and the Board closing an open investigation prior to or following a formal interview or formal hearing. A consent agreement contains language waiving a physician's right of appeal. A consent agreement may be non-disciplinary if it is entered to resolve issues involving physical or mental disabilities of a physician.

Preponderance of Evidence: Evidence of greater weight or more convincing than evidence offered in opposition to it; evidence that as a whole shows that the fact sought to be proved is more probable than not. [\(b\)](#)

Toll: To suspend or stop temporarily. [\(c\)](#)

COMPLAINT CATEGORIES

Complaints to the Board fall roughly into the following categories:

1. Moral and Ethical (including prescribing and dispensing issues)
2. Legal Errors
3. Standard of Care
 - a. Technical Errors
 - b. System and Documentation Issues
 - c. Cognitive Errors or Performance Issues
4. Behavioral and Health
 - a. Substance Abuse/Chemical Dependency
 - b. Psychiatric Impairment/ Behavioral Disorders
 - c. Physical and Mental Impairment

Board complaints may fall into more than one category and involve the violation of more than one category of unprofessional conduct.

1. Moral and Ethical

If an investigation sustains a moral or ethical violation, the Board may consider the egregiousness of the offense and whether or not it is likely to reoccur. The following are examples of moral and ethical violations not involving prescribing and dispensing violations. They include, but are not limited to:

- a. Sexual misconduct with a patient
- b. Commission of a felony, or of a misdemeanor involving moral turpitude
- c. Fraudulent billing.
- d. False or fraudulent statement in connection with the practice of medicine
- e. False or fraudulent statement to the Board or in a credentialing application or during the course of an investigation.

Prescribing and Dispensing violations are generally considered moral and ethical violations. A physician who violates prescribing, dispensing, or other statutes to procure substances for abuse may be subject to discipline.

2. Legal Errors

Legal Errors refer to violations of law that do not implicate the quality of care rendered to a patient. They include, but are not limited to:

- a. Failure to transfer records in a timely fashion
- b. Failure to notify the Board of an address change
- c. False advertising
- d. Violations of statutes regarding fees
- e. Violations of Board orders.

3. Standard of Care

Complaints involving the standard of care encompass the bulk of the Board's complaints and may arise from cognitive/performance issues involving a physician, system and documentation issues, and technical errors.

a. Technical Errors

Technical errors arise when performing procedures or surgery.

b. System and Documentation Issues

System and documentation issues include, but are not limited to:

- a. Record keeping failures or deficiencies
- b. Failure to follow-up lab and X-ray reports
- c. Failure to institute procedures to appropriately triage patients for timely appointments and treatment

The Board frequently reviews charts with documentation that is inadequate to define and evaluate the patient's complaint. Sparse history of present illness and absent or extremely abbreviated physical exams are also grounds for Board action.

c. Cognitive Errors or Performance Issues

Cognitive Errors or Performance Issues involve judgment, medical decision-making, a physician's fund of knowledge, and the application of each to individual patients. Almost all complaints involve some element of medical decision-making and the quality of a physician's judgment.

The major elements that the Board may consider in dealing with cognitive errors are whether the incident is isolated or repetitive, and the degree to which it departs from the standard of care. The Board may also consider whether there are issues of overall competence involved and whether or not these are likely to be remediable.

If the complaint involves cognitive or performance issues, the Board may consider ordering a physician to undergo any of the following assessments before determining whether disciplinary action is appropriate:

- **Special Purpose Examination (SPEX):** SPEX is a computer-administered examination of approximately 420 multiple-choice questions that assess knowledge required of all physicians, regardless of specialty. It is used by the Board to determine basic competency issues.
- **Post-Licensure Assessment System (PLAS):** PLAS is a comprehensive system used to profile a physician's clinical performance and competency. The PLAS system utilizes computer based multiple-choice questions, computer based patient simulations, standardized patients, structured oral examinations, chart simulated recall interviews and other established methods of evaluation.
- **Physician Assessment and Clinical Education Program (PACE):** PACE is a two-day program that assesses mental health; neuropsychological performance; basic clinical and communication skills common to all physicians; and medical knowledge, skill and judgment pertaining to the specialty or subspecialty of the individual physician.

4. Behavioral and Health

Behavioral and health problems involve substance abuse and chemical dependency, psychiatric impairment, and physical and/or mental impairment.

a. Substance Abuse and Chemical Dependency

A physician who departs from the standard of care because of chemical dependency or abuse is subject to discipline.

- **A physician who relapses after successfully completing a voluntary confidential diversion program** must request his/her license be Inactivated with Cause. Before the license is reactivated, a physician must successfully complete long-term inpatient treatment for substance abuse. The Board considers requests for reactivation and may place a physician on Probation that provides that a third offense results in Revocation or Surrender of License.
- **A physician who relapses while currently being monitored in a voluntary program** must enter a Consent Agreement to not practice medicine until successful completion of long-term treatment and receiving Board approval to return to the practice. The Board may then place a physician on Probation that provides that a third offense results in Revocation or Surrender of License. If a license is revoked or surrendered a physician cannot reapply for licensure for 5 years. If a physician refuses to consent to not practice, the Board may suspend a physician after notice and an opportunity to be heard.

- **If a physician is reported to the Board as a result of a third party complaint for illegal activities related to chemical dependency:** a physician may be ordered to undergo further evaluation. Upon completion of the investigation, a physician may be placed on Probation.

b. Psychiatric Impairment/Behavioral Disorders

Some Board complaints involve the behavioral and/or psychiatric impairment of a physician. A complaint of alleged psychiatric impairment requires psychiatric, psychometric, and/or physical examination of the physician. Probation may be appropriate if the evaluation determines there is a psychiatric impairment and the physician refuses to voluntarily enter a rehabilitation agreement or a non-disciplinary practice limitation agreement.

Some physicians demonstrate behavioral problems that may not be psychiatric impairments but may require Probation if the physician refuses to voluntarily enter a rehabilitation agreement. For example, Probation mandating anger-management therapy, or a restriction of work hours.

c. Physical and/or Mental Impairment

Allegation of physical and/or mental impairment may require physical or psychometric evaluations. Board action to restrict or remove a physician from practice may be appropriate if the evaluation determines there is impairment and/or that the physician is a threat to public health and safety and the physician refuses to voluntarily enter a rehabilitation agreement or a non-disciplinary practice limitation agreement.

(a) *City Court of Tucson v. Lee*, 16 Ariz. App. 449, 452 (1972). Arizona courts have held that kidnapping, sexual assault, theft, fraud, embezzlement and forgery involve moral turpitude. They have also held that reckless driving, simple assault and disorderly conduct and possession of marijuana do not. Solicitation of prostitution can also be classified as an act of moral turpitude because it involves an offense that is significantly offensive to community moral standards. *State ex rel. Dean v. Dolny*, 161 Ariz. 361, 363 (App. 1984).

(b) Black's Law Dictionary with Pronunciations, Abridged Fifth Edition, 1983

(c) Black's Law Dictionary with Pronunciations, Abridged Fifth Edition, 1983