

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING

PREAMBLE

- | <u>1. Article, Part or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Article 7 | New Article |
| R9-16-701 | New Section |
| R9-16-702 | New Section |
| R9-16-703 | New Section |
| R9-16-704 | New Section |
| R9-16-705 | New Section |
| R9-16-706 | New Section |
| Table-7.1 | New Section |
| R9-16-707 | New Section |
| R9-16-708 | New Section |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statutes: A.R.S. §§ 30-654(B)(5), 36-132(A)(1), 36-136(G)
Implementing statutes: A.R.S. §§ 30-654(B)(9), 32-516, 32-3233
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
- Notice of Rulemaking Docket Opening: 29 A.A.R. 1202
- 4. The agency's contact person who can answer questions about the rulemaking:**
- Name: Megan Whitby, Deputy Assistant Director
Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 400
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Telephone: (602) 364-3052
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or

Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
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5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 32-3233 specifies requirements for the certification of laser technicians and for programs providing training to individuals enabling them to apply for certification. A.R.S. § 32-516 requires an aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices to apply for and receive a certificate from the Department. The rules for certification of training programs and laser technicians, including aesthetician and cosmetologists, are currently embedded in 9 A.A.C. 7, Article 14. The requirements are difficult to find and to understand, imposing an undue burden on individuals wanting to obtain certification as a laser technician. As part of a recent five-year review report on the rules in 9 A.A.C. 7, Article 14, the Department proposed removing the requirements for certification of training programs and laser technicians into a separate Article under 9 A.A.C. 16, Occupational Licensing. The Department is adopting these existing requirements in Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 7. The Department believes that this rulemaking will improve effectiveness and reduce regulatory burden.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study for this rulemaking.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Not applicable

10. Where, when, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):

Close of record: Monday, July 10, 2023, 4:00 p.m.

A person may submit written comments on the proposed expedited rules no later than the close of record to either of the individuals listed in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No business competitiveness analysis was received by the Department.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING
ARTICLE 7. LASER TECHNICIANS

<u>R9-16-701.</u>	<u>Definitions</u>
<u>R9-16-702.</u>	<u>Laser Technician - Eligibility and Scope of Practice</u>
<u>R9-16-703.</u>	<u>Application for Initial Certification as a Laser Technician</u>
<u>R9-16-704.</u>	<u>Renewal of Certification</u>
<u>R9-16-705.</u>	<u>Changes Affecting a Certificate; Request for a Revised/Duplicate Certificate</u>
<u>R9-16-706.</u>	<u>Review Time-frames</u>
<u>Table 7.1</u>	<u>Time-frames</u>
<u>R9-16-707.</u>	<u>Fees</u>
<u>R9-16-708.</u>	<u>Enforcement</u>

ARTICLE 7. LASER TECHNICIANS

R9-16-701. Definitions

In addition to the definitions in A.R.S. §§ 32-516 and 32-3231, the following definitions apply in this Article unless otherwise specified:

1. “Applicant” means an individual who submits an application packet.
2. “Application packet” means the information, documents, and fees required by the Department for a certificate.
3. “Calendar day” means each day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. “Department-certified training program” means a curriculum of courses and learning activities that is granted approval through the Department under 9 A.A.C. 7, Article 14.

R9-16-702. Laser Technician - Eligibility and Scope of Practice

A. An individual is eligible for certification as a laser technician if the individual:

1. Is at least 18 years of age; and
2. Either:
 - a. Has:
 - i. Completed a course consistent with requirements in 9 A.A.C. 7, Article 14, provided by a Department-certified training program;
 - ii. Achieved a score of at least 80% on an examination consistent with requirements in 9 A.A.C. 7, Article 14;
 - iii. For use of a laser or IPL device for hair removal, completed 10 procedures and 24 hours of hands-on training for hair removal consistent with requirements in 9 A.A.C. 7, Article 14; and
 - iv. For use of a laser or IPL device for a cosmetic procedure other than hair removal, has completed, in addition to the hands-on training required according to subsection (A)(2)(a)(iii), an additional 10 procedures and 24 hours of hands-on training hands-on training for the other cosmetic procedure consistent with requirements in 9 A.A.C. 7, Article 14; or
 - b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a laser technician is authorized to use a laser or IPL device to perform:

1. Only those cosmetic procedures specified on the certificate issued by the Department to the individual according to R9-16-703, R9-16-704, or R9-16-705;
2. Hair removal under the indirect supervision of a health professional licensed under A.R.S. Title 32 whose scope of practice permits the supervision; and
3. For a cosmetic procedure other than hair removal, under the direct supervision of a health professional licensed under A.R.S. Title 32 whose scope of practice permits the supervision.

R9-16-703. Application for Initial Certification as a Laser Technician

A. Except as provided in subsection (B), an applicant for certification as a laser technician shall submit to the Department an application packet that includes:

1. The following information in a Department-provided format:
 - a. The applicant's name;
 - b. The applicant's residential address and, if different, mailing address;
 - c. The applicant's telephone number;
 - d. The applicant's e-mail address;
 - e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - f. The applicant's date of birth;
 - g. The applicant's current employment as a laser technician, if applicable, including:
 - i. The employer's name,
 - ii. The applicant's position,
 - iii. Dates of employment,
 - iv. The address of the employer,
 - v. The supervisor's name,
 - vi. The supervisor's email address, and
 - vii. The supervisor's telephone number;
 - h. Each type of cosmetic procedure, from the list of Department-approved cosmetic procedures on the Department's website at <https://www.azdhs.gov/licensing/special/index.php#laser-technicians-provider-application>, for which the applicant is requesting certification;
 - i. Whether the applicant holds other professional licenses or certifications and, if so:
 - i. The professional license or certification, and

- ii. The state in which the professional license or certification was issued;
 - j. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;
 - k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-706;
 - l. An attestation that the information and documentation submitted as part of an application packet is true and accurate; and
 - m. The applicant's signature and date of signing;
2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:
- a. The date of the disciplinary action, revocation, or suspension;
 - b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and
 - c. An explanation of the disciplinary action, revocation, or suspension;
3. If the applicant is currently ineligible for licensing or certification in any state because of a professional license revocation or suspension, documentation that includes:
- a. The date of the ineligibility for licensing or certification,
 - b. The state or jurisdiction of the ineligibility for licensing or certification, and
 - c. An explanation of the ineligibility for licensing or certification;
4. A copy of the provisional certificate for course completion issued to the applicant consistent with requirements in 9 A.A.C. 7, Article 14;
5. Either:
- a. Documentation from a Department-certified training program certifying that the applicant completed 10 procedures and 24 hours of hands-on training for each type of cosmetic procedure specified according to subsection (A)(1)(h); or
 - b. Both:
 - i. A copy of the document, in a Department-provided format, issued to the applicant by the supervising health professional or laser technician, consistent with requirements in 9 A.A.C. 7, Article 14, verifying and attesting to the successful completion of the applicant's 24 hours of hands-on training; and

- ii. A log, in a Department-provided format, documenting 10 procedures and 24 hours of hands-on training for each type of cosmetic procedure specified according to subsection (A)(1)(h);
- 6. Documentation for the applicant that complies with A.R.S. § 41-1080; and
- 7. The applicable fee in R9-16-707.
- B.** If an applicant for initial certification as a laser technician may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
 - 1. The information and documentation required in subsection (A)(1) and, if applicable, (A)(2) or (3);
 - 2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
 - 3. Documentation showing the types of cosmetic procedures for which the applicant has a professional license or certification;
 - 4. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a professional license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have a complaint, an allegation, or an investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 - 5. The applicable fee in R9-16-707.
- C.** The Department shall approve or deny an application for initial certification according to R9-16-706.
- D.** Initial certification as a laser technician is valid for one year after issuance, unless revoked, and must be renewed annually.

R9-16-704. Renewal of Certification

- A.** A laser technician may apply for renewal of certification:
 - 1. Within 60 days before the expiration date of the laser technician's current certification, or
 - 2. Within the extension time period granted under A.R.S. § 32-4301.

B. An applicant for renewal of certification shall submit to the Department an application packet that includes:

1. The following information in a Department-provided format:
 - a. The applicant's name, address, telephone number, and email address;
 - b. The applicant's current certification number;
 - c. The applicant's current employment as a laser technician, if applicable, including:
 - i. The employer's name,
 - ii. The applicant's position,
 - iii. Dates of employment,
 - iv. The address of the employer,
 - v. The supervisor's name,
 - vi. The supervisor's email address, and
 - vii. The supervisor's telephone number;
 - d. Whether the applicant has, within the previous year before the date of the application, had:
 - i. A certificate issued under this Article suspended or revoked; or
 - ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;
 - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-706;
 - f. Attestation that all the information submitted as part of the application packet is true and accurate; and
 - g. The applicant's signature and date of signature; and
2. The renewal fee required in R9-16-707.

C. The Department shall approve or deny an application for renewal of certification according to R9-16-706.

R9-16-705. Changes Affecting a Certificate; Request for a Revised/Duplicate Certificate

A. A laser technician shall notify the Department in writing, within 30 calendar days after the effective date of a change in:

1. The laser technician's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address, as applicable;
2. The laser technician's name, including:
 - a. The following information, in a Department-provided format:

- i. The laser technician's name, as recorded by the Department, and the laser technician's current certificate number and expiration date;
 - ii. The laser technician's new name; and
 - iii. The laser technician's signature and date of signature;
 - b. A copy of the legal document establishing the laser technician's new name; and
 - c. The fee required in R9-16-707 for a revised/duplicate certificate that reflects the laser technician's name change; or
 - 3. The laser technician's employer, including the name and address of the new employer.
- B.** A laser technician may request to add a cosmetic procedure to the laser technician's certificate by submitting to the Department an application packet that includes:
 - 1. The following information in a Department-provided format:
 - a. The laser technician's name, address, telephone number, and email address;
 - b. The laser technician's current certification number;
 - c. Each type of cosmetic procedure that the laser technician is requesting be added to the laser technician's certificate;
 - d. Attestation that all the information submitted as part of the application is true and accurate; and
 - e. The laser technician's signature and date of signature;
 - 2. A copy of the document issued to the laser technician by the supervising health professional or laser technician, consistent with requirements in 9 A.A.C. 7, Article 14, verifying the successful completion of the laser technician's 24 hours of hands-on training;
 - 3. A log, in a Department-provided format, documenting 10 procedures and 24 hours of hands-on training for each type of cosmetic procedure specified according to subsection (B)(1)(c); and
 - 4. The fee required in R9-16-707 for a revised/duplicate certificate that reflects the added cosmetic procedure.
- C.** The Department shall approve or deny a request to add a cosmetic procedure to the laser technician's certificate according to R9-16-706.
- D.** In addition to the circumstances in subsections (A) and (B), a laser technician may obtain a revised/duplicate certificate by submitting to the Department:
 - 1. A written request for a revised/duplicate certificate, in a Department-provided format, that includes:
 - a. The laser technician's name and address,

- b. The laser technician's certificate number, and
- c. The laser technician's signature and date of signature; and
- 2. The revised/duplicate certificate fee in R9-16-707.

R9-16-706. Review Time-frames

A. For each type of certificate or approval issued by the Department under this Article, Table 7.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

- 1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
- 2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of certificate or approval issued by the Department under this Article, Table 7.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

- 1. The administrative completeness review time-frame begins on the date the Department receives an application packet required in this Article.
- 2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
 - a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.
 - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
 - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.
- 3. If the Department issues a certificate or approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of certificate or approval issued by the Department under this Article, Table 7.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
 - a. The Department may make one comprehensive written request for additional information or documentation; and
 - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or approval.

D. An applicant who is denied a certificate or approval may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 7.1. Time-frames

<u>Type of Application</u>	<u>Administrative Completeness Review Time-frame (in Calendar Days)</u>	<u>Substantive Review Time-frame (in Calendar Days)</u>	<u>Overall Time-frame (in Calendar Days)</u>
<u>Initial laser technician certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Renewal of a laser technician certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Addition of a procedure</u>	<u>30</u>	<u>30</u>	<u>60</u>

R9-16-707. Fees

A. Except as provided in subsection (B), an applicant shall submit to the Department the following nonrefundable fees for:

1. An initial application or renewal application for certification as a laser technician, \$50; and
2. A revised/duplicate certificate, \$10.

B. An applicant for initial certification as a laser technician is not required to submit the applicable fee in subsection (A)(1) if the applicant, as part of the application packet in R9-16-703, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

R9-16-708. **Enforcement**

A. The Department may deny, revoke, or suspend a certificate under A.R.S. § 32-3233.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of individuals affected by the violations,
6. The degree of harm to an individual,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A laser technician may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.