

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

### **From A.R.S. Title 13: Criminal Code Chapter 36: Family Offenses**

#### **§13-3620. Duty and authorization to report nonaccidental injuries, physical neglect and denial or deprivation of necessary medical or surgical care or nourishment of minors; duty to make medical records available; exception; violation; classification**

A. Any physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, county medical examiner, nurse, psychologist, school personnel, social worker, peace officer, parent, counselor, clergyman or priest or any other person having responsibility for the care or treatment of children whose observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of injury, sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212, death, abuse pursuant to section 8-201, or physical neglect which appears to have been inflicted on that minor by other than accidental means or which is not explained by the available medical history as being accidental in nature or who has reasonable grounds to believe 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 less than one year of age 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. A clergyman or priest who has received a confidential communication or a confession in that person's role as a clergyman or a priest in the course of the discipline enjoined by the church to which the clergyman or priest belongs may withhold reporting of the communication or confession if the clergyman 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 clergyman or priest may otherwise make of the minor. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors age fourteen, fifteen, sixteen or seventeen and

there is nothing to indicate that the conduct is other than consensual. Reports shall be made forthwith by telephone or in person forthwith and shall be followed by a written report within seventy-two hours. The reports shall contain:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.
2. The minor's age and the nature and extent of the minor's injuries or physical neglect, including any evidence of previous injuries or physical neglect.
3. Any other information that the person believes might be helpful in establishing the cause of the injury or physical neglect.

B. A health care professional who is regulated pursuant to title 32 and whose routine newborn physical assessment of a newborn infant's health status or whose notification of positive toxicology screens of a newborn infant gives the professional reasonable grounds to believe that the newborn infant may be affected by the presence of alcohol or a substance prohibited by chapter 34 of this title 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.

C. Any person other than one required to report or cause reports to be made in subsection A of this section who has reasonable grounds to believe that a minor is or has been a victim of abuse or neglect may report the information to a peace officer or to child protective services in the department of economic security.

D. A person having 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 or child protective services worker investigating the minor's neglect or abuse on written request for the records signed by the peace officer 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.

E. When such telephone or in-person reports are received by the peace officer, they shall immediately notify child protective services in the department of economic security and make the information available to them. Notwithstanding any other statute, when child protective services receives these reports by telephone or in person, it shall immediately notify a peace officer in the appropriate jurisdiction.

F. Any person required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the child and the vicinity involved. Medical examinations including, but not limited to, radiological examinations of the involved child may be performed.

G. A person furnishing a report, information or records required or authorized under this section, or a person participating in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, shall be

immune from any civil or criminal liability by reason of such 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. Except as provided in subsection H of this section, the physician-patient privilege, the husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation or administrative proceeding in which a child's neglect, dependency, abuse or abandonment is an issue nor in any judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section nor in any investigation of a child's neglect or abuse conducted by a peace officer or child protective services in the department of economic security.

H. In any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is an issue, a clergyman or priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman or a priest in the course of the discipline enjoined by the church to which he belongs. Nothing in this subsection discharges a clergyman or priest from the duty to report pursuant to subsection A of this section.

I. If psychiatric records are requested pursuant to subsection D 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.

J. If any portion of a psychiatric record is excised pursuant to subsection I of this section, a court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of the record containing information relevant to the reported abuse or neglect be made available to the peace officer or child protective services worker investigating the abuse or neglect.

K. A person who violates this section is guilty of a class 1 misdemeanor.

#### **§13-3620.01. False reports; violation; classification**

A. A person acting with malice who knowingly and intentionally makes a false report of child abuse or neglect or a person acting with malice who coerces another person to make a false report of child abuse or neglect is guilty of a class 1 misdemeanor.

B. A person who knowingly and intentionally makes a false report that a person has violated the provisions of subsection A of this section is guilty of a class 1 misdemeanor.

**From A.R.S. Title 32: Professions and Occupations**  
**Chapter 28: Radiological Technologists**

**§32-2801. Definitions**

In this chapter, unless the context otherwise requires:

1. "Agency" means the radiation regulatory agency established under section 30-652.
2. "Board" means the medical radiologic technology board of examiners.
3. "Certificate" means a certificate granted and issued by the board.
4. "Certified technologist" means a person holding a certificate granted and issued by the board.
5. "Direction" means responsibility for and control of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.
6. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles or rays.
7. "Leg" means that part of the lower limb between the knee and the foot.
8. "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, podiatry, chiropractic or naturopathic medicine in this state.
9. "Practical technologist in podiatry" means a person holding a practical technologist in podiatry certificate granted and issued by the board.
10. "Practical technologist in podiatry certificate" means a certificate issued to a person, other than a licensed practitioner, who applies ionizing radiation to the foot and leg for diagnostic purposes while under the specific direction of a licensed practitioner.
11. "Practical technologist in radiology" means a person holding a practical technologist in radiology certificate granted and issued by the board.
12. "Practical technologist in radiology certificate" means a certificate issued to a person, other than a licensed practitioner, who applies ionizing radiation to specific parts of the human body for diagnostic purposes while under the specific direction of a licensed practitioner.
13. "Radiologic technologist" means a person who holds a certificate issued by the board that allows that person to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.

14. "Radiologic technology" means the science and art of applying ionizing radiation to human beings for general diagnostic or therapeutic purposes.

15. "Radiologic technology certificate" means a certificate issued in radiologic technology to a person with at least twenty-four months of full-time study or its equivalent through an approved program and who has successfully completed an examination by a national certifying body.

16. "Radiologist" means a licensed practitioner of medicine or osteopathy who has undertaken a course of training which meets the requirements for admission to the examination of the American board of radiology or the American osteopathic board of radiology.

17. "Unethical professional conduct" means the following acts, whether occurring in this state or elsewhere:

(a) Intentional betrayal of a professional confidence or intentional violation of a privileged communication except as required by law. This subdivision does not prevent members of the board from the exchange of information with the radiologic licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries.

(b) Use of controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401 or hypnotic drugs, derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects or use of alcohol to the extent that it affects the ability of the certificate or permit holder to practice his profession.

(c) Using drugs for other than accepted therapeutic purposes.

(d) Gross malpractice.

(e) Acting or assuming to act as a member of the board if this is not true.

(f) Procuring or attempting to procure a certificate or license by fraud or misrepresentation.

(g) Having professional connection with or lending one's name to an illegal practitioner of radiologic technology or any other health profession.

(h) Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

(i) Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity. This subdivision shall not apply to communication

between a technologist or permit holder and a patient with reference to a disease, injury, ailment or infirmity, or as to any knowledge obtained by personal examination of the patient.

(j) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly.

(k) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of radiologic technology.

(l) Refusal, revocation or suspension of a certificate or license by any other state, territory, district or country for reasons that relate to the person's ability to safely and skillfully practice radiologic technology or to any act of unprofessional conduct.

(m) Any conduct or practice which does or would constitute a danger to the health of the patient or the public.

(n) Obtaining a fee by fraud or misrepresentation or willfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

(o) Employing uncertified persons to perform or aiding and abetting uncertified persons in the performance of work which can be done legally only by certified persons.

(p) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate the provisions of this chapter or a rule adopted by the board.

18. "Unlimited practical technologist in radiology" means a person holding an unlimited practical technologist in radiology certificate granted and issued by the board.

19. "Unlimited practical technologist in radiology certificate" means a certificate issued to a person in 1977 or 1978, other than a licensed practitioner, who applies ionizing radiation to the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

#### **§32-2811. Prohibitions and limitations; exceptions**

A. No person may use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.

B. A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body specified in the law under

which the practitioner is licensed. The provisions of the technologist's certificate govern the extent of application of ionizing radiation.

C. Nothing in the provisions of this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.

D. The requirement of a certificate shall not apply to:

1. A hospital resident specializing in radiology who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, naturopathy, chiropractic or radiologic technology who applies ionizing radiation to a human being while under the specific direction of a licensed practitioner.
2. A person engaged in performing the duties of a technologist in such person's employment by an agency, bureau or division of the government of the United States.
3. Dental hygienists licensed in the state of Arizona and dental assistants holding a valid certificate in dental radiology from a course approved by the Arizona state board of dental examiners.
4. Persons providing assistance during an ionizing radiation procedure, apart from such procedures conducted in a health care institution, under the direction of a person licensed for the use of an ionizing radiation machine.

E. The provisions of subsection B of this section do not apply to ionizing radiation ordered by a licensed practitioner for other than diagnostic or therapeutic purposes pursuant to section 13-2505, subsection F.

**From A.R.S. Title 32: Professions and Occupations  
Chapter 32: Health Professionals**

**§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 or 41 of this title, title 36, chapter 6, article 7 or title 36, chapter 17.

### **§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.

### **32-3208. 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.

**From A.R.S. Title 32: Professions and Occupations  
Chapter 37: Child Support Obligations**

**§32-3701. Child support arrearages; suspension of license or certificate; applicability; definition**

- A. A licensing board or agency shall suspend a license within thirty days after receiving a certificate of noncompliance from the court pursuant to section 25-518. The licensing board or agency shall not lift the suspension until it receives a certificate of compliance from the court.
- B. The licensing board or agency shall notify the department of economic security within thirty days in writing, or by any other means prescribed by the department, of all license suspensions pursuant to this section. The information shall include the person's name, address, date of birth and social security number.
- C. This section applies to support obligations ordered by any state, territory or district of the United States.
- D. For purposes of this section, "license" means any license, certificate, registration, permit or other authorization that:
  1. Is issued by an agency or regulatory board.
  2. Is subject before expiration to suspension, revocation, forfeiture or termination by the issuing board or agency.
  3. A person must obtain to practice or engage in a particular business, occupation or profession.

**From A.R.S. Title 41: State Government  
Chapter 10: Administrative Appeals Procedures**

**ARTICLE 10 Uniform Administrative Appeals Procedures**

**41-1092. Definitions**

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.

3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not preceded by an opportunity for an administrative hearing. Appealable agency actions do not include interim orders by self-supporting regulatory boards or rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph "administrative hearing" does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.

4. "Director" means the director of the office of administrative hearings.

5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.

6. "Office" means the office of administrative hearings.

7. "Self-supporting regulatory board" means any one of the following:

(a) The state board of accountancy.

(b) The state board of appraisal.

(c) The board of barbers.

(d) The board of behavioral health examiners.

(e) The Arizona state boxing commission.

(f) The state board of chiropractic examiners.

(g) The board of cosmetology.

(h) The state board of dental examiners.

(i) The state board of funeral directors and embalmers.

(j) The Arizona game and fish commission.

(k) The board of homeopathic medical examiners.

(l) The Arizona medical board.

(m) The naturopathic physicians board of medical examiners.

(n) The state board of nursing.

(o) The board of examiners of nursing care institution administrators and adult care home managers.

(p) The board of occupational therapy examiners.

(q) The state board of dispensing opticians.

- (r) The state board of optometry.
- (s) The Arizona board of osteopathic examiners in medicine and surgery.
- (t) The Arizona peace officer standards and training board.
- (u) The Arizona state board of pharmacy.
- (v) The board of physical therapy examiners.
- (w) The state board of podiatry examiners.
- (x) The state board for private postsecondary education.
- (y) The state board of psychologist examiners.
- (z) The board of respiratory care examiners.
- (aa) The structural pest control commission.
- (bb) The state board of technical registration.
- (cc) The Arizona state veterinary medical examining board.
- (dd) The acupuncture board of examiners.
- (ee) The regulatory board of physician assistants.
- (ff) The board of athletic training.

**41-1092.01. Office of administrative hearings; director; powers and duties; fund**

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.
2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.
3. Hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.
5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act.
6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.
8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives by December 1 for the prior fiscal year:

- (a) The number of administrative law judge decisions rejected or modified by agency heads.
- (b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.
- (c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 upon the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

**41-1092.02. Appealable agency actions; application of procedural rules; exemption from article**

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.

5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation.
9. The department of economic security except as provided in sections 8-506.01 and 8-811.
10. The department of revenue regarding income tax, withholding tax or estate tax or any tax issue related to information associated with the reporting of income tax, withholding tax or estate tax.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to the provisions under section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.
2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

**41-1092.03. Notice of appealable agency action; hearing; informal settlement conference; applicability**

A. An agency shall serve notice of an appealable agency action pursuant to section 41-1092.04. The notice shall identify the statute or rule that is alleged to have been violated or on which the action is based and shall include a description of the party's right to request a hearing on an appealable agency action and to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action by filing a notice of appeal with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action. A notice of appeal also may be filed by a party who will be adversely affected by the appealable agency action and who exercised any right to comment on the action provided by law or rule, provided that the grounds for appeal are limited to issues raised in that party's comments. The notice of appeal shall identify the party, the party's address, the agency and the action being appealed and shall contain a concise statement of the reasons for the appeal. The agency shall notify the office of the appeal and the office shall schedule a hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal that is not filed in a timely manner.

**41-1092.04. Service of documents**

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

**41-1092.05. Scheduling of hearings; prehearing conferences**

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.

2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.

2. Consider amendments to any pleadings.

3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.

4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.

5. Schedule deadlines, hearing dates and locations if not previously set.

6. Allow the parties opportunity to discuss settlement.

**41-1092.06. Appeals of agency actions; informal settlement conferences; applicability**

A. If requested by the appellant of an appealable agency action, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an

informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

#### **41-1092.07. Hearings**

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the

failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

G. At a hearing on a denial of a license or permit, the applicant has the burden of proof.

#### **41-1092.08. Final administrative decisions; review**

A. The administrative law judge of the office 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 administrative law judge shall serve a copy of the decision on the agency. Upon request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all

parties. If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or upon review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

#### **41-1092.09. Rehearing or review**

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

#### **41-1092.10. Compulsory testimony; privilege against self-incrimination**

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.