



# Attorney General

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ARIZONA ATTORNEY GENERAL

March 1, 1985

Ms. Mary L. Tucker  
Executive Director  
Arizona Board of Osteopathic Examiners  
in Medicine and Surgery  
5060 North 19th Avenue, Suite 109  
Phoenix, Arizona 85015

Re: I85-033 (R85-014)

Dear Ms. Tucker:

You have asked us to address whether A.R.S. § 32-1855.A requires an osteopathic physician who is treating another osteopathic physician to report information which may show that the physician-patient is, or may be, "unable safely to engage in the practice of medicine" or is, or may be, "guilty of unprofessional conduct." For the reasons set forth below, we conclude that the duty to report imposed by A.R.S. § 32-1855.A applies, notwithstanding the physician-patient relationship.

A.R.S. § 32-1855.A which requires that certain information be reported to the Arizona Board of Osteopathic Examiners (the Board) provides, in relevant part:

Any osteopathic physician or surgeon or the Arizona Osteopathic Medical Association, or any health care institution as defined in § 36-401 shall and any other person may, report to the Board any information such physician or surgeon, association, health care institution or such other persons may have which appears to show that an osteopathic physician or surgeon is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.

(Emphasis added).

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The use of the mandatory "shall" by the legislature in connection with the reporting requirement imposes an absolute duty to report. Moreover, A.R.S. § 32-1855.A expressly declares that failure of an osteopathic physician to report as required by statute is an act of unprofessional conduct. There is no exception to this reporting requirement for the physician treating an unsafe or unprofessional practitioner.

The physician-patient privilege is expressly abrogated by A.R.S. § 32-1855.01.D which provides:

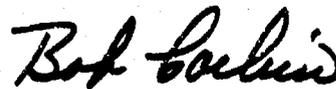
Nothing in this section or any other provision of law making communications between an osteopathic physician or surgeon and his patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this chapter. . . .

Again, there is no exception for the osteopathic physician who is treating another osteopathic physician.

We note that the abrogation of the physician-patient privilege in A.R.S. § 32-1855.01.D applies to investigations and proceedings conducted pursuant to the Board's statutory authority. We think that the terms "investigations or proceedings" as used in paragraph D legally include the initial reporting of information since that report both initiates and becomes an integral part of the Board's investigation and adjudicatory proceedings.

Based upon the foregoing, we conclude that the duty to report imposed by A.R.S. § 32-1855.A applies when an osteopathic physician is treating another osteopathic physician and that such duty to report is not altered by any physician-patient privilege which may otherwise exist.

Sincerely,



BOB CORBIN  
Attorney General

BC/LED/amw