

BOARD OF ACUPUNCTURE EXAMINERS

Five-year-review Report: A.A.C. Title 4, Chapter 8, Articles 1-7

October 2015

INTRODUCTION

The Acupuncture Board of Examiners was created in 1998 to protect the public health by ensuring that acupuncture is provided by qualified and competent individuals (Laws 1998, Ch. 239, § 5). The Board's initial rules became effective June 12, 2000. By a rulemaking that was effective on April 5, 2008, the Board substantially amended all of its rules and made several new rules. This is a review of the rules made in 2008.

Under Laws 2014, Chapter 107, the legislature made two significant changes to the Board's statutes. The first change involved deleting the requirement that the Board have rules dealing with preceptorships. The second change requires that beginning July 1, 2016, an applicant submit a full set of fingerprints for a criminal background check.

The Board did not review R4-8-411 and R4-8-412 and does not address them in this report. The Board intends that both rules expire under the provisions of A.R.S. § 41-1056(J).

Statute that generally authorizes the agency to make rules: A.R.S. § 32-3903(A)(1)

1. Specific statute authorizing the rule:

R4-8-101. A.R.S. § 32-3903(A)(1)

R4-8-102. A.R.S. §§ 32-3922 and 32-3924

R4-8-103. A.R.S. § 32-3903(A)(1)

R4-8-105. A.R.S. Title 41, Chapter 6, Article 7.1

Table 1. A.R.S. Title 41, Chapter 6, Article 7.1

R4-8-106. A.R.S. § 32-3927

R4-8-107. A.R.S. § 41-1028

R4-8-203. A.R.S. §§ 32-3903(A)(3) and 32-3924

R4-8-204. A.R.S. § 32-3925

R4-8-205. A.R.S. § 32-3925(D)

R4-8-206. A.R.S. § 32-3925(C)

R4-8-207. A.R.S. § 32-3925(C)
R4-8-208. A.R.S. § 32-3926
R4-8-301. A.R.S. §§ 32-3903(A)(3) and 32-3922
R4-8-302. A.R.S. § 32-3922
R4-8-303. A.R.S. § 32-3922(C)
R4-8-304. A.R.S. § 32-3922(B)
R4-8-401. A.R.S. § 32-3922(A)(1)
R4-8-402. A.R.S. §§ 32-3922(A)(2) and 32-3924
R4-8-403. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)
R4-8-404. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)
R4-8-405. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)
R4-8-407. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)
R4-8-408. A.R.S. § 32-3925(C)
R4-8-409. A.R.S. § 32-3925(C)
R4-8-501. A.R.S. § 32-3901(4)(t)
R4-8-502. A.R.S. §§ 32-3901(4)(p) and 32-3952
R4-8-503. A.R.S. § 32-3922(B)
R4-8-601. A.R.S. §§ 32-3903(A)(2) and 32-3951
R4-8-602. A.R.S. §§ 32-3903(A)(2) and 32-3951
R4-8-603. A.R.S. § 32-3951(D)
R4-8-604. A.R.S. § 32-3951(D)
R4-8-605. A.R.S. § 32-3951
R4-8-702. A.R.S. §§ 41-1033 and 41-1056.01
R4-8-704. A.R.S. § 41-1023(F)
R4-8-706. A.R.S. § 41-1056

2. Objective of the rule including the purpose for the existence of the rule:

R4-8-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R4-8-102. Authentication of Documentation; Translation; Verification: The objective of this rule is to ensure that licensing applications and documents submitted to the Board are authentic and either in English or accompanied by an accurate translation. This increases efficiency in the licensing process by enabling the Board to act on an application without delay. It also increases consumer confidence that only qualified individuals are licensed.

R4-8-103. Change of Mailing Address, E-mail Address, or Telephone Numbers: The objective of the rule is to provide notice that the Board communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Board apprised of changes in contact information.

R4-8-105. Time-frames for Licensure, Certification, and Approval: The objective of this rule is to specify the time-frames within which the Board will act on an application for licensure, certification, or other approval. This enables an applicant to anticipate when the Board-approval process will be completed.

Table 1. Time-frames (in days): The objective of this rule is to specify in table form the time-frames within which the Board will act on an application for licensure, certification, or other approval. This enables an applicant to anticipate when the Board-approval process will be completed.

R4-8-106. Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This increases efficiency in the licensing process by enabling an applicant to submit the correct amount.

R4-8-107. Materials Incorporated by Reference: The objective of this rule is to list materials the Board has incorporated by reference into the rules. Incorporating materials by reference enables the Board to benefit from the expertise of the professional organizations responsible for the materials.

R4-8-203. Application for Acupuncture License: The objective of this rule is to specify the content of an application for a license including information required to be submitted directly to the Board by third parties. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.

R4-8-204. Renewal of Acupuncture License: The objective of this rule is to specify the requirements for renewal of a license, the manner in which renewal application is made, and consequences of failing to renew timely. This increases efficiency in the licensing process by enabling licensees to submit a timely and administratively complete renewal application and avoid having a license expire.

R4-8-205. Reinstatement of Acupuncture License: The objective of this rule is to define the circumstances under which an expired license may be reinstated and establish the requirements for reinstatement. This increases efficiency in the licensing process by enabling a licensee who misses the renewal date by 60 days or less to apply for reinstatement rather than the more cumbersome process of applying for a new license.

R4-8-206. Continuing Education Requirement: The objective of the rule is to specify the hours of continuing education that may be obtained from various activities, limitations on hours that may be obtained from various activities, and documentation required. This enables a licensee to have confidence that a continuing education activity will be accepted for license-renewal purposes.

R4-8-207. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement: The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement and the manner in which an audited licensee is required to submit evidence of compliance. This enables a licensee to avoid being sanctioned for noncompliance.

R4-8-208. Application for Visiting Professor Certificate; Extension of Visiting Professor Certificate: The objective of this rule is to inform a visiting professor of the procedures for

obtaining a certificate from the Board and for renewing the certificate. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.

R4-8-301. Application for Auricular Acupuncture Certificate: The objective of this rule is to specify the pieces of information and documents required to apply for certification. This increases efficiency in the certification process by enabling an applicant to submit an administratively complete application.

R4-8-302. Requirements for the Practice of Auricular Acupuncture: The objective of this rule is to prescribe the limits on practicing auricular acupuncture. This enables a certificate holder to avoid unprofessional conduct by working outside the scope of practice for an auricular acupuncturist.

R4-8-303. Renewal of an Auricular Acupuncture Certificate: The objective of this rule is to specify the requirements for renewal of a certificate, the manner in which renewal application is made, and consequences of failing to renew. This increases efficiency in the licensing process by enabling certificate holders to submit a timely and administratively complete renewal application and avoid having a certificate expire.

R4-8-304. Notice of Change of Supervisor: Because an auricular acupuncturist is required to work in a Board-approved program and under the supervision of a licensee, the objective of this rule is to ensure that the Board has accurate information regarding these requirements. This enables the Board to protect public health and safety by ensuring that an auricular acupuncturist is working under supervision.

R4-8-401. Auricular Acupuncture Training Program Approval: The objective of this rule is to establish the auricular acupuncture training programs that are approved by the Board and the requirements for obtaining approval of other auricular acupuncture training programs. This enables an individual who wishes to be certified as an auricular acupuncturist to save time and money by ensuring the individual attends a program the Board will accept.

R4-8-402. Clean Needle Technique Course Approval: The objective of this rule is to establish the standard and procedure for obtaining Board approval of a clean needle technique course. This increases efficiency in the licensing process by enabling a course provider to design a course that meets the Board's standards and can be approved.

R4-8-403. Approval of an Acupuncture, Clinical Training, or Preceptorship Training Program: The objective of this rule is to establish the minimum standards for obtaining Board approval of an acupuncture, clinical training, or preceptorship training program. This increases efficiency in the licensing process by enabling a training provider to assess whether to apply for Board approval of the program.

R4-8-404. Standards for Acupuncture or Clinical Training Program: The objective of this rule is to establish the standards that must be met to obtain Board approval of an acupuncture or clinical training program that is not accredited by or a candidate for accreditation by ACAOM. This increases efficiency in the licensing process by enabling a training provider to design a training program that meets the Board's standards required for approval.

R4-8-405. Documentation Required for Approval: The objective of this rule is to describe the documents and other evidence that must be submitted to the Board to show that an acupuncture or clinical training program meets the standards required for approval. This increases efficiency in the licensing process by enabling a training provider to submit or have submitted documentation required for Board approval.

R4-8-407. Program Monitoring; Records; Reporting: The objective of this rule is to describe the procedures used by the Board to ensure that an approved acupuncture, clinical training, or preceptorship training program continues to meet the standards required for approval. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring those who participate in approved training programs receive quality training.

R4-8-408. Approval of Continuing Education: The objective of this rule is to identify continuing education the Board approves without application and the standards the Board uses to decide whether to approve a continuing education. This provides a level playing field for all providers of continuing education.

R4-8-409. Application for Continuing Education Approval: The objective of the rule is to specify the requirements and procedures for obtaining the Board's approval of a continuing education course. This increases efficiency in the approval process by enabling a provider of continuing education to design and submit for approval only courses that meet the Board's standards.

The Board did not review R4-8-411 and R4-8-412 with the intent that both rules expire under the provision of A.R.S. § 41-1056(J).

R4-8-501. Treatment of Patients by Acupuncture Students; Supervision: The objective of this rule is to describe the nature of the supervision that must be provided when an acupuncture student treats a patient. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring that students are properly supervised when providing treatment to a patient.

R4-8-502. Recordkeeping: The objective of this rule is to specify the minimum recordkeeping standards for an acupuncturist, a provider of acupuncture, auricular acupuncture, clinical, or preceptorship training program, and a provider of an approved continuing education. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring accurate records are maintained. This also provides a degree of liability protection for those who provide services.

R4-8-503. Supervision of an Auricular Acupuncturist: The objective of this rule is to establish the expectations of a licensed acupuncturist who supervises an auricular acupuncturist. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring that an auricular acupuncturist is properly supervised.

R4-8-601. Making a Complaint: The objective of this rule is to specify who may file a complaint; against whom a complaint may be filed; and the information that must be included in a complaint. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing clear direction regarding the standards for a complaint.

R4-8-602. Complaint Procedures: The objective of this rule is to specify the procedures used by the Board to assess and respond to a complaint. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing clear direction regarding complaint procedures.

R4-8-603. Hearing Procedures: The objective of this rule is to emphasize that the Board conducts hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing notice of procedures to those for whom a hearing is scheduled.

R4-8-604. Rehearing or Review of Decision: The objective of this rule is to specify the manner in which the Board acts on a motion for rehearing or review of a Board decision and the circumstances under which a rehearing or review will be granted. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R4-8-605. Disciplinary Action: The objective of this rule is to specify the factors the Board considers when deciding on an appropriate disciplinary action. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing notice of factors considered to those who are subject to discipline.

R4-8-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based upon Economic, Small Business or Consumer Impact: The objective of this rule is to prescribe the procedure for petitioning the Board under A.R.S.

§ 41-1033 or 41-1056.01. This provides transparency for the public regarding the method for challenging a Board rulemaking.

R4-8-704. Oral Proceedings: The objective of this rule is to establish the procedure for requesting that the Board hold an oral proceeding regarding a proposed rulemaking and the procedures the Board will follow when conducting an oral proceeding. This facilitates the rulemaking process by encouraging public participation.

R4-8-706. Written Criticism of Rule: The objective of this rule is to inform the public of how to criticize an existing rule and the nature of the Board's response to a written criticism. This facilitates the rulemaking process by encouraging public participation.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board determined that the rules are generally effective in achieving their objectives. It bases this conclusion on the fact that it is able to fulfill its statutory responsibility of protecting the public by licensing and regulating acupuncturists. The Board determined that R4-8-107 is less effective than it could be because all the materials incorporated by reference need to be updated to later editions. The Board believes that R4-8-408 could be more effective if it explicitly provided that training in cardiopulmonary resuscitation is acceptable for purposes of CE. The Board also wants to consider providing some CE credit for service as a Board member. The Board is concerned that the time required by the Department of Public Safety to complete a criminal background check of all applicants may make the Board's current time-frame rule unrealistic.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

All of the rules are consistent with other rules and state statutes except R4-8-702(B), which provides grounds for objecting to a rule and is not consistent with the statutory amendment made at A.R.S. § 41-1056.01(A)(3).

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces the rules as written without difficulty. There are no preceptorship training programs in the state so, while references to preceptorships make the rules less clear than desirable, they do not interfere with enforcement.

6. Clarity, conciseness, and understandability of the rule:

The rules are generally clear, concise, and understandable and consistent with current rule writing standards. However, the following issues were identified:

R4-8-101: The abbreviation "NCCAOM" stands for National Certification Commission for Acupuncture and Oriental Medicine rather than National Commission for the Certification of Acupuncture and Oriental Medicine.

R4-8-203(A)(2): Part of the internal cross reference is missing.

R4-8-101, Table 1, R4-8-203, R4-8-403, R4-8-407, and R4-8-502: Reference to a preceptorship needs to be deleted and conforming changes made.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Board received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was

prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The Board determined that the economic impact statement prepared in 2008 when all of the rules were made or last amended was generally accurate.

There are currently 592 licensed acupuncturists, which is 101 (21%) more than in 2010 when the rules were last reviewed. There are currently 39 auricular acupuncture certificate holders, which is 30 (43%) fewer than in 2010. The Board believes this reduction in the number of auricular acupuncture certificate holders is due to the fact many behavioral health organizations lost sources of funding during the recent economic downturn and scaled back on services and employees. During FY2015, the Board received initial applications from 62 acupuncturists and 11 auricular acupuncturists. The Board received no applications for certification of a visiting professor. The Board approved two acupuncture programs and applications from 16 continuing education providers. The Board collected \$160,400 in fees. Ten percent of this was contributed to the state's general fund. The Board was appropriated \$159,100. The Board has one FTE.

In FY2015, the Board audited 80 licensees for compliance with the continuing education requirement. All those audited were in compliance with the requirement. Responding to an audit imposes a minimal economic burden on a licensee because it requires only that the licensee attach to a renewal application the evidence of attendance that a continuing education provider is required to provide. Auditing compliance with the continuing education requirement protects the public by ensuring licensees remain skilled and competent.

In FY2015, the Board received three complaints. One alleged unlicensed practice of acupuncture. Another dealt with an alleged incident that occurred more than seven years ago and the last reported a misdemeanor offense by a licensee who had moved out of state. None of the complaints went to hearing and no disciplinary actions were imposed. The Board complied with all of its licensing time-frames.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

In the 5YRR approved by Council at its December 7, 2010, meeting, the Board indicated it would amend R4-8-101, Table 1, R4-8-107, R4-8-203, R4-8-403, R4-8-407, R4-8-408, R4-8-502, and R4-8-702 and repeal R4-8-411 and R4-8-412. The Board did not complete this course of action. The Board determined the issues identified in the 5YRR were not substantive enough to cause difficulty for those relying on the rules and that benefits from making the amendments did not outweigh the costs and unnecessary expenditure of scarce state resources.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The rules require that regulated persons submit an application for a license, certificate, or approval. Licensees and certification holders submit annually an application for renewal. A certified visiting professor is required, if necessary, to submit an application for a one-year extension of the certificate. Providers of approved training programs submit an annual letter attesting that the required standards continue to be met. Providers of approved continuing education renew the approval annually or when there is a change in the program.

A licensee is required to comply with the continuing education requirement and, on a random basis, submit evidence of compliance. As all other health professionals, licensees are required to maintain records for patients. Approved programs are required to adhere to the standards for approval. Licensees and certificate holders are required to ensure that the Board has current contact information and certificate holders are required to inform the Board when there is a change in supervisor.

The Board believes these requirements impose little burden on those regulated and are necessary to protect the public health by ensuring that acupuncture is provided by qualified and competent individuals.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

None of the rules is more stringent than federal law. Although there are numerous federal laws dealing with health care, none is directly applicable to these rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

This is not applicable because none of the rules was made after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board intends to amend R4-8-101, Table 1, R4-8-107, R4-8-203, R4-8-403, R4-8-407, R4-8-408, R4-8-502, and R4-8-702 to address issues identified in this report. In an e-mail dated July 30, 2015, the Board was granted an exemption from EO2015-01 to carry out provisions of Laws 2014, Chapter 107. However, the Board has determined provisions in Laws 2014, Chapter 107 relating to fingerprinting need clarification before the Board will be able to do a rulemaking. The Board is seeking clarification. At the same time, the Board will seek an exemption to address all issues identified in this report. With timely clarification and exemption, the Board will complete the rulemaking by July 2016.