

Analysis of R4-11-1701

1. Authorization of the rules by existing statute(s)
The agency's general and specific rulemaking authority is found in A.R.S. §§ 32-1207(A)(1), 32-1263.02, and Title 41, Chapter 6, Article 10.
2. Objective
The rule describes the process for a licensee who has been aggrieved to file a written motion for rehearing or review.
3. Analysis of effectiveness in achieving the objective
The rule effectively achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
In R4-11-1701(G), the last sentence should be deleted as it is inconsistent with A.R.S. § 42-1092.09(D). Additionally, in R4-11-1701(A), the word "party" should be changed to "licensee" to be consistent with ARS 32-1263.02(H).
5. Status of enforcement of the rule
The rule is fairly and consistently enforced.
6. The estimated economic, small business and consumer impact of the rule as compared to the economic, small business and consumer impact statement prepared on the last making of the rule.
See the attached Economic Impact Statement Comparison.
7. Analysis of clarity, conciseness, and understandability of the rule
The rule is clear, concise, and understandable with the exception noted in item 4 above.
9. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.
The rule was adopted before July 29, 2010 and does not issue a permit, license or agency authorization.
8. Written criticisms of the rule received in the last five years
The agency has not received any written criticism of rule in the past five years.

10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's competitiveness to the impact on businesses in other states

No analysis was submitted.

11. If applicable, that the agency completed the previous five-year review process

The agency completed its previous five-year review process.

12. A determination that 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 agency has determined that the rule imposes the least burden and costs on the regulated community necessary to achieve its regulatory objective.

13. A determination 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

The agency has determined that there is no corresponding federal law.

14. Proposed course of action

The agency plans to submit a notice of final rulemaking to the Council by December 31, 2015.

Arizona Board of Dental Examiners

4 A.A.C. 11, Articles 11, 12, 14, 15, and 18

April 2015

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INTRODUCTION

The Arizona Board of Dental Examiners protects the health, safety and welfare of the citizens of Arizona by regulating the practice of dentistry.

The rules in 4 A.A.C. 11, Article 11, establish the permissible advertising activities of a dentist, dental hygienist, or denturist and the permissible advertising activities of a dentist who advertises as a recognized specialist. The rules in 4 A.A.C. 11, Article 12, establish a continuing dental education requirement for licensees, certificate holders, and restricted permit holders, address documentation, compliance, renewal, and exception issues regarding the continuing education requirements for licensure, establish the number of continuing education hours by topics that are required for dentists and dental consultants, establish the number of continuing education hours by topics that are required for dental hygienist licensure, establish the number of continuing education hours by topics that are required for denturist certification, establish the number of continuing education hours by topics that are required for a dental restricted permit holder, establish the number of continuing education hours by topics that are required for a dental hygiene restricted permit holder, establish the number of continuing education hours by topics that are required for a retired licensee or certificate holder, and establish the types of continuing education courses recognized by the Board. The rules in 4 A.A.C. 11, Article 14, establish the requirements of a prescription order for dispensing by a dentist, the specific labeling and dispensing requirements for dispensing by a dentist, the storage and packaging requirements for dispensing by a dentist, the recordkeeping requirements for dispensing by a dentist, the reporting requirements for a theft or loss of controlled substances and the possible disciplinary actions for

violations of Article 14, and the registration and renewal requirements for a dentist who dispenses drugs and devices for profit. The rules in 4 A.A.C. 11, Article 15, establish that a complainant or regulated party against whom a complaint is filed shall not engage in ex-parte communication with the decision maker in the matter, the qualifications for the Board's complaint investigators, the Board's complaint review procedures, and the requirements for postponing an investigative or formal interview. The rules in 4 A.A.C. 11, Article 18, establish the requirements for business entity registration and the requirements for business entity display of registration.

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Effectiveness in Achieving Objectives

The rules reviewed are effective in achieving their stated objectives.

2. Written Criticisms of the Rules Received in the Past Five Years

The agency has not received any written criticisms of the rules in the past five years.

3. Authorization of the Rules by Existing Statutes

The agency's general rulemaking authority is found in A.R.S. §§ 32-1201(21)(C), (t), and (u), and 32-1207(A) (1) and (B) (3); with specific authority found in A.R.S. §§ 32-1213(B)(4) and (M), 32-1263.02, and 32-1298(C), (E), and (F).

4. Consistency with Statutes and Other Rules Made by the Agency

The rules reviewed are consistent with the statutes for the agency, namely A.R.S. Title 32, Chapter 18. In addition, the rules are consistent both internally and with relation to the agency's other rules. R4-11-1405 is not consistent with federal law, specifically 21 CFR 1301.76(b) requires reporting of a theft or loss within one business day (see individual rule analysis for specifics).

4a. Enforcement

The rules are enforced as written without incident.

5. Clarity, Conciseness, and Understandability of the Rules

The agency has analyzed the rules and has found the rules to be clear, concise, and understandable with the exception of R4-11-1405 as this rule conflicts with federal regulation 21 CFR 1304.76(b) (see individual rule analysis for specifics).

6. Economic, Small Business, and Consumer Impact Comparison

The economic impact has not differed from that projected when the rules were amended effective January 5, 2014 (19 A.A.R. 3873), April 6, 2013 (19 A.A.R. 334), and April 2, 2005 (11 A.A.R. 793). The main costs are born by the agency and include staff time to process new and renewal applications. As of March 31, 2015, the Board had licensed 4,693 dentists, 4,202 dental hygienists, 339 business entities, four dental consultants, five restricted permits, and 11 denturists compared to the 4,254 dentists, 3,431 dental hygienists, 207 business entities, zero dental consultants, zero restricted permits, and nine denturists licensed on 6/30/09 as reported during the Board's last 5-year rule review of Articles 11, 12, 14, 15, and 18 in 2009. Our analysis indicates that establishing standards of practice is beneficial to society. Our statutes and rules exist to protect the public health. These administrative mandates become the standard of practice within the profession. Relying on a single standard promotes consistency of service and improvement of outcomes as well as negating the confusion that comes from either too many or nonexistent standards. Therefore, we estimate the economic impact of the reviewed rules is minimal.

7. **Analysis Submitted by Another Person Regarding the Rules' Impact on this State's Business Competitiveness as Compared to the Competitiveness of Businesses in Other States**

No analysis was submitted to the agency.

9. **Probable Benefits Outweigh Probable Costs / Rules Impose Least Burden on Regulated Persons**

The rules impose the least burden and probable costs to regulated persons, which are outweighed by the probable benefits of the rules.

10. **Stringency Compared with Corresponding Federal Law**

The only reviewed rules that have corresponding federal laws are R4-11-1405 and R4-11-1406. Those rules were compared to the federal law, 21 CFR 1300 to the end. The agency found that the rules reviewed are not more stringent than the federal law.

INDIVIDUAL ANALYSIS

R4-11-1101 Advertising

1b. Objective

The rule establishes the permissible advertising activities of a dentist, dental hygienist, or denturist to prevent false or misleading advertising.

3. Authorization of the Rules by Existing Statute

The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and 32-1201 (21)(t).

8. Completion of the Previous Five-Year –Review Report Process

The last five-year-review report was completed and did not identify any needed course of action.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1102 Advertising as a Specialist

- 1b. Objective
The rule establishes the permissible advertising activities of a dentist who advertises as a recognized specialist.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207 (A) (1) and 32-1201(21)(t).
8. Completion of the Previous Five-Year-Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1201 Continuing Dental Education

- 1b. Objective
The rule establishes a continuing dental education requirement for licensees, certificate holders, and restricted permit holders.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3).
8. Completion of the Previous Five-Year-Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action

The rule requires no course of action.

R4-11-1202 Continuing Dental Education Compliance and Renewal Requirements

- 1b. Objective
The rule addresses documentation, compliance, renewal, and exception issues regarding the continuing education requirements for licensure. The rule is necessary for license renewal.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3).
8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 1/5/14.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
Although the rule was last amended in 2014, the rule complies with the exception in subsection (A)(2) of A.R.S. § 41-1037, because the rule issues a specific license or permit specified in A.R.S. Title 32 Chapter 11, Article 2.
12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1203 Dentists and Dental Consultants

- 1b. Objective
The rule establishes the number of continuing education hours by topics that are required for dentists and dental consultants.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3).
8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed with the filing of a Notice of Final Rulemaking effective 1/5/14.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1204 Dental Hygienists

- 1b. Objective
The rule establishes the number of continuing education hours by topics that are required for dental hygienist licensure.
- 3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3)
- 8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed with the filing of a Notice of Final Rulemaking effective 1/5/14.
- 11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
- 12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1205 Denturists

- 1b. Objective
The rule establishes the number of continuing education hours by topics that are required for denturist certification.
- 3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3)
- 8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 1/5/14.
- 11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
- 12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1206 Restricted Permit Holders – Dental

- 1b. Objective
The rule establishes the number of continuing education hours by topics that are required for a dental restricted permit holder.
- 3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3)

8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 1/5/14.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1207 Restricted Permit Holders – Dental Hygiene

- 1b. Objective
The rule establishes the number of continuing education hours by topics that are required for a dental hygiene restricted permit holder.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3)
8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 1/5/14.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1208 Retired Licensees or Certificate Holders

- 1b. Objective
The rule establishes the number of continuing education hours by topics that are required for a retired licensee or certificate holder.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3)
8. Completion of the Previous Five-Year-Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.

12. Proposed Course of Action
The rule requires no course of action.

R4-11-1209 Types of Courses

- 1b. Objective
The rule establishes the types of continuing education courses recognized by the Board.
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and (B)(3)
8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 1/5/14.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
12. Proposed Course of Action
The rule was last amended effective 1/5/2014 and requires no course of action.

R4-11-1401 Prescribing

- 1b. Objective
The rule establishes the requirements of a prescription order for dispensing by a dentist
3. Authorization of the Rules by Existing Statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1201(21)(C) and (u), 32-1207, and 32-1298(C) and (F)
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1402 Labeling and Dispensing

- 1b. Objective
The rule establishes the specific labeling and dispensing requirements for dispensing by a dentist.
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1201(21)(C) and (u), 32-1207, and 32-1298(E)
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1403 Storage and Packaging

- 1b. Objective
The rule establishes the storage and packaging requirements for dispensing by a dentist
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1201(21)(C) and (u), 32-1207, and 32-1298(E)
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1404 Recordkeeping

- 1b. Objective
The rule establishes the recordkeeping requirements for dispensing by a dentist
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1201(21)(c) and (u), 32-1207, and 32-1298(E).

8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1405 Compliance

- 1b. Objective
The rule establishes the reporting requirements for a theft or loss of controlled substances and the possible disciplinary actions for violations of Article 14
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1201(21)(C) and (u), 32-1207, and 32-1298(E).
4. Consistency with Statutes and Other Rules Made by the Agency
The Board has determined that the rule is inconsistent with federal law, specifically 21 CFR 1304.76(b), which requires the reporting of any theft for loss of controlled substances within one business day. The existing rule allows reporting within seven days. Depending upon receiving approval from the Governor's office for an exemption to the current rulemaking moratorium, the Board intends to open a docket to amend this rule by December 31, 2015.
5. Clarity, Conciseness, and Understandability of the Rule

The Board has determined that the rule is inconsistent with federal law, specifically 21 CFR 1304.76(b) and therefore is not clear and understandable (see explanation in item 4 above).
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The Board intends to open a docket to amend this rule by December 31, 2015, with possible completion by December 31, 2016.

R4-11-1406 Dispensing for Profit Registration and Renewal

- 1b. Objective

The rule establishes the registration and renewal requirements for a dentist who dispenses drugs and devices for profit.

3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1201(21)(C) and (u), 32-1207, and 32-1298(C) and (F)
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1501 Ex-parte Communication

- 1b. Objective
The rule establishes that a complainant or regulated party against whom a complaint is filed shall not engage in ex-parte communication with the decision maker in the matter.
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and 32-1263.02
8. Completion of the Previous Five-Year-Review Report Process
The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 4/6/2013.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule does not require issuance of a regulatory permit, license, or agency authorization.
12. Proposed Course of Action
The rule was last amended effective 4/6/2013 and requires no course of action.

R4-11-1502 Complaint Investigator Qualifications

- 1b. Objective
The rule establishes the qualifications for the Board's complaint investigators.
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and 32-1263.02.
8. Completion of the Previous Five-Year-Review Report Process

The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 4/6/2013.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The rule does not require issuance of a regulatory permit, license, or agency authorization.

12. Proposed Course of Action

The rule was last amended effective 4/6/2013 and requires no course of action.

R4-11-1503 Initial Complaint Review

- 1b. Objective

The rule establishes the Board's complaint review procedures. The rule is necessary for completion of the complaint process.

3. Authorization of the rules by existing statute

The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and 32-1263.02.

8. Completion of the Previous Five-Year-Review Report Process

The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 4/6/2013.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The rule does not require issuance of a regulatory permit, license, or agency authorization.

12. Proposed Course of Action

The rule was last amended effective 4/6/2013 and requires no course of action.

R4-11-1504 Postponement of Investigative or Informal Interview

- 1b. Objective

The rule establishes the requirements for postponing an investigative or formal interview and provides a necessary part of the complaint process.

3. Authorization of the rules by existing statute

The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1) and 32-1263.02.

8. Completion of the Previous Five-Year-Review Report Process

The last five-year rule review report was completed. Although not identified as necessary to change, this section of rules was amended and became effective 4/6/2013.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The rule does not require issuance of a regulatory permit, license, or agency authorization.

12. Proposed Course of Action
The rule was last amended effective 4/6/2013 and requires no course of action.

R4-11-1801 Application

- 1b. Objective
The rule establishes the requirements for business entity registration, as required by statute.
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1), 32-1213(B)(4), and 32-1213(M).
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

R4-11-1802 Display of Registration

- 1b. Objective
The rule establishes the requirements for business entity display of registration, as required by statute.
3. Authorization of the rules by existing statute
The agency's general and specific rulemaking authority is found in A.R.S. 32-1207(A)(1), 32-1213(B)(4) and 32-1213(M)
8. Completion of the Previous Five-Year –Review Report Process
The last five-year-review report was completed and did not identify any needed course of action.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.
The rule was adopted before July 29, 2010.
12. Proposed Course of Action
The rule requires no action.

STATE BOARD OF DENTAL EXAMINERS

Five-year-review Report: A.A.C. Title 4, Chapter 11, Articles 1, 2, and 4

August 2016

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

INTRODUCTION

The Board protects the health, safety, and welfare of the public by licensing, regulating, and disciplining dental professionals. The mission of the Board is to provide professional, courteous service and information to dental professionals and the public. The Board currently regulates approximately 8,700 dental professionals and 300 business entities. The Board licenses dentists and dental hygienists by examination or credential. The Board certifies denturists and registers business entities that offer dental services. Dental assistants may be certified by the Board to take dental radiographs or perform coronal polishing. The Board also issues permits to dentists to administer anesthesia or sedation or to operate a mobile facility or portable dental unit.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1207(A)(1)

1. Specific statute authorizing the rule:

R4-11-101: A.R.S. § 32-1207(A)(1)

R4-11-201: A.R.S. §§ 32-1240(A) and 32-1292.01(A)

R4-11-202: A.R.S. § 32-1240

R4-11-203: A.R.S. § 32-1292.01

R4-11-204: A.R.S. § 32-1292.01

R4-11-205: A.R.S. § 32-1292.01

R4-11-401: A.R.S. § 32-1207(B)(3)(c)

R4-11-402: A.R.S. § 32-1213(B)(4)

R4-11-405: A.R.S. §§ 32-1207(F), 32-1236(F), 32-1262(G), 32-1297.04, and 32-1297.06(F)

R4-11-406: A.R.S. § 32-1207(E)

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

R4-11-101. 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.

R4-11-201. Clinical Examination; Requirements: The objective of the rule is to specify the examination requirement for a dentist or dental hygienist who wishes to apply for licensure by credential in Arizona. This facilitates the licensing process by enabling potential applicants to know whether requirements are met.

R4-11-202. Dental Licensure by Credential; Application: The objective of this rule is to specify the information an applicant for licensure by credential as a dentist is required to submit to the Board. This increases efficiency in the licensing process by enabling applicants to submit all required information.

R4-11-203. Dental Hygienist Licensure by Credential; Application: The objective of this rule is to specify the information an applicant for licensure by credential as a dental hygienist is required to submit to the Board. This increases efficiency in the licensing process by enabling applicants to submit all required information.

R4-11-204. Dental Assistant Radiography Certification by Credential: The objective of this rule is to specify the prerequisite qualification for a dental assistant to be certified by credential to take dental radiographs. This facilitates the certification process by enabling potential applicants to know whether the prerequisite is met.

R4-11-205. Application for Dental Assistant Radiography Certification by Credential: The objective of this rule is to specify the information a dental assistant for a radiography certification by credential is required to submit to the Board. This increases efficiency in the certification process by enabling applicants to submit all required information.

R4-11-401. Retired or Disabled Licensure Fees: The objective of the rule is to specify the fees the Board charges for renewal of a dentist or dental hygienist license when the licensee is retired or disabled. This increases efficiency in the licensing process by enabling a retired or disabled licensee to submit the correct amount.

R4-11-402. Business Entity Fees: The objective of the rule is to specify the fee the Board charges for registration of a business entity. This increases efficiency in the registration process by enabling a business entity to submit the correct amount.

R4-11-405. Other fees: The objective of the rule is to specify the Board's charges for various services it provides to applicants, licensees, and members of the public. This increases efficiency and transparency in operation of the Board office.

R4-11-406. Fees for Anesthesia and Sedation Permits: The objective of the rule is to specify the fee the Board charges for issuance of an anesthesia and sedation permit. This increases efficiency in the licensing process by enabling a dentist who wishes to have an anesthesia and sedation permit to submit the correct amount.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion: The Board concluded the rules are effective in achieving their objectives. The Board based this conclusion on the fact it is able to fulfill its statutory responsibility to issue licenses by credential to qualified individuals and to collect specifically authorized fees and charges.
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: Except as noted, the Board determined the rules reviewed are consistent with both statutes and other Board rules. There are no federal statutes specifically applicable to the rules reviewed.

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 reviewed rules without difficulty.

6. Clarity, conciseness, and understandability of the rule: The rules are clear, concise, and understandable. However, the Board identified the following issues, which may have minimal negative impact on the clarity and understandability of the rules:

R4-11-101: This Section includes definitions of four terms that are not used elsewhere in the rules. The terms are: nonsurgical periodontal treatment, patient of record, periodontal examination and assessment, and public member.

R4-11-201 through R4-11-203: The information in these Sections is duplicative. The rules would be more concise if the Sections were combined.

R4-11-402 and R4-11-406: Because of statutory changes, the internal cross references in these Sections are incorrect.

R4-11-405: The Section is titled "Other Fees" but the charges listed are for services provided. They are not fees as defined at A.R.S. § 41-1001.

R4-11-406: The Section needs to clarify that the fee for anesthesia and sedation permits is per licensee per location.

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 its rules in the past five years.

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 currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year.

2000 Rulemaking

The only rule not amended since being made in 2000 is R4-11-405, Other Fees. The Economic, Small Business, and Consumer Impact Statement (EIS) prepared in 2000 was not available when preparing this report. The rule lists charges for services provided by the Board. Any economic impact is minimal and occurs only when an individual voluntarily asks for the service.

2003 Rulemaking

R4-11-205, Application for Dental Assistant Radiography Certification by Credential, and R4-11-406, Fees for Anesthesia and Sedation Permits, have not been amended since being made in 2003. The EIS prepared in 2003 was available. The Board believes it correctly estimated the economic impact of these two rules would be minimal for applicants and licensees.

R4-11-205 was a new rule establishing how to apply for certification by credential in dental assistant radiography. Dental assistants are not licensed. They work under supervision. Under some circumstances a dental assistant is allowed to expose radiographs (See A.R.S. § 32-1291). During the last year, the Board received 40 applications for dental assistant radiography certification by credential.

R4-11-406 was amended in 2003 to include fees for a Section 1303 permit, which authorizes use of oral sedation, and to clarify the fees for anesthesia and sedation permits are per location rather than per licensee. Section 1303 permits are the most frequently issued of the anesthesia and sedation permits. Currently, 320 Section 1303 permits have been issued. This means the rulemaking resulted in holders of a Section 1303 permit being required to pay \$300 to obtain and renew the permit. However, having the permit enables permit holders to provide dental services using oral sedation. This is a cost of doing business that is probably passed to consumers of dental services performed under oral sedation.

2005 Rulemaking

R4-11-401, Retired or Disabled Licensure Fees, and R4-11-402, Business Entity Fees, have not been amended since being made in 2005. The EIS prepared in 2005 was available.

R4-11-401 was amended to include only the fee for renewal of a license by a retired or disabled dentist or dental hygienist. The amount of the fee was not changed. The Board currently licenses 69 retired or disabled dentists and eight retired or disabled dental hygienists.

R4-11-402 was newly made in 2005. In 2003 the legislature enacted A.R.S. § 32-1213 requiring business entities that offer dental services to register with the Board and authorized the Board to prescribe a fee for the registration. The rule established a \$100 per year per location fee. There are currently 330 registered business entities, which is considerably more than the 93 the Board estimated would be affected by the statute and rule. The Board estimated the administrative cost of processing a registration to be \$25. The remaining \$75 was for implementation of statute and rule. The Board expected a net increase in revenue of \$6,045 annually. However, because of the number of registrations, the net increase in revenue is actually \$24,750.

2014 Rulemaking

Only R4-11-101, Definitions, has not been amended since being made in 2014. The EIS from 2014 was available. The Board correctly estimated that repealing definitions made obsolete by a statutory change would have minimal economic impact.

2016 Rulemaking

R4-11-201 and R4-11-202, dealing with licensure by credential, were amended in a rulemaking approved by Council on February 2, 2016. They went into effect on April 3, 2016. The EIS prepared with the rulemaking was available. The Board correctly estimated the amendments to these rules would have minimal economic impact. The most important change made was to R4-11-201. The Board deleted the requirement that all applications for licensure by credential be considered at the Board meeting after the application is determined to be complete. This change was possible because the Board delegated to the Executive Director authority to determine which applications need to be brought to the Board's attention. During the last year, the Board received applications for licensure by credential from 133 dentists and 59 dental hygienists.

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 a 5YRR approved by Council on October 4, 2011, the Board indicated it would amend R4-11-204, R4-11-405, and R4-11-406. It completed the amendment of R4-11-204 in a rulemaking approved by Council on February 2, 2016. It has yet to amend R4-11-405 and R4-11-406. The Board had a rulemaking amending these two rules almost complete (See 20 A.A.R. 2842 and 2928) when Governor Ducey issued Executive Order 2015-01. The Board's request for an exemption following the order was initially denied. An exemption was granted on June 24, 2016, in an e-mail from Christina Corieri, Policy Advisor for Health and Human Services in the Governor's Office.

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 Board believes the following provisions, which impose a cost on applicants or licensees, impose the least burden possible and are necessary to enable the Board to fulfill its statutory responsibilities:

A.R.S. §§ 32-1240 and 32-1292.01 require the Board to establish a minimum number of active practice hours within a specific time period that an applicant for licensure by credential must complete before making application. For a dentist, the Board established the minimum at 5,000 hours in the five years immediately preceding application. For a dental hygienist, the Board established the minimum at 1,000 hours in the two years immediately preceding application.

The rules require that some documents submitted to the Board be certified.

The Board is specifically authorized to establish fees. In these rules, it establishes a fee for license renewal by a retired or disabled dentist or dental hygienist and for registration of a business entity. The rules also establish a charge for various services provided by the Board.

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:

No federal law is directly applicable to the subject matter of the 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:

R4-11-101 and R4-11-201 through R4-11-204 were made after July 29, 2010. The licenses and certifications by credential issued under R4-11-201 through R4-11-204 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

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 believes none of the issues identified in this 5YRR is substantive and none interferes with the Board's ability to license, regulate, and discipline dental professionals. The Board will address the issues identified when it becomes necessary to amend the rules for substantive reasons.

Because the Board was recently granted an exemption for a rulemaking on Article 4, the issues in that Article will be addressed when the rulemaking is done. The Board expects to have the rulemaking done by June 2017.