

HEALTH PROFESSIONS: CONSEQUENCES OF DRUG PROSECUTION & CONVICTION

Health Professionals: “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 36, chapter 17”¹

<ul style="list-style-type: none"> • Acupuncturist • Assoc. Counselor • Assoc. Marriage & Family Therapist • Assoc. Substance Abuse Counselor • Athletic Trainer • Audiologist • Auricular Cert. Holder • Baccalaureate Social Worker • Behavioral Analysts • Chiropractor • Chiropractor Assistant • Clinical Social Worker; • Clinical Nurse Specialist • Dental Hygienist 	<ul style="list-style-type: none"> • Dentist • Denturist • Equine Dental Tech • Homeopathic Physician • Homeopathic Medical Assistant • Independent Substance Abuse Counselor • Marriage & Family Therapist • Massage Therapists • Master Social Worker; • Medical Physician • Medical Assistant • Naturopathic Physician • Registered Nurse • Occupational Therapist 	<ul style="list-style-type: none"> • Occupational Therapy Assistant • Optometrist • Osteopathic Physician • Pharmacist • Pharmacy technician • Pharmacist Tech Trainee • Physical Therapists • Physical therapist assistant • Physician Assistants • Podiatrist • Practical tech-podiatry • Practical tech-radiology 	<ul style="list-style-type: none"> • Professional Counselor • Psychologists • Radiologic technologist • Radiologist assistant • Respiratory Therapist • Respiratory Therapy Technician • Speech-language pathologists • Speech-language pathology assistants • Veterinarian • Veterinary Technician
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¹ A.R.S. § 32-3201(2)

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UNIFORM REPORTING REQUIREMENT & AUTHORIZATION TO INVESTIGATE

	Pre-Conviction Reporting	Pre-conviction investigation?	Failure to Report- Penalty
ALL HEALTH PROFESSIONS	<ul style="list-style-type: none"> - 10 days to inform relevant regulatory board - “Charged with misdemeanor involving conduct that may affect patient safety or a felony” 	<p>Always permitted.</p> <p>ARS § 32-3208(C).</p>	<ul style="list-style-type: none"> • independent disciplinary violation • fine of up to \$1,000 <p>ARS § 32-3208(D)</p>

REPORTABLE MISDEMEANORS DRUG CHARGES

All misdemeanor drug charges must be reported. Assume Class 6 open will be treated as felony until designated misdemeanor

OTHER REPORTING REQUIREMENTS

- Statutes & regulations applicable to specific professions often **impose reporting requirements** on other parties: e.g., health care institutions, other professionals.
 - o Mandatory reporting or disciplinary violation if fail to report
 - o Often extend to professionals and their assistants/interns if subject to regulation

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MEDICAL MARIJUANA USE BY THE HEALTH PROFESSIONS

Registered patient (permitted medical marijuana user) is immune from denial of any right or privilege, “including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau” for the medical use of medical marijuana, provided amount, for most registered users, *does not exceed 2.5 ounces*. A.R.S. §§ 36-2811(B)(1); 36-2801(1)(a).

But professional may be required to establish his or her immunity at a hearing. *See State v. Fields ex rel. County of Pima*, 232 Ariz. 265, 304 P.3d 1088 (App. 2013) (holding that immunity is a jury question in criminal case)

Protections for employers suggest discipline may still be possible under some circumstances. For example, an employer may discipline employee for ingesting marijuana in the workplace or working while under the influence. A.R.S. 36-2814

Recent publicized case, Board of Nursing issued a letter of concern to a nurse who held a medical marijuana card and tested positive at her place of employment. But, the Board does not view a “letter of concern” as “discipline.”

Q: If prosecuted for marijuana crime, but will put on a medical marijuana defense, must you report?

Unclear, but likely required since Defendant has burden of proving immunity This seems little different that a case in which a defendant assert innocence – still must disclose the charge to state regulatory board.

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TABLE OF BOARDS/PROFESSIONS: ADDITIONAL NOTICE, SUMMARY SUSPENSION, DISCIPLINE GROUNDS

Range of punishments: Letters of Concern, Censure, Probation, Limitations on Practice, Suspension & Revocation. Civil fines of varying ranges often also available.

Summary suspension: often authorized if agency finds emergency threat to safety of patient or others

Conviction: often is *conclusive proof* of misconduct. See ,e.g., A.R.S. 32-1410 (“conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission”).

Class 6 Opens: At least some boards will treat class 6 open convictions as felonies until the Court designates the conviction as a misdemeanor.²

	Summary Suspension	Directly Relevant Grounds for Discipline
Acupuncture	No	<ul style="list-style-type: none"> • Conviction of any felony, or a misdemeanor involving a crime of moral turpitude • Committing a felony • Any substance abuse

² <http://www.azbn.gov/FelonyBarStatutes.aspx>

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	Summary Suspension	Directly Relevant Grounds for Discipline For Drugs
Athletic Trainer	Y	<ul style="list-style-type: none"> • committing any felony or a misdemeanor involving moral turpitude • Practicing as an athletic trainer if physical or mental abilities are impaired by the use of alcohol or any other substance
Behavioral Health	Y	<ul style="list-style-type: none"> • Conviction of a felony • Active habitual substance abuse • use of an unprescribed controlled substance
Chiropractic Examiners	Y	<ul style="list-style-type: none"> • Habitual use of alcohol, narcotics or stimulants • Conviction of a misdemeanor involving moral turpitude or a felony
Dental Examiners	N	<ul style="list-style-type: none"> • Conviction of a felony or of a misdemeanor involving moral turpitude • Using controlled substances, narcotic drugs, dangerous drugs, marijuana or hypnotic drugs • Prescribing, dispensing or using drugs for non-medical purposes

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	Summary Suspension	Relevant Grounds for Discipline
Homeopathic Medicine	Y	<ul style="list-style-type: none"> • Commission of a felony, or a misdemeanor involving moral turpitude. • Habitual intemperance in the use of alcohol or habitual substance abuse. • Prescribing a controlled substance for non-therapeutic purposes. • Using unprescribed controlled substances • Prescribing/dispensing controlled substances to family • Prescribing/administering/dispensing class 2 controlled substances, including amphetamines for more than 30 days to treat obesity <p>Non-therapeutic use of injectable amphetamines.</p>
Massage Therapy	Y	<ul style="list-style-type: none"> • Using drugs to the extent that it affects professional competency. • Conviction for a felony or other offense involving moral turpitude

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	Summary Suspension	Relevant Grounds for Discipline
Medical Board	Y.	<ul style="list-style-type: none"> • Committing a felony, or a misdemeanor involving moral turpitude • Habitual substance abuse • Use of unprescribed controlled substances • Prescribing/dispensing controlled substances to family • Prescribing/dispensing/administering any controlled substance or prescription-only drug for any non-therapeutic purpose • Prescribing/administering/dispensing class 2 controlled substances, including amphetamines for more than 30 days to treat obesity
Naturopathic	Y.	<ul style="list-style-type: none"> • Committing a felony or a misdemeanor involving moral turpitude • Any substance abuse • Illegal use of any narcotic or hypnotic drugs, or illegal substances. • Using an unprescribed controlled substance • Prescribing, dispensing or administering anabolic androgenic steroids for other than therapeutic purposes. • Prescribing or dispensing a controlled substance to immediate family, except in emergency.

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Occupational Therapy	N	<ul style="list-style-type: none"> • Habitual use of narcotic or hypnotic drugs. • Committing a felony, or a misdemeanor involving moral turpitude.
Optometry	N	<ul style="list-style-type: none"> • Addiction to, or illegal use of, narcotic drugs • Practicing under the influence • Conviction of a felony or any offense involving moral turpitude • providing any controlled substance or prescription-only drug for other than accepted therapeutic purposes or that optometrists may not provide

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	Summary Suspension	Relevant Grounds for Discipline
Osteopathic Examiners	Y	<p>Committing a felony, or misdemeanor involving moral turpitude.</p> <p>Practicing medicine while under the influence of alcohol, narcotic or hypnotic drugs</p> <p>Diagnosed as excessively or illegally using alcohol or a controlled substance.</p> <p>Prescribing, dispensing or administering controlled substances or prescription-only drugs for other than accepted therapeutic purposes.</p> <p>Using controlled substances or prescription-only drugs without a prescription/approval</p> <p>Prescribing to family members under most circumstances</p> <p>Nontherapeutic use of injectable amphetamines</p> <p>Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes</p>

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	Summary Suspension	Relevant Grounds for Discipline
Pharmacy	Y	<p>Committing a felony, or a misdemeanor involving moral turpitude or any drug related offense.</p> <p>Working under the influence of drugs</p> <p>Addiction to drugs</p> <p>Violating a federal or state law or administrative rule relating to the manufacture, sale or distribution of drugs, devices, poisons, hazardous substances or precursor chemicals.</p> <p>Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals.</p> <p>Intending to sell, transfer or distribute, or to offer for sale, transfer or distribution, or selling, transferring, distributing or dispensing or offering for sale, transfer or distribution an imitation controlled substance, imitation over-the-counter drug or imitation prescription-only drug</p> <p>Knowingly dispensing a drug without a valid prescription order</p>

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	Summary Suspension	Relevant Grounds for Discipline
Physical Therapy	Y	<p>Conviction of a felony, or a misdemeanor involving moral turpitude</p> <p>Practicing while impaired by controlled substances or other habit-forming drugs, chemicals</p>
Physician Assistant	Y	<p>habitual substance abuse.</p> <p>Prescribing or dispensing controlled substances or prescription-only drugs without authorization or in excess of limits</p> <p>Using unprescribed controlled substances</p> <p>Prescribing/dispensing to immediate family</p> <p>Committing a felony, or a misdemeanor involving moral turpitude.</p> <p>) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes</p>
Podiatry Examiners	Y.	<ul style="list-style-type: none"> • commission of felony, or misdemeanor involving moral turpitude • habitual substance abuse • Use of controlled substances or prescription-only drugs • Providing any controlled substance or prescription-only drug
Psychology	Y	Commission of a felony, or a misdemeanor involving moral turpitude..

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Radiological Tech	N	<p>addicted to the use of morphine, cocaine or other drugs having similar effect, is insane or uses hallucinogens.</p> <p>Convicted of a crime involving moral turpitude</p>
Respiratory Care	Y	<p>Committing a felony, [or misdemeanor involving moral turpitude.</p> <p>Illegal use of narcotic or hypnotic drugs or substances.</p>
Veterinary	Y	<p>unlawful use of narcotics, dangerous drugs or controlled substances</p> <p>Distribution of narcotics, dangerous drugs, prescription-only drugs or controlled substances for other than legitimate purposes</p> <p>Violation of or failure to comply with any state or federal laws or regulations relating to the storing, labeling, prescribing or dispensing of controlled substances or prescription-only drugs</p> <p>(2) Conviction of a crime involving moral turpitude, or conviction of a felony</p>

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CHART OF PROFESSIONS/STATUTES & STATE REGULATIONS

AREA/BOARD	PROFESSIONALS	STATUTES (A.R.S)	REGULATIONS (Ariz. Admin. Code)
Acupuncture Board of Examiners	Acupuncture Licensee; Auricular Certificate Holder	32-3901 → 3954	R4-8-101 → 706
Athletic Trainer	Trainers	32-4101 → 4161	R4-49-101 → 405
Behavioral Health	Professional Counselor; Associate Counselor; Licensed Marriage and Family Therapist; Licensed Associate Marriage and Family Therapist; Licensed Clinical Social Worker; Licensed Master Social Worker; Licensed Baccalaureate Social Worker; Licensed Independent Substance Abuse Counselor; Licensed Associate Substance Abuse Counselor	32-3251 → 3321	R4-6-101 → 1105
Chiropractic Examiners	Chiropractor; Chiropractor Assistant	32-3201 → 3234	R4-7-101 → 1301
Dental Examiners	Dentist; Denturist; Dental Hygienist	32-3201 → 3234	R4-11-101 → 1802
Homeopathic Medicine	Doctor of Homeopathic Medicine, Medical Assistant in Homeopathic Medicine	32-2901 → 2951	R4-38-101 → 403

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BOARD	PROFESSIONALS	STATUTES (A.R.S)	REGULATIONS (Ariz. Admin. Code)
Massage Therapy	Massage Therapist	32-4201 → 4259	R4-15-101 → 401
Medical Board	Medical Doctors; Medical Assistants	32-3201 → 3234	R4-25-101 → 605
Naturopathic	Naturopathic Physician	32-3201 → 3234	R4-18-101 → 802
Nursing	Registered Nurse; Clinical Nurse Specialist	32-1501 → 1581	R4-19-101 → 815
Occupational Therapy	Occupational Therapists, Occupational Therapy Assistants	32-3401 → 3445	R4-43-201 → 302
Optometry	Optometrists	32-1701 → 1774	R4-21-201 → 309
Osteopathic Examiners	Osteopathic Physicians	32-1800 → 1871	R4-22-101 → 212
Pharmacy	Pharmacists, Pharmacy technician, Pharmacist Tech Trainee	32-1901 → 1996	R4-23-101 → 1211
Physical Therapy	Physical therapists, Physical therapist assistants	32-2001 → 2052	R4-24-101 → 506

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BOARD	PROFESSIONALS	STATUTES (A.R.S)	REGULATIONS (Ariz. Admin. Code)
Physician Assistant (Medical Board)	Physician Assistants	32-2501 → 2558	R4-17-101 → 403
Podiatry Examiners	Doctors of Podiatry	32-801 → 871	R4-25-101 → 605
Psychology	Psychologists, Behavioral Analysts	32-2061 → 2091.14	R4-26-101 → 308
Radiological Tech	Radiologic technologist Radiologist assistant	32-2801 → 2843	
Respiratory Care	Respiratory Therapist; Respiratory Therapy Technician	32-3501 → 3558	R4-45-101 → 302
Veterinary	Vets; Vet Technician; Equine Dental Tech	32-2201 → 2250	R3-11-101 → 1010