



# Statutes & Rules

Revised April 19, 2016

## Arizona State Board of Optometry

Statutes and rules are available on the website at  
[www.optometry.az.gov](http://www.optometry.az.gov) or [www.azleg.gov](http://www.azleg.gov) (statutes only)

### **MISSION STATEMENT**

The mission of the Optometry Board is to protect the health, safety and welfare of Arizona citizens by regulating and achieving the highest standards in the optometry profession.

# TABLE OF CONTENTS

## ARIZONA REVISED STATUTES CHAPTER 16, OPTOMETRY

Article 1 General Provisions .....	5
32-1701 Definitions .....	5
32-1702 Board of optometry; appointment; qualifications; term; removal .....	7
32-1703 Organization of board; compensation; immunity .....	7
32-1704 Powers and duties of the board.....	8
32-1705 Board of optometry fund.....	9
32-1706 Use of pharmaceutical agents .....	9
Article 2 Licensing .....	10
32-1721 Persons and acts not affected by this chapter .....	10
32-1722 Qualifications of applicant; applications .....	10
32-1723 Licensure by endorsement .....	11
32-1725 Issuance and display of license and certificate .....	12
32-1726 Renewal of license; continuing education; failure to renew.....	12
32-1727 Fees .....	13
32-1728 Pharmaceutical agents; certification; use; course of study.....	13
32-1730 Fingerprinting .....	14
Article 3 Regulation .....	15
32-1741 Practicing optometry without a license prohibited.....	15
32-1742 Registering with board; public registry file; current information.....	15
32-1743 Grounds for censure, civil penalty, probation, suspension, revocation, denial or renewal of license, certificate or registration .....	15
32-1744 Board investigations; duty to report violations; hearing; decision of board; informal settlement conference.....	16
32-1745 Prehearing conferences; orders .....	19
32-1746 Records; maintenance; confidentiality .....	20
32-1747 Right to examine and copy evidence .....	20
32-1747.01 Medical, physical or mental examinations; duty to report; immunity .....	20
32-1748 Reinstatement; definition .....	20
32-1749 Judicial review.....	21
32-1750 Allegations sufficient to charge violation.....	21
32-1751 Cease and desist orders; injunctive relief .....	21
32-1752 Violation; classification .....	22
32-1753 Practice designations; definition.....	22
Article 4 Referral .....	22
32-1761 Referral of patient to licensed physician required on finding of certain symptomatic conditions.....	22
Article 5 Dispensers of Contact Lenses .....	23
32-1771 Dispensing contact lenses; conformity with federal law; requirements .....	23

## ARIZONA ADMINISTRATIVE CODE CHAPTER 21, OPTOMETRY

ARTICLE 1. GENERAL PROVISIONS.....	23
R4-21-101 Definitions .....	23
R4-21-102 Fees and other Charges .....	25

R4-21-103	Time frames for Board Action.....	26
Table 1.	Time frames (in calendar days) .....	27
<b>ARTICLE 2. LICENSING PROVISIONS</b> .....		28
R4-21-201	Licensure by Examination .....	28
R4-21-202	Licensure by Endorsement.....	30
R4-21-203	Jurisprudence Examination.....	31
R4-21-204	License Issuance.....	32
R4-21-205	License Renewal.....	32
R4-21-205.1	Cardiopulmonary Resuscitation (“CPR”) Requirements .....	34
R4-21-206	License Reinstatement; Application for Licensure following License Expiration.....	34
R4-21-207	Course of Study Approval.....	35
R4-21-208	Certificate of Special Qualification; Pharmaceutical Agent Number.....	35
R4-21-209	Continuing Education Requirement .....	36
R4-21-210	Approval of Continuing Education .....	38
R4-21-211	Audit of Compliance with Continuing Education Requirement .....	39
R4-21-212	Waiver of or Extension of Time to Complete Continuing Education Requirement.....	39
<b>ARTICLE 3. STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION</b> .....		40
R4-21-301	Display of License; Surrender of License .....	40
R4-21-302	Advertising.....	40
R4-21-303	Affirmative Disclosures Required .....	40
R4-21-304	Vision Examination Standards .....	41
R4-21-305	Recordkeeping.....	41
R4-21-306	Optometric Prescription Standards; Release to Patients.....	42
R4-21-307	Vision Rehabilitation .....	44
R4-21-308	Anaphylactic-related Supplies .....	44
R4-21-309	Rehearing or Review of Board Decision .....	44
<b>OTHER RELATED STATUTES:</b> .....		45
32-3201	Definitions.....	45
32-3202	License or certificate suspension .....	46
32-3203	Malpractice claim investigation.....	46
32-3204	Experimental diagnosis, therapy or treatment; implied consent; definition.....	46
32-3205	Board disciplinary action; voting requirements .....	46
32-3206	Disciplinary action; information; disclosure.....	46
32-3207	Health professionals disease hazard; testing; petition; definition.....	47
32-3208	Criminal charges; mandatory reporting requirements; civil penalty .....	48
32-3209	Release of information; fees .....	48
32-3210	Billing for laboratory costs; unprofessional conduct; definition.....	48
32-3211	Medical records; protocol; unprofessional conduct; corrective action; exemptions.....	49
32-3213	Health professionals; disclosure; unprofessional conduct; definition.....	50
32-3214	Board actions; records; website; compliance deadline.....	50
32-3215	Medical marijuana; unprofessional conduct; annual reports; identifying information .....	50
32-3216	Health care providers; charges; public availability; direct payment; notice; definitions....	51
32-4301	License, certificate or registration expiration; military active duty; one hundred eighty day extension.....	53
32-4302	Out-of-state applicants; military spouses; reciprocity .....	54
35-143.01	Special funds; appropriation; reversion; use .....	55
12-2291	Definitions.....	56
12-2292	Confidentiality of medical records .....	57
12-2293	Release of medical records to patients and health care decision makers .....	57
12-2294	Release of medical records and payment records to third parties .....	58

12-2294.01	Release of medical records or payment records to third parties pursuant to subpoena.....	59
12-2295	Charges .....	61
12-2296	Immunity .....	62
12-2297	Retention of records.....	62
13-3620	Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions .....	62
41-1001.01	Regulatory bill of rights.....	66
41-1010	Complaints; public record .....	67
41-3023.08	Optometry board; termination July 1, 2023.....	68

# Chapter 16

## Arizona Revised Statutes

### Article 1 General Provisions

#### 32-1701 Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of optometry.
2. "Conviction" means a judgment of conviction by any state or federal court of competent jurisdiction in a criminal cause, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.
3. "Licensee" means a person licensed to practice the profession of optometry pursuant to this chapter.
4. "Optometrist" or "doctor of optometry" means a person who has graduated from an accredited college of optometry.
5. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa.
6. "Practice of the profession of optometry" means:
  - (a) The examination or refraction of the human eye and its appendages and the employment of any objective or subjective means or methods other than surgery for the purpose of diagnosing or treating any visual, muscular, neurological or anatomical anomalies of the eye.
  - (b) The use of pharmaceutical agents authorized pursuant to this chapter.
  - (c) The use of any instrument or device to train the visual system or correct any abnormal condition of the eye or eyes.
  - (d) The prescribing, fitting or employment of any lens, prism, frame or mountings for the correction or relief of or aid to the visual function, provided that superficial foreign bodies may be removed from the eye and its appendages.
  - (e) The taking of smears of the human eye and its adnexa for culture analysis and the ordering or performing of clinical tests that are appropriate to diagnose, treat or manage conditions of the human eye and its adnexa and that are limited to those CLIA-waived clinical tests approved pursuant to 42 Code of Federal Regulations section 493.15.
7. "Surgery" means, in reference to the human eye and its appendages, an invasive procedure in which in vivo human tissue is cut, burned, vaporized, removed, coagulated or photodisrupted by use of an electrical cautery, a scalpel, a cryoprobe, a laser or ionizing radiation. Surgery does not include nonsurgical procedures, including the removal of superficial foreign bodies or eyelashes or the use of lasers for diagnostic purposes.

8. "Unprofessional conduct" means:
- (a) Wilful betrayal of a professional secret or wilful violation of a privileged communication except as otherwise required by law.
  - (b) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not prohibit a bona fide lease based on the revenues earned by a licensee.
  - (c) Addiction to, or illegal use of, narcotic drugs or use of intoxicating beverages to excess or practicing or attempting to practice the profession of optometry while under the influence of intoxicating beverages or narcotic drugs.
  - (d) Impersonating another licensee.
  - (e) Knowingly having professional connection with or lending one's name to a person who is not a licensee.
  - (f) Gross negligence, repeated or continuing acts of negligence or incompetence in the practice of optometry.
  - (g) Any conduct or practice, including incompetency, that constitutes a danger to the health, welfare or safety of patients or the public.
  - (h) Prescribing, dispensing or pretending to use any secret means, methods, device or instrumentality.
  - (i) Refusing to divulge to the board on demand the means, methods, device or instrumentality used for optometric examination or therapy.
  - (j) Representing that a manifestly not correctable condition can be permanently corrected or that a correctable condition can be corrected within a stated time if this is not accurate.
  - (k) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of the profession of optometry, including advertising.
  - (l) Failing to comply with a board order or consent agreement.
  - (m) Fraud, forgery, unsworn falsification, false swearing or perjury involving a matter before the board or a written instrument submitted to the board.
  - (n) Wilfully and without legal justification failing to furnish in a timely manner information that is necessary for the board to conduct an investigation under this chapter and that has been requested or subpoenaed by the board.
  - (o) Conduct that discredits the profession.
  - (p) Sexual intimacies with a patient in the course of care or treatment.
  - (q) Falsely claiming attendance at a required continuing education course.

- (r) Soliciting patients by fraudulent or misleading advertising of any kind.
- (s) Aiding the practice of optometry by an unlicensed, incompetent or impaired person.
- (t) Sharing fees with a person or organization in return for soliciting customers by that person or organization.
- (u) Issuing a prescription order contingent on the purchase of ophthalmic services or materials.

**32-1702 Board of optometry; appointment; qualifications; term; removal**

- A. The state board of optometry is established consisting of the following members who are appointed by the governor to staggered four-year terms that end on July 1:
  - 1. Five members who have been licensed and engaged in the active practice of optometry in this state for at least three years immediately before the appointment.
  - 2. Two public members who do not have a direct or indirect interest in the practice of optometry, opticianry or medicine.
- B. The governor may remove any professional member for incompetency or unprofessional conduct or if the member's license has been revoked or suspended or if the member has been censured or placed on probation. The governor may remove any member for neglect of duty or improper conduct. The unexcused absence of a member for more than two consecutive meetings is justification for removal. Appointment by the governor to fill a vacancy caused other than by expiration of a term is for the unexpired portion of the term.
- C. A member of the board is ineligible to serve more than two consecutive full terms. The completion of the unexpired portion of a full term does not constitute a full term for purposes of this subsection.
- D. The board shall conduct regular meetings at least six times each year at times and places designated by the board or the governor. Special meetings may be called that the president determines are necessary to carry out the functions of the board, including meetings using communications equipment that allows all members participating in the meetings to hear each other.
- E. A majority of the members of the board constitutes a quorum and a majority vote of a quorum present at any meeting governs all actions taken by the board.

**32-1703 Organization of board; compensation; immunity**

- A. The board shall annually elect from its members a president who shall be chief presiding officer of the board and such other officers as it deems appropriate and necessary to conduct its business. The board shall assign such duties as it deems appropriate to such other officers as it elects.
- B. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent in the performance of their duties.
- C. Members of the board, its agents and employees and members of advisory committees are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

### **32-1704 Powers and duties of the board**

- A. The board shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses. The board shall adopt and use a seal, administer oaths and take testimony concerning any matter within its jurisdiction.
- B. The board may not adopt a rule that:
  - 1. Regulates a licensee's fees or charges to a patient.
  - 2. Regulates the place in which a licensee may practice.
  - 3. Prescribes the manner or method of accounting, billing or collection of fees.
  - 4. Prohibits advertising by a licensee unless the advertising is inconsistent with section 44-1481.
- C. The board shall maintain its records in accordance with a retention schedule approved by the Arizona state library, archives and public records.
- D. The board shall adopt rules for criteria it must use to approve continuing education programs for licensees. Programs shall be designed to assist licensees to maintain competency, to become aware of new developments in the practice of the profession of optometry and to increase management skills and administrative efficiency. The board shall approve programs that meet these criteria.
- E. Subject to title 41, chapter 4, article 4, the board may hire an executive director as an employee of the board. The executive director is responsible for the performance of the regular administrative functions of the board and such other administrative duties as the board may direct. The executive director is eligible to receive compensation in an amount as determined pursuant to section 38-611.
- F. The board may hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter, hire other employees subject to title 41, chapter 4, article 4 required to carry out this chapter and contract with other state agencies when required to carry out this chapter.
- G. The board may:
  - 1. Appoint advisory committees.
  - 2. Issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
  - 3. Charge reasonable fees for materials it has printed at its own expense.
  - 4. Delegate to the executive director, board staff and persons with whom the board contracts the board's licensing and regulatory duties. The board shall adopt rules for each specific licensing and regulatory duty the board delegates pursuant to this paragraph.
- H. Subject to title 41, chapter 4, article 4, the board may hire consultants and professional and clerical personnel as required to perform its duties.

- I. The board may contract with other state or federal agencies as required to carry out this chapter.
- J. Subject to the limitations of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.
- K. A person who is aggrieved by an action taken by the executive director, board staff or person with whom the board contracts may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the action by personal delivery or certified mail to that person's last known residence or place of business. At the next regular board meeting, the board shall review the action and approve, modify or reject the action.
- L. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

### **32-1705 Board of optometry fund**

- A. A board of optometry fund is established.
- B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of optometry fund.
- C. Monies deposited in the board of optometry fund are subject to section 35-143.01.  
32-1706 Use of pharmaceutical agents

### **32-1706 Use of pharmaceutical agents**

- A. A licensee may prescribe, dispense and administer over-the-counter pharmaceuticals and topical prescription pharmaceuticals subject to the pharmaceutical agent classifications specified in section 32-1728.
- B. Except as provided in subsection C of this section, a licensee may prescribe, dispense and administer the following oral prescription pharmaceuticals for the treatment of diseases of the eye and its adnexa for any one patient for each occurrence for a period of not more than the day limit recommended by the manufacturer or the physicians' desk reference, unless otherwise specified in this subsection, subject to the pharmaceutical agent classifications specified in section 32-1728:
  - 1. Anti-infectives classified as tetracycline and its derivatives, cephalosporins, penicillin and its derivatives, macrolides, fluoroquinolones and antivirals.
  - 2. Antihistamines.
  - 3. Nonsteroidal anti-inflammatory agents.
  - 4. Agents for the treatment of angle-closure glaucoma, including carbonic anhydrase inhibitors.
  - 5. Steroids in an amount that does not exceed the amount packaged for a single course of therapy of not more than seven days.

- C. A licensee may not prescribe, dispense or administer an oral pharmaceutical specified in subsection B of this section or a controlled substance as specified in subsection D of this section to a person who is under six years of age.
- D. A licensee may prescribe, dispense and administer a schedule III controlled substance only if it is an analgesic and any controlled substance only if it is an analgesic that is reclassified from schedule III to schedule II after January 1, 2014.
- E. A licensee shall not prescribe, dispense or administer the following prescription substances:
  - 1. An oral antifungal.
  - 2. An oral antimetabolite.
  - 3. An oral immunosuppressive.
  - 4. A substance administered intravenously.
  - 5. Except as provided in subsection F of this section, substances administered by injection.
  - 6. Except as provided in subsection D of this section, a schedule I, II, IV or V controlled substance.
- F. A licensee may use epinephrine auto-injectors to counteract an anaphylactic reaction.

## **Article 2 Licensing**

### **32-1721 Persons and acts not affected by this chapter**

This chapter does not apply to:

- 1. Physicians and surgeons duly licensed to practice medicine and surgery in this state, if they are practicing lawfully.
- 2. Dispensing opticians duly licensed to practice, if they are practicing lawfully in accordance with the provisions of section 32-1671.
- 3. The sale of complete ready-to-wear eyeglasses as merchandise from a permanently established place of business.
- 4. A licensed or unlicensed individual performing duties delegated under the authority of a licensee.

### **32-1722 Qualifications of applicant; applications**

- A. A person of good moral character who wishes to engage in the practice of the profession of optometry shall file with the board a verified application with the required application fee that includes:
  - 1. The applicant's name, age and address.
  - 2. Documentation of graduation from a university or college that teaches the profession of optometry and that is accredited by a nationally accepted accrediting body on optometric education.

3. Documentation of satisfactory completion of an equivalent course of study that is approved by the board in didactic education, pharmacology and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa and that either:
    - (a) Meets the contemporary educational requirements at colleges of optometry in the United States.
    - (b) Totals at least one hundred twenty hours.
  4. Documentation of the successful passage of a written examination as prescribed by the board.
  5. Background information on a form prescribed by the attorney general for the purpose of conducting an investigation into the existence of prior arrests and convictions.
  6. Disclosure of any investigation conducted or pending by an optometric regulatory board in another jurisdiction in the United States.
- B. On receipt of an application in proper form and containing the information prescribed in subsection A of this section, the board may investigate the applicant's character, ability and experience.
- C. For the purposes of an investigation that is conducted pursuant to subsection B of this section, the board may subpoena witnesses, administer oaths and take testimony with respect to the character of the applicant or to any matter affecting the application at a hearing held after sufficient notice has been given.
- D. If the board finds that the applicant has passed the examination provided for under section 32-1724 and that the applicant's character, ability and experience are satisfactory, the board shall issue a license.

### **32-1723 Licensure by endorsement**

The board shall waive the written examination requirements of this chapter if all of the following are true:

1. The applicant submits a license or a certified copy of a license to practice optometry issued by the regulatory board of another jurisdiction of the United States that has licensure requirements that the board determines meet or exceed the requirements of this chapter.
2. The license of the applicant has not been suspended or revoked by any other licensing jurisdiction of the United States for any cause that is a ground for suspension or revocation of a license under this chapter.
3. The applicant has been engaged in the practice of the profession of optometry continuously in the other licensing jurisdiction or in a United States military branch of service for not less than four of the five years immediately preceding the application.
4. The information provided by national data banks designated by the board has successfully verified the applicant.
5. The applicant meets the requirements of section 32-1722 concerning good moral character.

### **32-1724 Examination of applicants; time of examination**

- A. Licensing examinations shall be conducted and graded according to rules prescribed by the board. The board shall not grade examinations on a curve.
- B. The board may give applicants a written examination on subjects currently being taught in universities or colleges of optometry as well as on this state's statutes and rules relating to the practice of optometry. In lieu of its written examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that an applicant has passed board designated parts of the national board's examination. To receive a passing grade on a written examination administered by the board, an applicant shall receive a grade of not less than seventy-five per cent on the whole written examination and not less than fifty per cent in any one subject.
- C. The board may give applicants a practical examination on subjects currently being taught in universities or colleges of optometry and shall give an examination on this state's statutes and rules relating to optometry. In lieu of its practical examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that the applicant has passed board designated parts of the national board's examination. To receive a passing grade on a practical examination, an applicant shall receive a grade of not less than seventy-five per cent.
- D. Examinations shall be held at least once each year. Notice of examinations shall be given not less than sixty days before the date of examination. The board shall adopt rules to establish conditions under which an applicant who is unable to take the examination and who notifies the board before the date fixed for the examination may take the next examination.

### **32-1725 Issuance and display of license and certificate**

- A. The board shall issue to each applicant who satisfactorily passes the examination and who pays the license issuance fee pursuant to section 32-1727 a license under the seal and signatures of the members of the board. An applicant who does not pay the issuance fee within sixty days must submit a new application and all applicable fees pursuant to section 32-1727.
- B. A person who holds a license or certificate pursuant to this chapter must display the current, original document in a conspicuous place that is accessible to the public.
- C. A person who practices, conducts business or is employed at more than one location and who maintains a continuing activity as authorized by the license or certificate must display a board-issued duplicate of that document at each location.

### **32-1726 Renewal of license; continuing education; failure to renew**

- A. Except as provided in section 32-4301, beginning on September 1, 2001, a licensee who wishes to renew a license must do so every other year on or before the licensee's birthday by submitting a completed renewal form and the renewal fee prescribed by the board. A licensee who does not renew a license within thirty days after the licensee's birthday must also pay a late fee as prescribed by the board. A license expires if the licensee does not renew the license within four months after the licensee's birthday. A person who practices optometry in this state after that person's license has expired is in violation of this chapter.
- B. As a condition of renewal or reinstatement each licensee shall complete thirty-two hours of continuing education as prescribed by the board. The board shall require continuing education on the subject of

pharmaceutical use for doctors who are authorized by the board to prescribe, dispense, and administer pharmaceuticals. The board may waive or adjust the continuing education requirements for good cause shown.

- C. To reinstate an expired license a person must submit a written application and pay all delinquent biennial fees, all late fees and a fifty dollar penalty fee for each year the license remains unrenewed. The board shall not require the applicant to pass an initial licensing examination if the applicant meets the requirements of this subsection within five years after the license expired.
- D. A person holding a license to practice the profession of optometry in this state who has not engaged in the practice of the profession of optometry within a five year period shall pass an initial licensing examination before the license is renewed.

### **32-1727 Fees**

- A. The following fees shall be paid to the board:
  - 1. Filing an application for examination, one hundred fifty dollars.
  - 2. License issuance fee as established by the board.
  - 3. Renewal of a license to practice the profession of optometry as established by the board.
  - 4. Late renewal of a license as established by the board.
  - 5. Application for a license by endorsement, three hundred dollars.
  - 6. Duplicate license fee, thirty dollars.
  - 7. Certificates of special qualification, twenty dollars.
  - 8. Duplicate certificates of special qualification, twenty dollars.
  - 9. Optometry statute pamphlet fee, five dollars.
- B. Fees are not refundable.

### **32-1728 Pharmaceutical agents; certification; use; course of study**

- A. A licensee initially licensed after the effective date of the amendment to this section, a licensee licensed by endorsement after the effective date of the amendment to this section or a licensee who passed an examination conducted by the board for the use of oral pharmaceutical agents before the effective date of the amendment to this section may prescribe, dispense and administer a pharmaceutical agent subject to the limitations provided in this chapter.
- B. The board may reissue a certificate for renewal for the use of pharmaceutical agents for topical diagnostic or topical therapeutic pharmaceutical agents, or both, to a person who holds an existing certificate issued on or before the effective date of the amendment to this section and who pays the certificate of special qualification fee prescribed in section 32-1727. The certificate may specify the following:

1. Use of no drugs.
  2. Use of topical diagnostic agents.
  3. Use of topical diagnostic and therapeutic agents.
- C. The board may issue a certificate of special qualification to practice optometry without the use of pharmaceutical agents to a person who holds a current license as of July 1, 2000 and who pays the certificate of special qualification fee prescribed in section 32-1727.
- D. The board shall adopt a course of study for certification to use oral pharmaceuticals after consultation with colleges of optometry accredited by a nationally accepted accrediting body on optometric education and with the college of pharmacy at the university of Arizona. The board shall design and implement the course in a manner that requires a licensee who wishes to have the privilege of dispensing, prescribing and administering topical and oral pharmaceutical agents pursuant to this chapter meet the contemporary educational requirements related to pharmaceuticals authorized for licensees pursuant to this chapter at colleges of optometry in the United States and to demonstrate competence in dispensing, prescribing and administering those topical or oral pharmaceutical agents by passing examinations in those areas commensurate with doctoral candidates in colleges of optometry in the United States. The course of study shall teach and certify competence in the prescription and administration of topical or oral pharmaceutical agents pursuant to this chapter. The board shall adopt the course of study and completion requirements to reflect the current course of study and demonstrated competence level of pharmacy programs in colleges of optometry in the United States. The board may offer a course and examination that otherwise meets the requirements of this subsection and that is limited to oral pharmaceuticals for licensees who hold a valid diagnostic and therapeutic topical pharmaceutical permit issued pursuant to subsection A of this section.
- E. The board shall adopt a uniform prescription form for use by all licensees who have the privilege to prescribe, dispense and administer topical pharmaceuticals or oral pharmaceuticals. The prescription form shall indicate the prescribing authority of the licensees and whether the authority includes oral pharmaceuticals, topical pharmaceuticals or both oral pharmaceuticals and topical pharmaceuticals. The form shall include the name, address, telephone number, fax number and professional license number of the licensee.
- F. Annually on or before January 1 the state board of optometry shall mail to the Arizona state board of pharmacy the list of all licensees who have been certified to prescribe, dispense and administer either oral pharmaceuticals or topical pharmaceuticals, or both. Within thirty days of any additional certification by the state board of optometry, the state board of optometry shall provide updated lists to the Arizona state board of pharmacy. At the same time the state board of optometry shall send the list to each licensed pharmacy in Arizona, excluding hospital pharmacies, long-term care pharmacies and infusion pharmacies.

### **32-1730 Fingerprinting**

- A. Each applicant for licensure and license reinstatement pursuant to this chapter shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- B. If the board does not have any evidence or reasonable suspicion that the applicant has a criminal history, the board may issue a license before it receives the results of a criminal records check.

- C. The board shall suspend a license of a person who submits an unreadable set of fingerprints and does not submit a new readable set of fingerprints within twenty days after being notified by the board to do so.
- D. This section does not affect the board's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

### **Article 3 Regulation**

#### **32-1741 Practicing optometry without a license prohibited**

It is unlawful for a person to practice the profession of optometry or to hold himself out to be or assume or attempt to act as a doctor of optometry without a valid license to practice the profession of optometry.

#### **32-1742 Registering with board; public registry file; current information**

- A. Each licensee shall provide the board in writing the addresses of all permanent and extended temporary locations in which the licensee practices and the licensee's office telephone numbers, mailing address and residence address. Any notice required to be given by the board to a licensee shall be sent by mail to the licensee's most current mailing address shown on the records of the board. The board may attempt to give or serve notice at any other address or location on file with the board if service to the mailing address is unsuccessful. Service of a required notice is complete on the date of mailing to the licensee's mailing address.
- B. The board shall maintain a current registry of each licensee's name, office locations and mailing address. The registry is open to the public.
- C. Each licensee shall give written notice to the board within ten days following each change in the licensee's residence address, mailing address, office location or office telephone number.

#### **32-1743 Grounds for censure, civil penalty, probation, suspension, revocation, denial or renewal of license, certificate or registration**

- A. After notice and a hearing the board in its discretion may censure, impose a civil penalty, prescribe probation, suspend or revoke the license of a doctor of optometry or refuse to issue or renew a license, certificate or registration for any of the following reasons:
  - 1. Conviction of a felony or any offense involving moral turpitude.
  - 2. Procuring or attempting to procure a license to practice optometry or a certificate to use pharmaceutical agents by fraud, deceit, misrepresentation or knowingly taking advantage of the mistake of another person or agency.
  - 3. Conduct likely to deceive or defraud the public.
  - 4. Unprofessional conduct.
  - 5. Employment of a solicitor to solicit business or soliciting from house to house or person to person.
  - 6. Obtaining a fee or compensation by fraud or misrepresentation.

7. Employment of a person to engage in the practice of the profession of optometry who does not hold a license to practice the profession of optometry in this state.
  8. Using any device to evade or defeat the provisions of this chapter, such as a profit sharing plan or partnership with a person not licensed to practice the profession of optometry in this state.
  9. The practice of the profession of optometry under a false or assumed name.
  10. Violation of any provision of this chapter or any board order.
  11. Violation of any of the rules adopted by the board pursuant to this chapter.
  12. Any violation of any statutes, laws or rules regulating the practice of optometry in this state or any other jurisdiction in the United States.
  13. Providing any controlled substance or pharmaceutical agent not authorized by this chapter or providing any controlled substance or prescription-only drug for other than accepted therapeutic purposes for diagnosis and treatment of conditions of the human eye and its adnexa.
  14. Gross malpractice or repeated acts constituting malpractice.
  15. Failing to maintain or submit records as required by this chapter.
- B. To determine the appropriate disciplinary action pursuant to this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

**32-1744 Board investigations; duty to report violations; hearing; decision of board; informal settlement conference**

- A. The board on its own motion shall investigate any evidence that appears to show that a licensee may be guilty of a violation of section 32-1743. Any person may report to the board information the person may have that appears to show that a licensee may be guilty of unprofessional conduct or of practice without regard for the safety and welfare of the public. A person who reports or provides information to the board in good faith is not subject to civil damages as a result. The name of the person reporting information pursuant to this subsection is subject to the disclosure requirements prescribed in section 41-1010.
- B. The board or its designee shall register and investigate all complaints. On receipt of a complaint, the board or its designee shall send the licensee a copy of the complaint for a response. The board shall review the complaint and response and may dismiss the complaint, investigate it further or bring its own complaint against the licensee. The board may resolve a disciplinary matter informally or after a formal hearing. The board or its designee shall inform the complainant of the findings of the investigation and the resolution of the complaint.
- C. The board, its designee or the executive director shall require a licensee to provide a written response to a complaint within twenty days after the licensee receives the notification of complaint.
- D. Except as provided in subsection F of this section, if in the opinion of the board it appears that information provided under subsection A of this section may be accurate and a violation of this chapter, the board shall request an informal interview with the licensee before proceeding to a formal hearing. If the licensee refuses an invitation for an informal interview, or if the licensee accepts the invitation and if

the results of the interview indicate suspension or revocation of license may be in order, a complaint shall be issued and a formal hearing held pursuant to title 41, chapter 6, article 10. If at the informal interview the board finds the information provided under subsection A of this section is accurate but not of sufficient seriousness to merit suspension exceeding thirty days or revocation of the license, it may take any or all of the following actions:

1. Issue a decree of censure or written reprimand.
  2. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate the licensee. Probation may include a requirement for a refund of fees and charges to professional services clients resulting from services performed in violation of this chapter or rules adopted pursuant to this chapter, restriction of a license to practice or temporary suspension not to exceed thirty days. Failure to comply with probation is cause for filing a complaint and holding a formal hearing pursuant to title 41, chapter 6, article 10.
  3. Impose a civil penalty of not more than five thousand dollars for each violation of this chapter.
  4. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- E. If the board determines that a reasonable basis exists to believe that a violation of this chapter or rules adopted pursuant to this chapter has occurred and the violation is not sufficiently serious to warrant disciplinary action, it may send a letter of concern to the licensee. The letter of concern shall advise the licensee of the possible violation and the board's decision not to initiate proceedings. If violations occur after the board sends a letter of concern, the board may initiate proceedings on all violations, including the violation that was the subject of the letter of concern.
- F. If in the opinion of the board it appears that information provided under subsection A of this section may be accurate, the board may issue a complaint and hold a formal hearing pursuant to title 41, chapter 6, article 10 without first holding an informal interview if the probable violation involves one or more of the following:
1. Gross negligence.
  2. Fraud, forgery, unsworn falsification, false swearing or perjury.
  3. Three or more repeated offenses.
  4. Conviction of a felony.
  5. Conviction of an offense involving moral turpitude.
  6. Incompetence.
  7. Failing to comply with a board order or consent agreement.
  8. Wilfully and without legal justification failing to furnish in a timely manner information necessary for the board to conduct an investigation under this chapter that has been requested or subpoenaed by the board.

- G. The board shall serve on the licensee a notice fully setting forth the conduct or inability concerned and returnable at a hearing to be held before the board or an administrative law judge in not less than thirty days, stating the time and place of the hearing. A licensee who has been notified of a complaint pursuant to this subsection must file with the board a written response not more than twenty days after service of the complaint and notice of hearing. If the licensee fails to answer in writing, it is deemed an admission of the act or acts charged in the complaint and notice of hearing. The board may then take disciplinary action pursuant to this chapter without a hearing.
- H. At the expense of the licensee, the board may require a medical, mental or physical examination and make an investigation, including, if necessary, the issuance of subpoenas, the appointment of advisory committees, the employment of expert witnesses or otherwise, as may be required fully to inform itself with respect to the complaint.
- I. A person may file a motion with the board for an expedited hearing pursuant to section 41-1092.05.
- J. If the licensee wishes to be present at the hearing in person or by representation, or both, the licensee shall file with the board an answer to the charges in the complaint. The answer shall be in writing, verified under oath and filed within twenty days after service of the summons and complaint.
- K. At the hearing held in compliance with subsection G of this section, a licensee may be present in person together with any counsel and witnesses the licensee chooses.
- L. The board shall issue subpoenas for witnesses it may need and, at the respondent's expense, for witnesses the respondent may request. All provisions of law compelling a person under subpoena to testify are applicable to a hearing held pursuant to this section.
- M. The board shall serve every notice or decision under this article by any method reasonably calculated to effect actual notice on the board and every other party to the action to the party's last address of record with the board. Each party shall inform the board of any change of address within five days after the change.
- N. A licensee who, after a hearing, is found to be guilty by the board of a violation of this chapter is subject to censure, probation or civil penalty as provided in subsection D of this section, suspension of license or revocation of license, or any combination of these, and for the period of time or permanently and under the conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of formal hearings to the licensee who is in violation of this chapter.
- O. The board shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The board shall serve a copy of the decision on the licensee. On the licensee's request, the board shall also transmit to the licensee the record of the hearing.
- P. Except as provided in this subsection, all materials, documents and evidence associated with a pending or resolved complaint or investigation are confidential and are not public records. The following materials, documents and evidence are not confidential and are public records if they are related to resolved complaints and comply with subsection A of this section:
1. The complaint.
  2. The response and any rebuttal statements submitted by the licensee.

3. Written or recorded board discussions of the complaint.
  4. Written reports of an investigation of a complaint.
  5. Disposition of the complaint, including any written comments of the board.
- Q. This section or any other law making communications between a licensee and the licensee's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.
- R. Any action of the board shall be included in the minutes of the meeting at which the action is taken, including any determination by the board not to proceed under this section. The person reporting information to the board shall receive a copy of any final decision.
- S. Pursuant to sections 35-146 and 35-147, the board shall deposit civil penalties collected pursuant to this chapter in the state general fund.
- T. A licensee who is the subject of a disciplinary action may request an informal settlement conference. The licensee must submit a request for an informal settlement conference to the board in writing. The board shall hold an informal settlement conference within fifteen days after it receives a request to do so from the licensee. Only a person with the authority to act on behalf of the board may represent the board at the informal settlement conference. The board representative shall notify the licensee in writing that any written or oral statement made by the licensee at the informal settlement conference, including statements for the purpose of settlement negotiations, is inadmissible in any subsequent hearing. A licensee who participates in an informal settlement conference waives the right to object to the participation of the board representative in the final administrative decision.

### **32-1745 Prehearing conferences; orders**

- A. On the written request of a licensee, the board may schedule a prehearing conference at least ten days before the hearing date scheduled pursuant to section 32-1744. The board shall notify the licensee who requested a prehearing conference of its decision within five business days. If the board agrees to hold a prehearing conference the notification shall include the date, time and place of the conference.
- B. To promote the orderly and prompt conduct of the hearing, the board may use a prehearing conference for the purposes prescribed in section 41-1092.05, subsection F and for any other matter related to the hearing.
- C. The board may conduct all or part of the prehearing conference by electronic means if each party in the prehearing conference can hear and has an opportunity to participate during the entire conference.
- D. After a prehearing conference and before the hearing, the board shall enter an order verbally on the record or in writing. The order shall state the stipulations and admissions made, actions taken and other matters resolved. The board shall modify this order only to prevent manifest injustice, as determined by the board.
- E. Whether or not a prehearing conference is held, the board may issue an order to regulate the conduct of the hearing and to limit the issues to those raised in the pleadings.

### **32-1746 Records; maintenance; confidentiality**

- A. A licensee must allow the board to inspect patient records during normal business hours. Before a licensee may change the location of patient records, the licensee must file a signed statement with the board that discloses the new address where the licensee will maintain the records.
- B. All patient records, examination materials, records of examination grading and performance and transcripts of educational institutions concerning applicants and licensees are confidential and are not public records.

### **32-1747 Right to examine and copy evidence**

In connection with the investigation by the board on its own motion or as the result of information received pursuant to section 32-1744, the board or its duly authorized agents or employees may examine and copy during normal business hours any documents, reports, records or other physical evidence of any person being investigated, or the reports, the records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or other public or private agency, and any health care institution as defined in section 36-401, if the documents, reports, records or evidence relates to competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice the profession of optometry.

#### **32-1747.01 Medical, physical or mental examinations; duty to report; immunity**

- A. If the board believes, based on its own information or a complaint or inquiry directed to the board, that a licensee is suffering from a medical, physical or mental condition that might impede the licensee's ability to practice competently, the board may order the licensee to undergo a medical, physical or mental examination by persons designated by the board, at the licensee's expense.
- B. A licensee's failure to submit to an examination directed by the board is an admission of the allegations, and the board may take appropriate action to protect the public health and safety.
- C. The board, at reasonable intervals, shall allow a licensee whose license has been suspended, limited or revoked pursuant to this section to demonstrate that the licensee is able to resume the competent practice of optometry with reasonable skill and safety to patients.
- D. If a licensee has reason to believe that another licensee has engaged in unprofessional conduct, the licensee must report the licensee to the board. The board shall not disclose the identity of the reporting licensee until the board completes its investigation. The board shall not disclose the name of the licensee under investigation until it completes its investigation.
- E. The board shall record and assign a case number to each complaint or allegation it receives.
- F. A licensee who reports information to the board pursuant to this section or testifies in any related investigation in good faith is not subject to civil liability.

### **32-1748 Reinstatement; definition**

- A. On written application and for good cause shown, the board may issue a new license to a doctor of optometry whose license has been revoked, reissue a license or modify the suspension of any license to practice optometry that has been suspended.

- B. A person applying for reinstatement of a revoked license, in addition to the requirements of this section, shall comply with all initial licensing requirements in existence at the time of the application for reinstatement, except those requirements that are inconsistent with this section.
- C. The board shall not issue a new license or reissue a license to a doctor of optometry whose license has been revoked until two years after the effective date of the revocation, except that if the revocation is based only on section 32-1743, subsection A, paragraph 1 and the conviction is ultimately reversed on appeal, the board shall enter an order vacating the revocation.
- D. For the purposes of this section, "good cause shown" means that the person making application for reinstatement or reissuance shall demonstrate through substantial evidence presented to the board that the person is completely rehabilitated with respect to the conduct that was the basis of the revocation or suspension of the license. Demonstration of rehabilitation shall include:
  - 1. Evidence that the person has not engaged in any conduct during the revocation or suspension period that, if the person had been licensed during that period, would have constituted a basis for revocation or suspension pursuant to section 32-1743.
  - 2. Evidence that, with respect to any criminal conviction that constituted any part of the basis for the previous revocation or suspension, the person's civil rights have been fully restored pursuant to statute or other applicable recognized judicial or gubernatorial order.
  - 3. Evidence that restitution has been made to any aggrieved party as ordered by a court of competent jurisdiction.
  - 4. Other evidence of rehabilitation the board deems appropriate.

### **32-1749 Judicial review**

Except as provided in section 41-1092.08, subsection H, a doctor of optometry aggrieved by a final decision of the board in a disciplinary proceeding is entitled to judicial review pursuant to title 12, chapter 7, article 6 in superior court in Maricopa county.

### **32-1750 Allegations sufficient to charge violation**

In charging a person in a complaint for an injunction or in an affidavit, information or indictment with a violation of this chapter by practicing the profession of optometry without a license, it is sufficient to charge that he did upon a certain day and in a certain county engage in the practice of the profession of optometry, not having a valid license to do so, without averring any more particular facts concerning the act.

### **32-1751 Cease and desist orders; injunctive relief**

- A. In addition to all other remedies, if after conducting an investigation, either on complaint or otherwise, and for good cause shown it appears to the board that any person has engaged in or is engaging in an act, practice or transaction that violates this chapter or any rule or order of the board, the board may do either of the following:
  - 1. Serve on the person by certified mail or personal service a cease and desist order requiring the person to cease and desist immediately, on receipt of the notice, from engaging in the act, practice or transaction. If the board issues a cease and desist order it shall conduct a hearing within thirty days to determine whether the order should be continued or eliminated and to determine whether the board should take other appropriate action.

2. Through the attorney general or the county attorney of the county in which the violation is alleged to have occurred apply to the superior court in that county for an injunction restraining that person from engaging in the violation.
- B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the board to post a bond.
- C. Service of process may be on the defendant in any county of this state where the defendant is found.
- D. Violation of an injunction is punishable as contempt of court.
- E. An injunction does not relieve a person practicing the profession of optometry without a license from criminal prosecution but is in addition to any remedy provided for the criminal prosecution.

### **32-1752 Violation; classification**

A person who practices the profession of optometry without at the time having a valid license to practice, or who files or attempts to file with the board of optometry practice locations under a license issued to another, claiming to be the person entitled to practice under such license, is guilty of a class 2 misdemeanor.

### **32-1753 Practice designations; definition**

- A. A licensee must practice the profession of optometry only as either:
  1. A sole practitioner.
  2. A partner with other health professionals.
  3. A professional limited liability company in which health professionals collectively possess at least fifty-one per cent of the ownership interest.
  4. A professional corporation in which health professionals collectively possess at least fifty-one per cent of the ownership interest.
  5. An employee or independent contractor in any of the categories listed in this subsection.
- B. A licensee must practice only under the name under which the licensee is registered with the board, which may include a trade name.
- C. For purposes of this section, "health professional" means a currently licensed member of the health professions as defined in section 32-3101.

## **Article 4 Referral**

### **32-1761 Referral of patient to licensed physician required on finding of certain symptomatic conditions**

An optometrist licensed pursuant to this chapter and providing service to any person shall refer such person to a physician licensed pursuant to chapter 13 or 17 of this title when such optometrist finds an indication of the presence of a disease or condition of the eye requiring treatment outside the scope of practice of the profession of optometry as defined in section 32-1701.

## **Article 5 Dispensers of Contact Lenses**

### **32-1771 Dispensing contact lenses; conformity with federal law; requirements**

- A. All sales of and prescriptions for contact lenses in this state must conform to the federal fairness to contact lens consumers act (15 United States Code sections 7601 through 7610).
- B. Contact lenses used to determine a prescription for contact lenses are considered to be diagnostic lenses. After the diagnostic and trial period and after the contact lenses have been adequately fitted and the patient has been released from immediate follow-up care by a person who is licensed pursuant to this chapter or chapter 13 or 17 of this title, the prescribing optometrist shall provide a prescription for contact lenses at no cost to the patient.
- C. Contact lenses may not be sold or dispensed except pursuant to a prescription order that conforms to state and federal regulations governing prescriptions.

## **ARIZONA ADMINISTRATIVE CODE**

### **ARTICLE 1. GENERAL PROVISIONS**

#### **R4-21-101 Definitions**

In addition to the definitions in A.R.S. §32-1701, the following apply to this Chapter:

“Accredited” means approved by the ACOE.

“ACOE” means the Accreditation Council on Optometric Education.

“Active license” means a license that is current and has not expired.

“Advertisement” means a written, oral, or electronic communication that an ordinary person would perceive is designed to influence, directly or indirectly, a decision regarding ophthalmic goods or optometric services.

“Applicant” means:

An individual who applies to the Board under A.R.S. §§32-1722 or 32-1723 and A.A.C. R4-21-201 or R4-21-202 for a license to practice the profession of optometry, but has not been granted the license;

A licensee who applies under A.R.S. §32-1726 and R4-21-205 for license renewal;

A licensee who applies under A.R.S. §32-1728 and R4-21-208 for a pharmaceutical agent number;

A licensee or provider of Continuing Education that applies for approval of a Continuing Education under R4-21-210

“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.

“Approved Continuing Education” means a planned educational experience relevant to the practice of the profession of optometry that the Board determines meets the criteria at R4-21-210.

“ARBO” means the Association of Regulatory Boards of Optometry.

“Audit” means the selection of licensees and process of reviewing documents for verification of satisfactory completion of Continuing Education requirements during a specified time period.

“CPR” means Cardiopulmonary Resuscitation.

“CELMO” means the Council on Endorsed Licensure Mobility for Optometrists.

“Certificate of special qualification” means a document that specifies whether the holder, who was licensed by the Board before July 1, 2000, and has not completed a course of study approved by the Board, may prescribe, administer, and dispense a pharmaceutical agent and if so, whether the holder may prescribe, administer, and dispense:

A topical diagnostic pharmaceutical agent only, or

Topical diagnostic and topical therapeutic pharmaceutical agents.

“Continuing Education” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“COPE” means the Council on Optometric Practitioner Education.

“Course of study,” as used in A.R.S. §32-1722, means education approved by the Board under R4-21-207 that qualifies an optometrist to prescribe, administer, and dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents.

“Injectable Epinephrine” means an intramuscular dose of epinephrine used for emergency treatment of an allergic reaction and delivered by a spring-loaded syringe.

“Good cause” means a reason that is substantial enough to afford a legal excuse.

“Hour of Continuing Education” means no less than 50 minutes of learning in one hour of time.

“Incompetence,” as used in A.R.S. §32-1701(8), means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.

“Low vision” means chronic impairment to vision that significantly interferes with daily routine activities and cannot be adequately corrected with medical, surgical, or therapeutic means or conventional eyewear or contact lenses.

“Low-vision rehabilitation” means use of optical and non-optical devices, adaptive techniques, and community resources to assist an individual to compensate for low vision in performing daily routine activities.

“Negligence,” as used in A.R.S. § 32-1701(8), means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.

“OE Tracker” means the ARBO Online Education Tracker used to electronically track Continuing Education hours taken by a licensee.

“Oral pharmaceutical agent,” as used in A.R.S. §32-1728, means an ingested prescription or non-prescription substance used to examine, diagnose, or treat disease of the eye and its adnexa.

“Party” has the same meaning as prescribed in A.R.S. §41-1001.

“Plano lenses” means contact lenses that have cosmetic function only.

“Practice management” means the study of management of the affairs of optometric practice.

“Self-instructed media” means educational material in a printed, audio, video, electronic or distance learning format.

“Topical diagnostic pharmaceutical agent,” as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to examine and diagnose disease and conditions of the eye and its adnexa.

“Topical therapeutic pharmaceutical agent,” as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to treat disease of the eye and its adnexa.

“Vision rehabilitation” means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa or develop compensatory approaches. Vision rehabilitation is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision rehabilitation includes, but is not limited to optical, non-optical, electronic, or other assistive treatments.

#### **R4-21-102 Fees and other Charges**

- A. The Board shall collect the fees established by A.R.S. §32-1727.
- B. Under the authority provided at A.R.S. §32-1727, the Board establishes and shall collect the following fees:
  - 1. License issuance fee of \$450, which is prorated from date of issuance to date of renewal;
  - 2. Biennial license renewal fee of \$450; and
  - 3. Late renewal fee of \$200.
- C. Except as provided in subsection (C)(3), a person requesting a public record shall pay the following for searches and copies of Board records under A.R.S. §§39-121.01 or 39-121.03:
  - 1. Noncommercial copy:
    - a. 5¢ per name and address for directory listings or 15¢ each if printed on labels, and
    - b. 25¢ per page for other records;
  - 2. Commercial copy:
    - a. 25¢ per name and address for directory listings or 35¢ each if printed on labels, and
    - b. 50¢ per page for other records; and

3. The Board waives the charges listed in subsections (C)(1) and (C)(2) for a government agency.

**D.** The Board establishes and shall collect the following charges for the services specified:

1. Written or certified license verification: \$10; and
2. Duplicate or replacement renewal receipt: \$10.

**R4-21-103 Time frames for Board Action**

**A.** For each type of license, certificate, or approval issued by the Board, the overall time frame described in A.R.S. § 41-1072(2) is listed in Table 1.

**B.** For each type of license, certificate, or approval issued by the Board, the administrative completeness review time frame described in A.R.S. §41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.

1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package. Within the time provided in Table 1 for response to a deficiency notice, beginning on the postmark date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.
2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If an application package is not completed with the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**C.** For each type of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review time frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the postmark date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.
2. If, under A.R.S. §32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
3. If the applicant fails to provide the additional information within the time provided to respond to a comprehensive written request for additional information, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**D.** An applicant may, pursuant to A.R.S. §41-1075(B), receive an extension of up to twenty-five percent of the overall time frame to respond under subsection (B)(3) or (C)(3) by sending a request for extension of time to the Board before expiration of the time to respond. The time frame for the Board to act remains suspended during any extension of time. If the applicant fails to provide the requested information during the extension of time, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**E.** Within the overall time frame listed in the Table 1, the Board shall:

1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.

**F.** If the Board denies a license, certificate, or approval under subsection (E)(1), the Board shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to appeal the denial;
3. The time for appealing the denial; and
4. The right to request an informal settlement conference.

**G.** In computing any period prescribed in this Section, the day of the act, event, or default after which the designated period begins to run is not included. The period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date. The last day of the period is included unless it falls on a Saturday, Sunday, or state holiday in which case, the period ends on the next business day.

**Table 1. Time frames (in calendar days)**

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Licensure by examination A.R.S. §32-1722; R4-21-201	75	15	60	60	20
Licensure by endorsement A.R.S. §32-1723; R4-21-202	75	15	75	60	20
Renewal of license A.R.S. §32-1726; R4-21-205	45	15	20	30	20

Renewal of Pharmaceutical agents number A.R.S. §32-1728; R4-21-208	75	15	60	60	20
Approval of a Continuing Education A.R.S. §32-1704(D); R4-21-210	75	15	20	60	20

## ARTICLE 2. LICENSING PROVISIONS

### **R4-21-201    Licensure by Examination**

- A.** An individual is eligible to apply for licensure by examination if the individual graduated from an accredited optometry program but is not eligible for licensure by endorsement under R4-21-202(A).
- B.** To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit an application form, which is available from the Board, and provide the following information about the applicant:
1. Full legal name;
  2. Other names ever used, if any, and if applicable, a copy of the court document or marriage license resulting in a name change;
  3. Social Security number;
  4. Mailing address;
  5. E-mail address, if any;
  6. Residential, business, and mobile telephone numbers, if applicable;
  7. Date and place of birth;
  8. Residential addresses for the past five years;
  9. Educational background including the name and address of, dates of attendance at, and date of graduation from:
    - a. An accredited optometry program,
    - b. A pre-optometric school or undergraduate educational institution, and
    - c. Other post-secondary schools attended, if any;
  10. Experience in the practice of the profession of optometry including the business form and location of the practice;
  11. Work experience or occupation, other than the practice of the profession of optometry, for the past five years;

12. List of the states in which the applicant is professionally licensed including the name of the state, type of professional license, date issued, and expiration date;
13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;
14. Statement of whether the applicant:
  - a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
  - b. Has ever been denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
  - c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;
  - d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;
  - e. Has ever had a disciplinary action instituted against the applicant by any optometric licensing agency and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
  - f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;
  - g. Is currently, or has ever been addicted to narcotic substances or habitually abused alcohol within the last 10 years. If so, dates during which the addiction or abuse occurred, steps taken to address the addiction or abuse, current status, and a statement as to why the addiction or abuse does not amount to unprofessional conduct.
15. Dated and sworn signature of the applicant verifying that the information provided is true to the best of the applicant's knowledge, information, and belief.

C. In addition to submitting the application form required under subsection (B), an applicant shall submit or have submitted on the applicant's behalf:

1. A passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;
2. A full set of readable fingerprints taken by a criminal justice agency for the purpose of obtaining a state and federal criminal records check;
3. To process the fingerprints; a cashier's check or money order payable to the Arizona Department of Public Safety in the amount listed on the application for licensure;

4. The application fee required under A.R.S. §32-1727;
5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination less than ten years before the date of the application;
6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;
7. An official transcript submitted directly to the Board by the educational institution with an accredited optometry program from which the applicant graduated with a degree in optometry;
8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;
9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and
10. A copy of the front and back of a current CPR card issued to the applicant.

#### **R4-21-202 Licensure by Endorsement**

- A.** An individual is eligible to apply for licensure by endorsement if the individual:
  1. Graduated from an accredited optometry program;
  2. Is licensed to practice the profession of optometry in another state that has licensing requirements that the Board determines meet or exceed Arizona's requirements;
  3. Has engaged in the practice of the profession of optometry continuously in the other state or military for at least four of the five years before the date of application; and
  4. Has not had a license to practice the profession of optometry suspended or revoked by any licensing jurisdiction for a cause that is a ground for suspension or revocation of a license in Arizona.
- B.** To apply for licensure by endorsement, an individual who is eligible under subsection (A) shall submit the application form described in R4-21-201(B).
- C.** In addition to complying with subsection (B), an applicant for licensure by endorsement shall submit or have submitted on the applicant's behalf:
  1. The materials required under R4-21-201(C)(1) through (C)(4) and (C)(6) through (C)(10);
  2. A state board certification and license verification form, which is submitted directly to the Board from the state that issued the license on which the applicant's endorsement application is based, indicating:
    - a. Name and title of the individual completing the verification form;
    - b. Applicant's optometry license number in the state;
    - c. Date on which the applicant was issued an optometry license by the state;

- d. A statement of whether the applicant:
  - i. Has been licensed in the state for at least four of the last five years;
  - ii. Is certified to use topical diagnostic, topical therapeutic, or oral pharmaceutical agents and if so, the date on which the certification was obtained;
  - iii. Is currently in good standing in the state;
  - iv. Is known to be licensed to practice the profession of optometry in another state and if so, the name of the other state;
  - v. Has been subject to any disciplinary action and if so, the date, nature of, and reason for the disciplinary action; and
  - vi. Is subject to any pending investigation or complaint and if so, the nature of the investigation or complaint; and
- e. The dated, notarized signature of the individual completing the verification form; and
- 3. A letter on official letterhead, in substantially the form provided by the Board, from a representative of the accredited optometry program at the educational institution from which the applicant graduated, providing details that demonstrate the applicant's education meets the standards at R4-21-207; and
- 4. If the applicant does not meet the requirements listed in R4-21-201 or R4-21-202(A)(2), a current certificate issued by the CELMO or its successor organization.

**R4-21-203 Jurisprudence Examination**

- A.** To be licensed, an applicant shall obtain a score of at least 75% on a jurisprudence examination that assesses knowledge of Arizona's statutes and rules relating to the practice of optometry in Arizona.
- B.** An applicant may take the jurisprudence examination up to six months prior to submitting an application for licensure or after submitting to the Board the application form required under R4-21-201(B) or R4-21-202(B).
- C.** The jurisprudence exam may be taken in person at the Arizona State Board of Optometry offices, through the National Board of Examiners in Optometry, or at a proctored testing center approved by the Board.
- D.** An applicant who fails the jurisprudence examination may retake the examination one time within the deficiency time frame of the related application for licensure listed in Table 1.
- E.** The Board shall further consider an applicant who fails the jurisprudence examination a second time only if the applicant:
  - 1. Waits at least six months from the date of the second taking of the jurisprudence examination;
  - 2. Submits a new application form under R4-21-201(B) or R4-21-202(B);
  - 3. Submits a full set of readable fingerprints taken by a criminal justice agency for the purpose of obtaining a state and federal criminal records check; and a cashier's check or money order payable to the Arizona Department of Public Safety in the amount listed on the application for licensure;

4. Submits a passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of the new application and signed by the applicant in ink across the lower portion of the front side;
5. Submits a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of the new application; and
6. Submits the application fee required under A.R.S. §32-1727.

#### **R4-21-204 License Issuance**

- A. When the Board determines that an applicant meets all of the substantive criteria required by statute and this Chapter, the Board shall send the applicant a written notice informing the applicant that the Board shall issue the applicant a license when the applicant pays the license issuance fee required under R4-21-102(B).
- B. Under A.R.S. §32-1725, if an applicant fails to pay the license issuance fee within 60 days after receiving notice under subsection (A), the Board considers the application withdrawn. An individual whose application is withdrawn can be further considered for licensing only by complying with R4-21-201 or R4-21-202.

#### **R4-21-205 License Renewal**

- A. To continue practicing the profession of optometry in Arizona, a licensee shall renew the licensee's license and certificate of special qualification, if applicable, on or before the date on which the license and certificate expire. Timely renewal is a licensee's responsibility. As a courtesy, the Board may provide a licensee with notice that the licensee's license is going to expire. Failure to obtain notice of the need to renew is not good cause for failing to renew.
- B. To renew a license and, if applicable, certificate of special qualification, a licensee shall submit to the Board a license renewal application and provide the following information:
  1. Whether the licensee wants to renew the licensee's license and, if applicable, certificate of special qualification;
  2. The licensee's current public mailing address, telephone and fax numbers;
  3. The licensee's current residential address, e-mail address, and residential or mobile telephone numbers;
  4. The licensee's current permanent and temporary practice addresses and telephone and fax numbers;
  5. A statement of whether the licensee:
    - a. Has practiced the profession of optometry within the last two years;
    - b. Has been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for the denial;
    - c. Has been denied an optometric license or renewal in any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for denial;

- d. Has had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, action taken, reason for the action, and current status;
  - e. Has had disciplinary action instituted against the licensee by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
  - f. Has had an investigation conducted within the preceding two years or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and the state or jurisdiction, date, reason for the investigation, and current status;
  - g. Has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, the name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;
  - h. Is currently, or has been addicted to narcotic substances or habitually abused alcohol within the preceding two years. If so, dates during which the addiction or abuse occurred, steps taken to address the addiction or abuse, current status, and a statement as to why the addiction or abuse does not amount to unprofessional conduct.
  - i. Has had the authority to prescribe, dispense, or administer pharmaceutical agents limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years and if so, name of agency taking action, nature of action taken, date, reason for action, and current status; and
  - j. Is in compliance with the provisions of A.R.S. §32-3211;
6. The following information about each approved Continuing Education course attended by the licensee during the preceding two years:
- a. Name of Continuing Education provider,
  - b. Title,
  - c. COPE course identification number, if any
  - d. Date(s) of attendance, and
  - e. Number of hours of attendance; and
7. The licensee's dated signature affirming that the information provided is true and correct.
- C. In addition to the license renewal application required under subsection (B), a licensee shall submit to the Board:
1. The license renewal fee listed at R4-21-102(B); and
  2. The certificate of special qualification fee required under A.R.S. §32-1727 if the licensee has a certificate of special qualification; or

3. Written documentation that the licensee is currently certified in CPR if the licensee has a pharmaceutical agent number.
- D.** A licensee who fails to renew the licensee's license and, if applicable, certificate of special qualification within 30 days after the date of expiration, may apply for late renewal by complying with subsections (B) and (C) within four months after the date of expiration and paying the late renewal fee listed at R4-21-102(B).
- E.** A licensee who fails to renew timely and fails to comply with subsection (D) shall not engage in the practice of the profession of optometry. The holder of a license that is not renewed within four months after the date of expiration may apply under R4-21-206 for license reinstatement but is not eligible for license renewal.
- F.** If a licensee timely applies for license renewal or complies with subsection (D), the licensee's license and, if applicable, certificate of special qualification remain in effect until the license renewal is granted or denied.

#### **R4-21-205.1 Cardiopulmonary Resuscitation (“CPR”) Requirements**

1. A CPR course shall be as recommended by the American Heart Association, the American Red Cross, or the National Safety Council and shall include an exam of the materials presented in the course;
2. A CPR certification card or other documentation with an expiration date received from the CPR course provider shall be presented to the Board as proof of CPR certification.
3. Failure to maintain current CPR certification shall result in immediate loss of the licensee’s Pharmaceutical Agent certification. The Pharmaceutical Agent certification shall not be reinstated until written documentation that the CPR certification deficiency has been met and proof of completion is presented to the Board; and
4. Any licensee whose Pharmaceutical Agent certification is suspended due to expiration of their CPR certification shall not prescribe utilizing the Pharmaceutical Agent certification. Upon submission of proof of current CPR certification to the Board, the Pharmaceutical Agent certification shall be immediately reinstated.

#### **R4-21-206 License Reinstatement; Application for Licensure following License Expiration**

- A.** Reinstatement following license expiration. Under A.R.S. §32-1726, if an individual holds a license that has been expired at least four months but less than five years, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have an expired license reinstated, the former licensee shall:
1. Submit the renewal form described in R4-21-205(B);
  2. Submit the renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
  3. Submit, if applicable, the fee for a certificate of special qualification listed at A.R.S. §32-1727 for each biennial period that the license was not renewed;
  4. Submit the late renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
  5. Submit a \$50 penalty fee for each year or portion of a year that the license was not renewed; and

6. Submit written documentation that the former licensee is currently certified in cardiopulmonary resuscitation if the former licensee had a pharmaceutical agent number.

**B.** Reinstatement following license suspension. If an individual holds a license that was suspended by the Board following a disciplinary proceeding and if the individual timely renewed the suspended license under R4-21-205, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have a suspended license reinstated, the suspended licensee shall submit evidence of completing all terms of suspension imposed by the Board.

**C.** Application for new license following license expiration. If an individual holds a license that has been expired for five years or more, the individual may apply for a new license:

1. Under R4-21-202 if the individual has continuously practiced the profession of optometry in another state or the military for at least four of the last five years, or
2. Under R4-21-201 if the individual is not qualified to apply for a new license under subsection (C)(1).

#### **R4-21-207 Course of Study Approval**

The Board approves a course of study that:

1. Includes didactic and clinical training in:
  - a. Examining, diagnosing, and treating conditions of the human eye and its adnexa; and
  - b. Prescribing dispensing, and administering pharmaceutical agents;
2. Includes at least 120 hours of training, at least 12 of which address prescribing, dispensing, and administering oral pharmaceutical agents; and
3. Is provided by an educational institution with an accredited optometry program.

#### **R4-21-208 Certificate of Special Qualification; Pharmaceutical Agent Number**

**A.** The Board shall issue a certificate of special qualification that allows a licensee to prescribe, administer, and dispense topical diagnostic and therapeutic pharmaceutical agents or only topical diagnostic pharmaceutical agents if the licensee:

1. Was licensed by the Board before July 1, 2000;
2. Held a comparable certificate of special qualification issued by the Board before July 1, 2000; and
3. Pays the fee prescribed at A.R.S. §32-1727.

**B.** The Board shall issue a certificate of special qualification that indicates a licensee shall not prescribe, administer, or dispense a pharmaceutical agent if the licensee:

1. Was licensed by the Board before July 1, 2000,
2. Did not hold a certificate of special qualification issued by the Board before July 1, 2000, and
3. Pays the fee prescribed at A.R.S. § 32-1727.

**C.** A licensee who holds a certificate of special qualification issued under subsection (A) or (B) may apply to the Board for a pharmaceutical agent number that indicates the licensee is authorized to prescribe,

administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents. To apply for a pharmaceutical agent number, a licensee who holds a certificate of special qualification issued under subsection (A) or (B) shall:

1. Submit to the Board an application, using a form that is available from the Board, and provide the following information:
  - a. Name of licensee;
  - b. Social Security number;
  - c. Mailing address;
  - d. Telephone and fax numbers at the address listed under subsection (C)(1)(c);
  - e. License number;
  - f. Number of certificate of special qualification for diagnostic pharmaceutical agents, if any;
  - g. Number of certificate of special qualification for therapeutic pharmaceutical agents, if any;
  - h. Residential address;
  - i. Telephone number at the address listed under subsection (C)(1)(h);
  - j. Name of the course of study approved under R4-21-207 that the licensee completed and date of completion; and
  - k. Applicant's dated signature affirming that the information provided is true and correct; and
2. Have a representative of the educational institution at which the licensee completed the approved course of study submit to the Board evidence that the course of study is approved and the licensee completed all course requirements; and
3. Submit written documentation that the licensee is currently certified in CPR.

**D.** The Board shall issue a pharmaceutical agent number that indicates a licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents if the licensee is initially licensed by the Board under R4-21-201 or R4-21-202 after June 30, 2000.

#### **R4-21-209 Continuing Education Requirement**

- A.** A licensee shall complete 32 hours of approved Continuing Education during each biennial license renewal period. The licensee shall ensure that in each biennial license renewal period:
1. At least eight hours of the approved Continuing Education is in the area of diagnosis, treatment, and management of disease of the human eye and its adnexa and pharmaceutical use appropriate to the authority held by the licensee;
  2. No more than 12 hours of the approved Continuing Education shall be obtained through self-instructed media. All self-instructed media shall be COPE approved.

3. No more than four hours of the approved Continuing Education are in the area of practice management;
  4. No more than one hour of approved Continuing Education is claimed for each day of instruction in a course of study approved under R4-21-207 to a maximum of four hours; and
  5. No more than four hours of approved Continuing Education are claimed for publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of the profession of optometry.
  6. No more than one (1) hour of Continuing Education requirements shall be claimed for obtaining CPR certification.
- B.** If a licensee obtains more than 32 hours of approved Continuing Education during a biennial renewal period, the licensee shall not claim the extra hours of approved Continuing Education during a subsequent biennial renewal period.
- C.** During the biennial renewal period in which a licensee is first licensed, the licensee shall obtain a prorated number of hours of approved Continuing Education for each month remaining in the biennial renewal period. The hours shall be calculated at four hours per quarter of a year to include the quarter in which the application for licensure is approved by the Board.
- D.** A licensee shall not claim as approved Continuing Education any educational program or course completed before being licensed in Arizona.
- E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved Continuing Education attended that includes the following:
1. Name of the licensee,
  2. License number of the licensee,
  3. Name of the approved Continuing Education,
  4. Name of the Continuing Education provider,
  5. Date, time, and location of the approved Continuing Education, and
  6. Number of hours of approved Continuing Education and number of hours relating to practice management.
- F.** For the purpose of license renewal, Continuing Education shall be verified through the ARBO OE Tracker Program, using the licensee's individual OE Tracker report.
- G.** A licensee shall maintain the OE Tracker report or other evidence of attendance described in subsection (E) for at least two years from the date of attendance.
- H.** A licensee shall submit to the Board a copy of the OE Tracker report obtained during a biennial renewal period as proof of attendance at Continuing Education courses if subject to an audit by the Board under R4-21-211.

## **R4-21-210 Approval of Continuing Education**

### **A. The Board approves the following as Continuing Education:**

1. An internship, residency, or fellowship attended at an educational institution with an accredited optometry program; and
2. An educational program designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry and:
  - a. Provided by an educational institution with an accredited optometry program; or
  - b. Sponsored or approved by the Association of Schools and Colleges of Optometry, The Council on Optometric Practitioner Education, or a local, regional, or national optometric association.

### **B. To obtain approval of a Continuing Education that is not approved under subsection (A), the provider of the Continuing Education or a licensee shall, before providing or participating in the Continuing Education:**

1. Submit an application for approval, using a form that is available from the Board, and provide the following information:
  - a. Name of applicant,
  - b. Address and telephone number of applicant,
  - c. Provider of the Continuing Education,
  - d. Name and telephone number of a contact person with the Continuing Education provider,
  - e. Name of the Continuing Education,
  - f. Date and location of the Continuing Education,
  - g. Manner in which potential participants will be notified that the Continuing Education is available,
  - h. Number of hours of the Continuing Education and the number of hours that relate to practice management,
  - i. Name of instructor of the Continuing Education, and
  - j. Dated signature of the applicant;
2. Submit a curriculum vitae for the instructor of the Continuing Education; and
3. Submit a syllabus of the Continuing Education that identifies learning objectives, teaching methods, and content.

### **C. The provider of an approved Continuing Education shall provide each participant with a certificate or other evidence of attendance that meets the standards at R4-21-209(E).**

### **D. The Board shall approve a Continuing Education if the application required under subsection (B) is submitted and the Board determines that the Continuing Education is designed to provide understanding of**

current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry.

#### **R4-21-211 Audit of Compliance with Continuing Education Requirement**

- A.** At the time of license renewal, the Board shall provide notice of an audit of Continuing Education records to a random sample of licensees. A licensee subject to a Continuing Education audit shall submit documentation that demonstrates compliance with the Continuing Education requirement at the same time the licensee submits the license renewal application form required under R4-21-205.
- B.** To perform an audit, the Board shall use the information entered into the ARBO OE Tracker software to perform its audit. The Board shall consider a licensee's Continuing Education requirement met if the licensee has recorded the required number of Continuing Education credits into the OE tracker.
- C.** At the time of license renewal, each licensee shall certify to the Board, through an OE Tracker report, completion of the Continuing Education required for license renewal. In the event that Continuing Education credits are not able to be recorded in the OE Tracker, a licensee may submit to the Board certificates of attendance for those hours only to meet the Continuing Education requirement. A licensee may not renew the license until required Continuing Education hours are submitted.

#### **R4-21-212 Waiver of or Extension of Time to Complete Continuing Education Requirement**

- A.** To obtain a waiver of some or all of the hours of approved continuing education required during a biennial renewal period, a licensee shall submit a written request to the Board that:
  - 1. Specifies the number of hours of approved continuing education that the licensee requests the Board to waive; and
  - 2. Documents that the licensee suffered a serious or disabling illness or other good cause that prevented the licensee from complying with the continuing education requirement.
- B.** The Board shall grant a waiver within seven days after receiving the request if the Board determines that the licensee demonstrated good cause.
- C.** To obtain an extension of time to complete the continuing education requirement, a licensee shall submit to the Board a written request that includes the following:
  - 1. Ending date of the requested extension,
  - 2. Continuing education completed during the biennial renewal period and the documentation required under R4-21-209(E),
  - 3. Proof of registration for additional approved continuing education that is sufficient to enable the licensee to fulfill the continuing education requirement before the end of the requested extension, and
  - 4. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent license renewal application.

**D.** The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:

1. Specifies an ending date no later than four months after the date of license expiration, and
2. Includes the required documentation and attestation.

**ARTICLE 3. STANDARDS; RECORDKEEPING;  
REHEARING OR REVIEW OF BOARD DECISION**

**R4-21-301     Display of License; Surrender of License**

- A.** License display. A licensee shall display the Board-issued license at each location at which the licensee practices the profession of optometry and in a manner that makes the license visible to the public.
- B.** License surrender. Upon order by the Board, a licensee shall surrender to the Board all copies of the license and, if applicable, certificate of special qualification issued to the licensee.

**R4-21-302     Advertising**

- A.** A licensee shall not knowingly make, publish, or use an advertisement that contains a false, fraudulent, deceptive, or misleading representation.
- B.** A licensee may advertise that the licensee has a practice limited in some way if the licensee does not use the term “specialist” or any derivative of the term "specialist."
- C.** A licensee shall ensure that the content of an advertisement or directory that includes the name and address of the licensee is accurate.
- D.** An advertisement for health care services that includes a licensee’s name shall identify the title and type of license the licensee holds.

**R4-21-303     Affirmative Disclosures Required**

- A.** A licensee shall ensure that an advertisement for or by the licensee clearly indicates within the advertisement:
1. Whether spectacle lenses or contact lenses advertised are single vision, multi-focal, or other;
  2. Whether the price advertised for spectacles includes both the frame and lenses;
  3. Whether the price advertised includes an eye examination;
  4. Whether the price advertised for contact lenses includes all dispensing fees, follow-up care, and a contact lens accessory kit; and, if an accessory kit is included, the specific features of the kit;
  5. Whether restrictions are imposed upon delivery, if delivery time is advertised;
  6. The refund policy if refunds are advertised; and
  7. A statement that other restrictions apply if there are other restrictions.

- B.** A licensee shall inform a patient of all professional fees before providing treatment.
- C.** A licensee who refers a patient to a facility in which the licensee or a member of the licensee's family has an ownership or employment interest shall advise the patient of the interest at the time of referral.
- D.** A licensee who charges a patient a fee for a warranty or a service or ophthalmic-goods-replacement agreement, shall:
  - 1. Give the patient a written copy of the warranty or service or ophthalmic-goods-replacement agreement;
  - 2. Ensure that the warranty or service or ophthalmic-goods-replacement agreement explains the coverage included and any limitation;
  - 3. Document compliance with subsection (D)(1) by making a written entry on the patient's record; and
  - 4. Place a copy of the warranty or service or ophthalmic-goods-replacement agreement, signed by the patient, in the patient's record.

#### **R4-21-304 Vision Examination Standards**

A licensee shall conduct an eye examination in accordance with the standards of care prevalent in the community and consistent with current industry practice.

#### **R4-21-305 Recordkeeping**

- A.** A licensee shall create and maintain a complete and legible record of each examination including all findings. A licensee shall ensure that a patient record is maintained for at least six years after the licensee's last contact with the patient and includes:
  - 1. Patient's name and contact information;
  - 2. Date on which an entry is made in the patient's record;
  - 3. Identification of the person making the entry in the patient's record;
  - 4. Complete health history;
  - 5. Visual acuity of each eye: entering and best corrected;
  - 6. Ocular health examination;
  - 7. Assessment of intraocular and extra-ocular muscle function;
  - 8. Objective or subjective refraction of the eyes;
  - 9. Diagnosis, treatment, and disposition;
  - 10. Type and dosage of each use of a pharmaceutical agent;
  - 11. Final optometric prescription given, if any;

12. Corrective procedure program prescribed, if any; and

13. Signature of licensee providing diagnosis, treatment, and disposition.

- B.** A licensee may create and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this Chapter to electronic format. A licensee who converts a record to electronic format shall ensure that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this Chapter.
- C.** A licensee who discontinues practice for any reason shall arrange for a patient's record to be available to the patient for six years from the date the licensee discontinues practice. Before discontinuing practice, a licensee shall notify the Board of the location at which patient records from the practice will be maintained.
- D.** A licensee who acquires the patient records of a licensee who discontinued practice, either with or without succeeding to the practice of the other licensee, shall ensure that the records are available to the patients for six years after the licensee from whom the records were acquired discontinued practice.
- E.** A licensee shall provide a tangible or electronic copy of a patient's record within five business days after receiving a written request from the patient. The licensee shall provide the copy to any person designated by the patient. The licensee may charge a fee to cover the costs of providing the copy. The licensee shall maintain a record of providing the copy for six years.
- F.** Regardless of the form in which a licensee creates and maintains patient records, the licensee shall comply with all laws regarding security, confidentiality, maintenance and release of the records.

#### **R4-21-306 Optometric Prescription Standards; Release to Patients**

- A.** When a licensee completes an eye examination and generates an optometric prescription, the licensee shall provide the patient with a copy of the optometric prescription without charging a fee other than the examination fee.
- B.** A licensee shall ensure that an optometric prescription written by the licensee includes:
  - 1. For ophthalmic lenses other than contact lenses:
    - a. Name of the patient;
    - b. Refractive power of the lenses;
    - c. Printed name, office address, telephone number, and signature of the licensee; and
    - d. Date of the examination and expiration date of the prescription;
  - 2. For contact lenses, including plano lenses:
    - a. Name of the patient;
    - b. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase trial lenses at another optical establishment or location;

- c. For a patient who has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to reproduce the contact lenses accurately;
  - d. Printed name, office address, telephone number, license number, and signature of the licensee;
  - e. Date of the examination and the issue and expiration date of the prescription; and
  - f. Information regarding the prescribed contact lenses:
    - i. Refractive power;
    - ii. Base curve or other appropriate designation;
    - iii. Diameter, if appropriate;
    - iv. Tint, if applicable;
    - v. Material, manufacturer, or both; and
    - vi. In the case of private-label contact lenses, manufacturer, trade name, and, if applicable, trade name of equivalent brand name; and
3. For pharmaceutical agents:
- a. Name and address of the patient;
  - b. Date the prescription is issued;
  - c. Name, strength, and quantity of the pharmaceutical agent prescribed;
  - d. Directions for use of the pharmaceutical agent prescribed;
  - e. Name, office address, and telephone number of the prescribing licensee;
  - f. When prescribing controlled substances, the DEA number of the prescribing licensee;
  - g. Two adjacent signature lines with the following printed words:
    - i. "Dispense as written" under the left signature line, and
    - ii. "Substitution permissible" under the right signature line; and
  - h. Original signature of the prescribing licensee on one of the signature lines; and
4. Additional information that the licensee considers necessary.
- C.** A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.
- D.** A licensee shall be available to verify that a prescription written by the licensee but filled by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for verifying the accuracy or quality of ophthalmic goods dispensed by another provider.
- E.** A licensee shall not:
- (a) Require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of the prescription;

(b) Require a payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription;

(c) Require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

**R4-21-307 Vision Rehabilitation**

- A. A licensee may use any objective or subjective method other than surgery to diagnose or treat any visual, muscular, neurological, or anatomical anomaly of the eye.
- B. A licensee may use any instrument or device to train the visual system or correct any abnormal condition of the eye.

**R4-21-308 Anaphylactic-related Supplies**

- A. If a patient to whom a licensee administers a pharmaceutical agent experiences an anaphylactic reaction, the licensee may, as provided by A.R.S. § 32-1706(F), use injectable epinephrine to counteract the anaphylactic reaction.
- B. A licensee who maintains injectable epinephrine at the licensee's practice location shall also maintain the following medically necessary supportive equipment and supplies:
  - 1. Diphenhydramine in injectable, capsule or tablet, and syrup forms;
  - 2. Syringes for injecting diphenhydramine;
  - 3. Wristwatch with a second hand;
  - 4. Sphygmomanometer with both adult and extra-large cuffs;
  - 5. Stethoscope;
  - 6. Adult-size pocket mask with one-way valve;
  - 7. Tongue depressors; and
  - 8. Telephone.

**R4-21-309 Rehearing or Review of Board Decision**

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Misconduct of the Board, its staff, or the administrative law judge;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or in the course of the proceedings; and
  7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing or review.

### **OTHER RELATED STATUTES:**

#### **32-3201 Definitions**

In this chapter, unless the context otherwise requires:

1. "Health profession regulatory board" means any board that regulates one or more health professionals in this state.
2. "Health professional" means a person who is certified or licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41 or 42 of this title, title 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17.

3. "Medical record" has the same meaning prescribed in section 12-2291 but does not include prescription orders.

### **32-3202 License or certificate suspension**

The certificate or license of a health professional who does not renew the certificate or license as prescribed by statute and who has been advised in writing that an investigation is pending at the time the certificate or license is due to expire or terminate does not expire or terminate until the investigation is resolved. The license is suspended on the date it would otherwise expire or terminate and the health professional shall not practice in this state until the investigation is resolved. The certificate is suspended on the date it would otherwise expire or terminate and the health professional shall not practice as a certified health professional in this state until the investigation is resolved.

### **32-3203 Malpractice claim investigation**

On receipt of a malpractice report and a copy of a malpractice complaint as provided in section 12-570, the health profession regulatory board shall initiate an investigation into the matter to determine if the licensee is in violation of the statutes or rules governing licensure.

### **32-3204 Experimental diagnosis, therapy or treatment; implied consent; definition**

- A. Notwithstanding any provision of this title to the contrary, a health professional, within the scope of that person's profession, may use an experimental diagnosis, therapy or treatment on a patient who is unable to make or communicate health care decisions and who has an emergent life threatening condition if the requirements of 21 Code of Federal Regulations parts 50, 56, 312, 314, 601, 812 and 814 have been met.
- B. A health professional who performs an experimental diagnosis, therapy or treatment pursuant to this section is deemed to have obtained the patient's implied consent for the purposes of title 12, chapter 5.1, article 1.
- C. For purposes of this section, "experimental diagnosis" means the pharmaceuticals, devices and technology used to diagnose patients.

### **32-3205 Board disciplinary action; voting requirements**

If a disciplinary action requires a vote of board members, a health profession regulatory board shall conduct that vote by roll call. The board shall maintain a record of each member's vote. This section does not prohibit a board from using a consent agenda.

### **32-3206 Disciplinary action; information; disclosure**

- A. At least ten business days before a disciplinary interview or a hearing, if the board does not hold a disciplinary interview, the health profession regulatory board shall notify the health professional and, at that person's request, the board shall provide the health professional or the health professional's attorney with the information listed in this section. The board shall provide the following information:
  1. Any review conducted by an expert or consultant providing an evaluation of or opinion on the allegations.
  2. Any records on the patient obtained by the board from other health care providers.

3. The results of any evaluations or tests of the health professional conducted at the board's direction.
  4. Any other factual information that the board will use in making its determination.
- B. A person who obtains information from the board pursuant to this section may not release it to any other person or entity or use it in any proceeding or action except the disciplinary interview and any administrative proceedings or appeals related to the disciplinary interview. A person who violates this subsection commits an act of unprofessional conduct.
- C. The board may charge the health professional or the health professional's attorney for the cost of providing the information received up to the fee for making a copy of each page as prescribed by section 12-284, subsection A.

### **32-3207 Health professionals disease hazard; testing; petition; definition**

- A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.
- B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:
1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.
  2. If the person is deceased, the medical examiner draw two specimens of blood for testing.
- C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.
- D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.
- E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

**32-3208 Criminal charges; mandatory reporting requirements; civil penalty**

- 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.
- B. An applicant for licensure or certification as a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after submitting the application must notify the regulatory board in writing within ten working days after the charge is filed.
- C. On receipt of this information the regulatory board may conduct an investigation.
- D. A health professional who does not comply with the notification requirements of this section commits an act of unprofessional conduct. The health professional's regulatory board may impose a civil penalty of not more than one thousand dollars in addition to other disciplinary action it takes.
- E. The regulatory board may deny the application of an applicant who does not comply with the notification requirements of this section.
- F. On request a health profession regulatory board shall provide an applicant or health professional with a list of misdemeanors that the applicant or health professional must report.

**32-3209 Release of information; fees**

- A. On request of any person, a health profession regulatory board must provide the following information to that person:
  - 1. A copy of the minutes of any specified board meeting.
  - 2. A copy of a board action concerning a person regulated by the board.
  - 3. A copy of the final adjudication of a complaint against a person regulated by the board. For the purposes of this paragraph, final adjudication of a complaint does not include any complaint that was dismissed or terminated more than five years before the request was submitted.
  - 4. The name and primary practice address of a person regulated by the board.
- B. A health regulatory board may charge a fee for copies of any of the information in subsection A.

**32-3210 Billing for laboratory costs; unprofessional conduct; definition**

- A. It is an act of unprofessional conduct for a health professional to request a laboratory that provides anatomic pathology services at the health professional's orders to submit a bill for anatomic pathology services, whether occurring in this state or elsewhere, to any person or entity other than the following:
  - 1. The patient.
  - 2. The responsible insurer or other third party payor.
  - 3. The health care institution.

4. A referring laboratory, excluding the laboratory of the health professional who ordered the test.
  5. A governmental agency or the agency's public or private agent, agency or organization that is acting on behalf of the recipient of the services.
- B. For the purposes of this section, "anatomic pathology services" includes cytology services, molecular pathology services, hematopathology, histopathology, surgical pathology, and blood banking services performed by a pathologist. Anatomic pathology services does not include the collection, packaging and transportation of the specimen.

### **32-3211 Medical records; protocol; unprofessional conduct; corrective action; exemptions**

- A. A health professional must prepare a written protocol for the secure storage, transfer and access of the medical records of the health professional's patients. At a minimum the protocol must specify:
1. If the health professional terminates or sells the health professional's practice and the patient's medical records will not remain in the same physical location, the procedure by which the health professional shall notify each patient in a timely manner before the health professional terminates or sells the health professional's practice in order to inform the patient regarding the future location of the patient's medical records and how the patient can access those records.
  2. The procedure by which the health professional may dispose of unclaimed medical records after a specified period of time and after the health professional has made good faith efforts to contact the patient.
  3. How the health professional shall timely respond to requests from patients for copies of their medical records or to access their medical records.
- B. The protocol prescribed in subsection A of this section must comply with the relevant requirements of title 12, chapter 13, article 7.1 regarding medical records.
- C. A health professional shall indicate compliance with the requirements of this section on the health professional's application for relicensure in a manner prescribed by the health professional's regulatory board.
- D. A health professional who does not comply with this section commits an act of unprofessional conduct.
- E. In addition to taking disciplinary action against a health professional who does not comply with this section, the health professional's regulatory board may take corrective action regarding the proper storage, transfer and access of the medical records of the health professional's patients. For the purposes of this subsection, corrective action does not include taking possession or management of the medical records.
- F. For the purposes of this section, health professional does not include a veterinarian.
- G. This section does not apply to a health professional who is employed by a health care institution as defined in section 36-401 that is responsible for the maintenance of the medical records.

### **32-3213 Health professionals; disclosure; unprofessional conduct; definition**

- A. An advertisement for health care services that includes a health professional's name shall identify the title and type of license the health professional holds and under which the health professional is practicing.
- B. A health professional who violates this section commits an act of unprofessional conduct.
- C. For the purposes of this section, "advertisement" includes billboards, brochures, pamphlets, radio and television scripts, electronic media, printed telephone directories, telephone and direct mail solicitations and any other means of promotion intended to directly or indirectly induce any person to enter into an agreement for services with the health professional. Advertisement does not include materials that provide information about network providers and that are created by an entity regulated under title 20.

### **32-3214 Board actions; records; website; compliance deadline**

- A. If a health profession regulatory board dismisses a complaint, the record of that complaint is available to that regulatory board and the public pursuant to section 39-121 but may not appear on the board's website. For the purposes of this subsection, "dismisses a complaint" means that a board does not issue a disciplinary or nondisciplinary order or action against a licensee or certificate holder.
- B. If a health profession regulatory board issues a nondisciplinary order or action against a licensee or certificate holder, the record of the nondisciplinary order or action is available to that board and the public pursuant to section 39-121, but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website.
- C. If a health profession regulatory board maintains a website, the board must display on its website a statement that a person may obtain additional public records related to any licensee or certificate holder, including dismissed complaints and nondisciplinary actions and orders, by contacting the board directly.
- D. This section does not prohibit a health profession regulatory board from conducting its authorized duties in a public meeting.
- E. Subsections A and B of this section do not apply to meeting minutes and notices kept by the board in accordance with the public meeting requirements of title 38, chapter 3, article 3.1.
- F. A health profession regulatory board must comply with the requirements of this section on or before January 1, 2012.

### **32-3215 Medical marijuana; unprofessional conduct; annual reports; identifying information**

- A. It is an act of unprofessional conduct for a health professional who is licensed pursuant to chapter 13, 14, 17 or 29 of this title to recommend medical marijuana pursuant to title 36, chapter 28.1 for other than a debilitating medical condition as defined in section 36-2801.
- B. The Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery, the naturopathic physicians medical board and the board of homeopathic and integrated medicine examiners shall each submit an annual report on or before November 15 to the governor, the president of the senate, the speaker of the house of representatives and the director of the department of health services that includes at least the following information:

1. The number of notifications received from the department of health services and from the public of suspected unprofessional conduct that relate to medical marijuana recommendations issued pursuant to title 36, chapter 28.1.
  2. The number of investigations conducted as a result of information received pursuant to paragraph 1 and the outcome of those investigations.
- C. Annual reports filed pursuant to subsection B of this section shall not include identifying information about a physician.

### **32-3216 Health care providers; charges; public availability; direct payment; notice; definitions**

**(Eff. 1/1/14. Rpld. 1/1/22) THIS STATUTE INCLUDES OPTOMETRISTS! (CHAPTER 16)**

- A. A health care provider must make available on request or online the direct pay price for at least the twenty-five most commonly provided services, if applicable, for the health care provider. The services may be identified by a common procedural terminology code or by a plain-English description. The direct pay prices must be updated at least annually and must be based on the services from a twelve-month period that occurred within the eighteen-month period preceding the annual update. The direct pay price must be for the standard treatment provided for the service and may include the cost of treatment for complications or exceptional treatment. Health care providers who are owners or employees of a legal entity with fewer than three licensed health care providers are exempt from the requirements of this subsection.
- B. Subsection A of this section does not apply to emergency services.
- C. The health care services provided by health care providers in veterans administration facilities, health facilities on military bases, Indian health services hospitals and other Indian health service facilities, tribal owned clinics, the Arizona state hospital and any health care facility determined to be exempt pursuant to section 36-437, subsection D, are exempt from the requirements and provisions of this section.
- D. Subsection A of this section does not prevent a health care provider from offering either additional discounts or additional lawful health care services for an additional cost to a person or an employer paying directly.
- E. A health care provider is not required to report the direct pay prices to a government agency or department or to a government-authorized or government-created entity for review or filing. A government agency or department or government-authorized or government-created entity may not approve, disapprove or limit a health care provider's direct pay price for services. A government agency or department or government-authorized or government-created entity may not approve, disapprove or limit a health care provider's ability to change the published or posted direct pay price for services.
- F. A health care system may not punish a person or employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or employer for lawful health care services.
- G. Except as provided in subsection J of this section, a health care provider who receives direct payment from a person or employer for a lawful health care service is deemed paid in full if the entire fee for the service is paid and shall not submit a claim for payment or reimbursement for the service to any health care system. This subsection does not prevent a health care provider from pursuing a health care lien for

customary charges pursuant to title 33. This subsection does not affect the ability of a health care provider to submit claims for the same service provided on other occasions to the same or a different person if no direct payment occurs. This subsection does not require a health care provider to refund or adjust any capitated payment, bundled payment or other form of prepayment or global payment made by a health care system to the health care provider for lawful health care services to be provided by the health care provider for the person who makes, or on whose behalf an employer makes, direct payment to the health care provider.

- H. Before a health care provider who is contracted as a network provider for a health care system accepts direct payment from a person or an employer, and the person is an enrollee of the same health care system, the health care provider shall obtain the person's or employer's signature on a notice in a form that is substantially similar to the following:

Important notice about direct payment for your health care services

The Arizona Constitution permits you to pay a health care provider directly for health care services. Before you make any agreement to do so, please read the following important information:

If you are an enrollee of a health care system (more commonly referred to as a health insurance plan) and your health care provider is contracted with the health insurance plan, the following apply:

1. You may not be required to pay the health care provider directly for the services covered by your plan, except for cost share amounts that you are obligated to pay under your plan, such as copayments, coinsurance and deductible amounts.
2. Your provider's agreement with the health insurance plan may prevent the health care provider from billing you for the difference between the provider's billed charges and the amount allowed by your health insurance plan for covered services.
3. If you pay directly for a health care service, your health care provider will not be responsible for submitting claim documentation to your health insurance plan for that claim. Before paying your claim, your health insurance plan may require you to provide information and submit documentation necessary to determine whether the services are covered under your plan.
4. If you do not pay directly for a health care service, your health care provider may be responsible for submitting claim documentation to your health insurance plan for the health care service.

Your signature below acknowledges that you received this notice before paying directly for a health care service.

- I. A health care provider who receives direct payment for a lawful health care service and who complies with subsection H of this section is not responsible for submitting documentation of any kind for purposes of reimbursement to any health care system for that claim if the failure to submit such documentation does not conflict with the terms of any federal or state contracts to which the health care system is a party and the health care provider has agreed to serve patients under or with applicable state or federal programs in which a health care provider and health care system participate.
- J. This section does not impair the provisions of a health care system's private health care network provider contract, except that a health care provider may accept direct payment from a person or

employer or may decline to bill the health care system directly for services paid directly by a person or employer if the health care provider has complied with subsection H of this section and the health care provider's receipt of direct payment and the declination to bill the health care system do not conflict with the terms of any federal or state contract to which the health care system is a party and the health care provider has agreed to serve patients under or with applicable state or federal programs in which both a health care provider and health care system participate.

K. A health care provider who does not comply with the requirements of this section commits unprofessional conduct. Any disciplinary action taken by the health professional's licensing board may not include revocation of the health care provider's license.

L. For the purposes of this section:

1. "Direct pay price" means the price that will be charged by a health care provider for a lawful health care service, regardless of the health insurance status of the person, if the entire fee for the service is paid in full directly to a health care provider by the person, including the person's health savings account, or by the person's employer and that does not prohibit a provider from establishing a payment plan with the person paying directly for services.
2. "Emergency services" means lawful health care services needed to evaluate and stabilize an emergency medical condition as defined in 42 United States Code section 1396u-2(B)(2)(C).
3. "Enrollee" means a person who is enrolled in a health care plan provided by a health insurer.
4. "Health care plan" means a policy, contract or evidence of coverage issued to an enrollee. Health care plan does not include limited benefit coverage as defined in section 20-1137.
5. "Health care provider" means a person who is licensed pursuant to chapter 7, 8, 13, 16, 17, 19 or 34 of this title.
6. "Health care system" means a public or private entity whose function or purpose is the management, processing or enrollment of individuals or the payment, in full or in part, of health care services.
7. "Health insurer" means a disability insurer, group disability insurer, blanket disability insurer, health care services organization, hospital service corporation, medical service corporation or hospital and medical service corporation as defined in title 20.
8. "Lawful health care services" means any health-related service or treatment, to the extent that the service or treatment is permitted or not prohibited by law or regulation, that may be provided by persons or businesses otherwise permitted to offer the services or treatments.
9. "Punish" means to impose any penalty, surcharge or named fee with a similar effect that is used to discourage the exercise of rights under this section.

**32-4301 License, certificate or registration expiration; military active duty; one hundred eighty day extension**

A. Except as otherwise provided in this section, a license, certificate or registration issued pursuant to this title to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days

after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member. A license, certificate or registration issued pursuant to this title to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member.

- B. A license, certificate or registration issued pursuant to this title to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license, certificate or registration if the member both:
  - 1. Is released from active duty service.
  - 2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.
- C. If the license, certificate or registration is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license, certificate or registration and shall not be charged any additional costs such as late fees or delinquency fees.
- D. The member, or the legal representative of the member, shall present to the authority issuing the license, certificate or registration a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.
- E. This section does not apply to licenses issued pursuant to chapter 10 of this title if a person other than the person who is a member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces as described in subsection A is authorized to renew the license.
- F. A license or certificate issued pursuant to chapter 36 of this title to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall be placed in active status for ninety days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the state board of appraisal of the federal active duty status of the member.

### **32-4302 Out-of-state applicants; military spouses; reciprocity**

- A. Notwithstanding any other law, a license or certificate shall be issued, in the discipline applied for and at the same practice level as determined by the regulating entity, pursuant to this title without an examination to a person who is married to an active duty member of the armed forces of the United States and who is accompanying the member to an official permanent change of station to a military installation located in this state if all of the following apply:
  - 1. The person is currently licensed or certified in at least one other state in the discipline applied for and at the same practice level as determined by the regulating entity and the license or certification is in good standing in all states in which the person holds a license or certification.

2. The person has been licensed or certified by another state for at least one year. If the person has been licensed or certified for fewer than five years, the regulating entity may require the person to practice under the direct supervision of a licensee or certificate holder in the practice area in this state.
  3. When the person was licensed or certified by another state there were minimum education requirements and, if applicable, work experience and clinical supervision requirements in effect and the other state verifies that the person met those requirements in order to be licensed or certified in that state.
  4. The person previously passed an examination required for the license or certification.
  5. The person has not had a license or certificate revoked and has not voluntarily surrendered a license or certificate in any other state or country while under investigation for unprofessional conduct.
  6. The person has not had discipline imposed by any other regulating entity. If another jurisdiction has taken disciplinary action against the person, the regulating entity shall determine if the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the regulating entity may not issue or deny a license until the matter is resolved.
  7. The person does not have a complaint, allegation or investigation pending before another regulating entity in another state or country that relates to unprofessional conduct. If an applicant has any complaints, allegations or investigations pending, the regulating entity in this state shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
  8. The person pays all applicable fees.
- B. This section does not prevent a regulating entity under this title from entering into a reciprocity agreement with another state or jurisdiction for persons married to active duty members of the armed forces of the United States, except that the agreement may not allow out-of-state licensees or certificate holders to obtain a license or certificate by reciprocity in this state if the applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the regulating entity on a case-by-case basis.
- C. This section does not apply to a regulating entity under this title that has entered into a licensing compact with another state for the regulation of practice under the regulating entity's jurisdiction.

### **32-3801 Personal information maintained by professional boards; confidentiality**

Notwithstanding any law to the contrary, a professional's residential address and residential telephone number or numbers maintained by a professional board established pursuant to this title are not available to the public unless they are the only address and numbers of record.

### **35-143.01 Special funds; appropriation; reversion; use**

- A. All monies deposited in special agency funds of self-supporting regulatory agencies, as provided in section 35-142, to be used by such agency for administration and enforcement, shall be subject to annual legislative appropriation.

- B. Unless otherwise provided by the legislature, a special fund self-supporting regulatory agency shall not expend more monies than are appropriated by the legislature for a fiscal year, and any monies remaining at the end of the fiscal year revert to the special agency fund.
- C. Any unexpended or unencumbered balance of monies remaining in the special funds of self-supporting regulatory agencies as provided in section 35-142 at the end of the fiscal year shall not revert to the state general fund and may be made available by the legislature for use by the agency for the following fiscal year.

## **12-2291 Definitions**

In this article, unless the context otherwise requires:

- 1. "Clinical laboratory" has the same meaning prescribed in section 36-451.
- 2. "Contractor" means an agency or service that duplicates medical records on behalf of health care providers.
- 3. "Department" means the department of health services.
- 4. "Health care decision maker" means an individual who is authorized to make health care treatment decisions for the patient, including a parent of a minor or an individual who is authorized pursuant to section 8-514.05, title 14, chapter 5, article 2 or 3 or section 36-3221, 36-3231 or 36-3281.
- 5. "Health care provider" means:
  - (a) A person who is licensed pursuant to title 32 and who maintains medical records.
  - (b) A health care institution as defined in section 36-401.
  - (c) An ambulance service as defined in section 36-2201.
  - (d) A health care services organization licensed pursuant to title 20, chapter 4, article 9.
- 6. "Medical records" means all communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including medical records that are prepared by a health care provider or by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917. Medical records do not include recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity, but include communications that are recorded in any form or medium between emergency medical personnel and medical personnel concerning the diagnosis or treatment of a person.
- 7. "Payment records" means all communications related to payment for a patient's health care that contain individually identifiable information.

8. "Source data" means information that is summarized, interpreted or reported in the medical record, including x-rays and other diagnostic images.

#### **12-2292 Confidentiality of medical records**

- A. Unless otherwise provided by law, all medical records and payment records, and the information contained in medical records and payment records, are privileged and confidential. A health care provider may only disclose that part or all of a patient's medical records and payment records as authorized by state or federal law or written authorization signed by the patient or the patient's health care decision maker.
- B. This article does not limit the effect of any other federal or state law governing the confidentiality of medical records and payment records.

#### **12-2293 Release of medical records to patients and health care decision makers**

- A. Except as provided in subsections B and C of this section, on the written request of a patient or the patient's health care decision maker for access to or copies of the patient's medical records and payment records, the health care provider in possession of the record shall provide access to or copies of the records to the patient or the patient's health care decision maker.
- B. A health care provider may deny a request for access to or copies of medical records or payment records if a health professional determines that either:
  1. Access by the patient is reasonably likely to endanger the life or physical safety of the patient or another person.
  2. The records make reference to a person other than a health professional and access by the patient or the patient's health care decision maker is reasonably likely to cause substantial harm to that other person.
  3. Access by the patient's health care decision maker is reasonably likely to cause substantial harm to the patient or another person.
  4. Access by the patient or the patient's health care decision maker would reveal information obtained under a promise of confidentiality with someone other than a health professional and access would be reasonably likely to reveal the source of the information.
- C. A health care provider may deny a request for access to or copies of medical records or payment records if the health care provider determines that either:
  1. The information was created or obtained in the course of clinical research and the patient or the patient's health care decision maker agreed to the denial of access when consenting to participate in the research and was informed that the right of access will be reinstated on completion of the research.
  2. A health care provider is a correctional institution or is acting under the direction of a correctional institution and access by a patient who is an inmate in the correctional institution would jeopardize the health, safety, security, custody or rehabilitation of the patient or other inmates or the safety of any officer, employee or other person at the correctional institution or of a person who is responsible for transporting the inmate.

- D. If the health care provider denies a request for access to or copies of the medical records or payment records, the health care provider must note this determination in the patient's records and provide to the patient or the patient's health care decision maker a written explanation of the reason for the denial of access. The health care provider must release the medical records or payment records information for which there is not a basis to deny access under subsection B of this section.
- E. For the purposes of this section, "health professional" has the same meaning prescribed in section 32-3201.

**12-2294 Release of medical records and payment records to third parties**

- A. A health care provider shall disclose medical records or payment records, or the information contained in medical records or payment records, without the patient's written authorization as otherwise required by law or when ordered by a court or tribunal of competent jurisdiction.
- B. A health care provider may disclose medical records or payment records, or the information contained in medical records or payment records, pursuant to written authorization signed by the patient or the patient's health care decision maker.
- C. A health care provider may disclose medical records or payment records or the information contained in medical records or payment records and a clinical laboratory may disclose clinical laboratory results without the written authorization of the patient or the patient's health care decision maker as otherwise authorized by state or federal law, including the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or as follows:
  - 1. To health care providers who are currently providing health care to the patient for the purpose of diagnosis or treatment of the patient.
  - 2. To health care providers who have previously provided treatment to the patient, to the extent that the records pertain to the provided treatment.
  - 3. To ambulance attendants as defined in section 36-2201 for the purpose of providing care to or transferring the patient whose records are requested.
  - 4. To a private agency that accredits health care providers and with whom the health care provider has an agreement requiring the agency to protect the confidentiality of patient information.
  - 5. To a health profession regulatory board as defined in section 32-3201.
  - 6. To health care providers for the purpose of conducting utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.
  - 7. To a person or entity that provides services to the patient's health care providers or clinical laboratories and with whom the health care provider or clinical laboratory has an agreement requiring the person or entity to protect the confidentiality of patient information and as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E.
  - 8. To the legal representative of a health care provider in possession of the medical records or payment records for the purpose of securing legal advice.

9. To the patient's third party payor or the payor's contractor.
  10. To the industrial commission of Arizona or parties to an industrial commission claim pursuant to title 23, chapter 6.
- D. A health care provider may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment records to the patient's health care decision maker at the time of the patient's death. A health care provider also may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment records to the personal representative or administrator of the estate of a deceased patient, or if a personal representative or administrator has not been appointed, to the following persons in the following order of priority, unless the deceased patient during the deceased patient's lifetime or a person in a higher order of priority has notified the health care provider in writing that the deceased patient opposed the release of the medical records or payment records:
1. The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.
  2. The acting trustee of a trust created by the deceased patient either alone or with the deceased patient's spouse if the trust was a revocable inter vivos trust during the deceased patient's lifetime and the deceased patient was a beneficiary of the trust during the deceased patient's lifetime.
  3. An adult child of the deceased patient.
  4. A parent of the deceased patient.
  5. An adult brother or sister of the deceased patient.
  6. A guardian or conservator of the deceased patient at the time of the patient's death.
- E. A person who receives medical records or payment records pursuant to this section shall not disclose those records without the written authorization of the patient or the patient's health care decision maker, unless otherwise authorized by law.
- F. If a health care provider releases a patient's medical records or payment records to a contractor for the purpose of duplicating or disclosing the records on behalf of the health care provider, the contractor shall not disclose any part or all of a patient's medical records or payment records in its custody except as provided in this article. After duplicating or disclosing a patient's medical records or payment records on behalf of a health care provider, a contractor must return the records to the health care provider who released the medical records or payment records to the contractor.

**12-2294.01 Release of medical records or payment records to third parties pursuant to subpoena**

- A. A subpoena seeking medical records or payment records shall be served on the health care provider and any party to the proceedings at least ten days before the production date on the subpoena.
- B. A subpoena that seeks medical records or payments records must meet one of the following requirements:
  1. The subpoena is accompanied by a written authorization signed by the patient or the patient's health care decision maker.

2. The subpoena is accompanied by a court or tribunal order that requires the release of the records to the party seeking the records or that meets the requirements for a qualified protective order under the health insurance portability and accountability act privacy standards (42 Code of Federal Regulations section 164.512(e)).
  3. The subpoena is a grand jury subpoena issued in a criminal investigation.
  4. The subpoena is issued by a health profession regulatory board as defined in section 32-3201.
  5. The health care provider is required by another law to release the records to the party seeking the records.
- C. If a subpoena does not meet one of the requirements of subsection B of this section, a health care provider shall not produce the medical records or payment records to the party seeking the records, but may either file the records under seal pursuant to subsection D of this section, object to production under subsection E of this section or file a motion to quash or modify the subpoena under rule 45 of the Arizona rules of civil procedure.
- D. It is sufficient compliance with a subpoena issued in a court or tribunal proceeding if a health care provider delivers the medical records or payment records under seal as follows:
1. The health care provider may deliver by certified mail or in person a copy of all the records described in the subpoena by the production date to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal, together with the affidavit described in paragraph 4 of this subsection.
  2. The health care provider shall separately enclose and seal a copy of the records in an inner envelope or wrapper, with the title and number of the action, name of the health care provider and date of the subpoena clearly inscribed on the copy of the records. The health care provider shall enclose the sealed envelope or wrapper in an outer envelope or wrapper that is sealed and directed to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal.
  3. The copy of the records shall remain sealed and shall be opened only on order of the court or tribunal conducting the proceeding.
  4. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:
    - (a) That the affiant is the duly authorized custodian of the records and has authority to certify the records.
    - (b) That the copy is a true complete copy of the records described in the subpoena.
    - (c) If applicable, that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3 and applicable regulations and that those confidentiality requirements may apply to the requested records. The affidavit shall request that the court make a determination, if required under applicable federal law and regulations, as to the confidentiality of the records submitted.
    - (d) If applicable, that the health care provider has none of the records described or only part of the records described in the subpoena.

5. The copy of the records is admissible in evidence as provided under rule 902(11), Arizona rules of evidence. The affidavit is admissible as evidence of the matters stated in the affidavit and the matters stated are presumed true. If more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this paragraph is a presumption affecting the burden of producing evidence.
- E. If a subpoena does not meet one of the requirements of subsection B of this section or if grounds for objection exist under rule 45 of the Arizona rules of civil procedure, a health care provider may file with the court or tribunal an objection to the inspection or copying of any or all of the records as follows:
1. On filing an objection, the health care provider shall send a copy of the objection to the patient at the patient's last known address, to the patient's attorney if known and to the party seeking the records, unless after reasonable inquiry the health care provider cannot determine the last known address of the patient.
  2. On filing the objection, the health care provider has no further obligation to assert a state or federal privilege pertaining to the records or to appear or respond to a motion to compel production of records, and may produce the records if ordered by a court or tribunal. If an objection is filed, the patient or the patient's attorney is responsible for asserting or waiving any state or federal privilege that pertains to the records.
  3. If an objection is filed, the party seeking production may request an order compelling production of the records. If the court or tribunal issues an order compelling production, a copy of the order shall be provided to the health care provider. On receipt of the order, the health care provider shall produce the records.
  4. If applicable, an objection shall state that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3, shall state that the records may be subject to those confidentiality requirements and shall request that the court make a determination, if required under applicable federal law and regulations, on whether the submitted records are subject to discovery.
- F. If a party seeking medical records or payment records wishes to examine the original records maintained by a health care provider, the health care provider may permit the party to examine the original records if the subpoena meets one of the requirements of subsection B of this section. The party seeking the records also may petition a court or tribunal for an order directing the health care provider to allow the party to examine the original records or to file the original records under seal with the court or tribunal under subsection D of this section.

## **12-2295 Charges**

- A. Except as otherwise provided by law, a health care provider or contractor may charge a person who requests copies of medical records or payment records a reasonable fee for the production of the records. Except as necessary for continuity of care, a health care provider or contractor may require the payment of any fees in advance.
- B. A health care provider or contractor shall not charge for the pertinent information contained in medical records provided to:
1. Another health care provider for the purpose of providing continuing care to the patient to whom the medical record pertains.

2. The patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.
3. The health care decision maker of the patient to whom the medical record pertains for the demonstrated purpose of obtaining health care for the patient.
4. The Arizona medical board, the board of osteopathic examiners in medicine and surgery or an officer of the department of health services or the local health department requesting records pursuant to section 36-662.

#### **12-2296 Immunity**

A health care provider, contractor or clinical laboratory that acts in good faith under this article is not liable for damages in any civil action for the disclosure of medical records, payment records or clinical laboratory results or information contained in medical records, payment records or clinical laboratory results that is made pursuant to this article or as otherwise provided by law. The health care provider, contractor or clinical laboratory is presumed to have acted in good faith. The presumption may be rebutted by clear and convincing evidence.

#### **12-2297 Retention of records**

- A. Unless otherwise required by statute or by federal law, a health care provider shall retain the original or copies of a patient's medical records as follows:
  1. If the patient is an adult, for at least six years after the last date the adult patient received medical or health care services from that provider.
  2. If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received medical or health care services from that provider, whichever date occurs later.
  3. Source data may be maintained separately from the medical record and must be retained for six years from the date of collection of the source data.
- B. When a health care provider retires or sells the provider's practice the provider shall take reasonable measures to ensure that the provider's records are retained pursuant to this section.
- C. A person who is licensed pursuant to title 32 as an employee of a health care provider is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.
- D. A nursing care institution as defined in section 36-401 shall retain patient records for six years after the date of the patient's discharge. For a minor, the nursing care institution shall retain the records for three years after the patient reaches eighteen years of age or for six years after the date of the patient's discharge, whichever date occurs last.

#### **13-3620 Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions**

- A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other

than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, a christian science practitioner or a priest who has received a confidential communication or a confession in that person's role as a member of the clergy, a christian science practitioner or a priest in the course of the discipline enjoined by the church to which the member of the clergy, christian science practitioner or priest belongs may withhold reporting of the communication or confession if the member of the clergy, christian science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, christian science practitioner or priest may otherwise make of the minor. For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
2. Any peace officer, child welfare investigator, child protective services worker, member of the clergy, priest or christian science practitioner.
3. The parent, stepparent or guardian of the minor.
4. School personnel or domestic violence victim advocates who develop the reasonable belief in the course of their employment.
5. Any other person who has responsibility for the care or treatment of the minor.

B. A report is not required under this section either:

1. For conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.
2. If a minor is of elementary school age, the physical injury occurs accidentally in the course of typical playground activity during a school day, occurs on the premises of the school that the minor attends and is reported to the legal parent or guardian of the minor and the school maintains a written record of the incident.

C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

D. Reports shall be made immediately either electronically or by telephone. The reports shall contain the following information, if known:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor.
  2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.
  3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.
- E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.
- F. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.
- G. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer, child welfare investigator or child protective services worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer, child welfare investigator or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.
- H. When reports are received by a peace officer, the officer shall immediately notify child protective services in the department of economic security and make the information available to child protective services. Notwithstanding any other statute, when child protective services receives these reports, it shall immediately notify a peace officer in the appropriate jurisdiction and the office of child welfare investigations in the department of economic security.
- I. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.
- J. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.
- K. Except for the attorney client privilege or the privilege under subsection L of this section, no privilege applies to any:
1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.

2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.
  3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or child protective services in the department of economic security.
- L. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, a member of the clergy, a christian science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a christian science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. This subsection does not discharge a member of the clergy, a christian science practitioner or a priest from the duty to report pursuant to subsection A of this section.
- M. If psychiatric records are requested pursuant to subsection G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:
1. Personal information about individuals other than the patient.
  2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.
- N. If any portion of a psychiatric record is excised pursuant to subsection M of this section, a court, on application of a peace officer, child welfare investigator or child protective services worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer, child welfare investigator or child protective services worker investigating the abuse, child abuse, physical injury or neglect.
- O. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.
- P. For the purposes of this section:
1. "Abuse" has the same meaning prescribed in section 8-201.
  2. "Child abuse" means child abuse pursuant to section 13-3623.
  3. "Neglect" has the same meaning prescribed in section 8-201.
  4. "Reportable offense" means any of the following:
    - (a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.01.
    - (b) Surreptitious photographing, videotaping, filming or digitally recording or viewing a minor pursuant to section 13-3019.
    - (c) Child prostitution pursuant to section 13-3212.
    - (d) Incest pursuant to section 13-3608.

## **41-1001.01 Regulatory bill of rights**

- A. To ensure fair and open regulation by state agencies, a person:
1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.
  2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.
  3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.
  4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.
  5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.
  6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:
    - (a) Providing written comments or testimony on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement.
    - (b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.
    - (c) Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.
  7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.
  8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.
  9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.
  10. May file a complaint with the administrative rules oversight committee concerning:

- (a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.
  - (b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.
11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.
  12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter and may appeal a final administrative decision by filing a notice of appeal pursuant to title 12, chapter 7, article 6.
  13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.
  14. Is entitled to receive written notice from an agency on denial of a license application:
    - (a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.
    - (b) That explains the applicant's right to appeal the denial as provided in section 41-1076.
  15. Is entitled to receive information regarding the license application process before or at the time the person obtains an application for a license as provided in sections 41-1001.02 and 41-1079.
  16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.
  17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.
  18. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.
  19. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.
- B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

**\*\*See Chapter 6 of Title 41 for all the articles on Administrative Procedure\*\***

#### **41-1010 Complaints; public record**

Notwithstanding any other law, a person shall disclose the person's name during the course of reporting an alleged violation of law or rule. During the course of an investigation or enforcement action, the name of the complainant shall be a public record unless the affected agency determines that the release of the complainant's name may result in substantial harm to any person or to the public health or safety.

**41-3023.08 Optometry board; termination July 1, 2023**

A. The state board of optometry terminates on July 1, 2023.

B. Title 32, chapter 16 is repealed on January 1, 2024.