

Agency Overview

Arizona State Board of Nursing

Background

At the turn of the 19th century, nurse registration emerged in order to separate trained from untrained nurses as a means to protect the public. In 1921, the Arizona Legislature determined, as a matter of public policy, that the practice of nursing is a privilege granted by the people of Arizona as defined by the laws enacted by the elected representatives. It is not a natural right of individuals. Therefore, in the interest of public health, safety and welfare and to protect people from unprofessional and incompetent nursing practices, only qualified persons hold the privilege to be licensed as a nurse. The Nurse Practice Act's fundamental purpose is to protect the public and any license/certificate issued pursuant to the statutes shall be a revocable privilege; thereby no holder shall acquire any irrevocable right.

General Purpose of the Agency

The purposes of the Board of Nursing are to:

- Establish eligibility standards for licensure for Advanced Practice Nurses (APN's), Registered Nurses (RN's), Licensed Practical Nurses (LPN's) and Certified Nursing Assistants (CNA's).
- Determine eligibility, examine and license/certify qualified applicants.
- Provide for interstate/foreign endorsements.
- Renew licenses/certificates, grant temporary licenses/certificates, and provide for inactive status for those already licensed as requested.
- Set procedures for relicensure/reinstatement/recertification for previously licensed and certified individuals.
- Establish minimum educational standards for programs of nursing.
- Approve/accredit nursing education programs.
- Investigate and resolve complaints against licensees/certificate holders and impose disciplinary sanctions.
- Monitor probationers as nursing practice is resumed to ensure patient safety.
- Deny licensure/certification to applicants deemed unsafe to practice due to serious convictions or acts.
- Enforce legal prohibitions against the unlicensed practice of registered nursing/licensed practical nursing and use of title.

- Order evaluations of licensees/certificate holders to determine their ability to practice safely; take disciplinary action based on the results of the evaluation.
- Establish scope of practice for nurses.
- Promulgate rules that regulate nursing.
- Issue Advisory Opinions regarding the function of nursing practice and education.
- Establish a non-disciplinary rehabilitation option for impaired nurses entitled CANDO (Chemically Addicted Nurse Diversion Option) as an alternative to traditional disciplinary action.
- Promote public protection through education and informational services to prevent violations of the Nurse Practice Act.
- Overall enforcement of the provisions of the statutes/rules.
- Establish competency standards for maintaining a license

Changes in agency objectives since establishment.

The Arizona State Board of Nursing (ASBN) has made a number of regulatory improvements since the agency began in 1921.

- Disciplinary Actions were rare during the early days (1921-1977) when few complaints were received by the board. Beginning in the 1980's the number of drug related cases increased significantly. In 1987, the ASBN developed an effective non-disciplinary confidential program titled CANDO (Chemically Addicted Nurse Diversion Option) to assist nurses entering into rehabilitation when impaired by substance abuse and thereby reduce the risk to the public. The nurse is out of practice during a period of rehabilitation and can only return when an experienced evaluator assures safety for practice. CANDO averages 50-70 admissions per year with approximately 200 individuals participating in the program on an annual basis.
- The Executive Director may now accept a voluntary surrender of a license or certificate if a respondent chooses this option instead of Board imposed disciplinary action.
- In 1995, the legislature authorized the Board to certify and maintain a register of nursing assistants, a workforce of approximately 24,000. Combined with the 68,000 RNs and 11,000 LPN's, the ASBN manages the largest investigator case load of all the health profession licensing boards. This legislative change along with improved investigative procedures has increased the volume of investigative reports to the Board from an average of 64 cases per month in 1996 to approximately 150 in FY2010.
- Initial licensure examinations have been determined to be psychometrically sound and legally defensible as the test questions clearly relate to the practice of the profession at entry level. The National Council Licensing Exam (NCLEX) is based on empirical job analyses that are performed at a national level every 3 years by the National Council of State Boards of Nursing. Test plans and passing standards are re-evaluated on the same triennial basis to ensure the content and NCLEX RN and NCLEX PN are reflective of current competencies required for safe and effective practice.

- In 1994, all boards of nursing began offering computerized adaptive testing (CAT), which is offered year round in testing centers with high speed turn around reports, providing applicants with rapid licensure.
- In 1999, ASBN mandated that applicants for licensure/certificate have criminal history reports from the DPS/FBI to ensure applicants were behavior-free from indications of potential harm to the public, i.e. felony convictions. Applicants must provide information about prior behavior before a decision is made to grant legal authority to practice and issue a license/certificate.
- Mandatory reporting of licensee/certificate holders suspected of violating the Arizona Nurse Practice Act has been required for over 15 years. ASBN must now comply with a Federal mandatory reporting law; when final disciplinary actions are taken, the disciplinary information must be reported to the National Practitioner Data Bank.
- In 1987, the Nursing Home Reform Act was passed as part of the Omnibus Budget Reconciliation Act (OBRA), establishing various regulatory requirements for nurse aides employed in long-term care facilities receiving federal funds. ASBN has a contract with Department of Health Services (DHS) to monitor, register and approve educational programs for nurse aides employed in nursing home settings. In 1995, the authority to regulate CNAs was placed under the jurisdiction of ASBN. The basic argument for the jurisdiction was that if nurses are to delegate nursing tasks to nurse aides, then nursing should control that aspect of the nurse aide training and approval. Because the job description of nurse aide's fall within the nursing practice domain and licensed nurses are accountable for nursing care on a 24 hour basis, it was reasonable ASBN would assume authority and oversight of the regulation of CNAs.
- In 2001, as part of sunset review, the agency proposed amendments to the Nurse Practice Act to include setting standards for continued competency. The Board established a requirement through rule that all nurses practice nursing for a minimum of 960 hours within the past 5 years to renew licensure. New graduates of nursing programs must become licensed within 2 years of graduation. Applicants who fail to meet these qualifications must take and pass a Board-approved refresher course.
- In 2009 omnibus legislation to amend the Nurse Practice Act allowed the Executive Director to dismiss cases, issue letters of concern, close complaints through settlement and enter into a consent agreement for summary suspension. Other features of the legislation allow the Board to engage in pilot studies for innovation in nursing education, practice and regulation; allow the board to receive monies for specific projects without an appropriation to the state general fund; exempt certain short-term nursing assignments from licensure; changed the licensure renewal date to April 1 and specified conditions for obtaining the medical records of the licensee.
- In 2010 legislation was enacted to allow the Board to certify medication assistants, implementing successful aspects of a 4 year pilot program examining the role in long term care facilities and the effect on medication errors.
- In 2012, the legislature defined the term Certified Registered Nurse Anesthetist and established qualifications and a scope of practice.

Agency's major accomplishments.

As part of the initial strategic plan the Board continually examines its operations and customer services, including workflow and evolution of job duties. In response to the internal assessment and reports from outside entities, Board staff was involved in the following accomplishments over the past five years:

- Instituted on-line renewal of licenses and certificate holders.
- Developed web-site for verification of licensure data.
- Upgraded phone systems for more effective and efficient customer service.
- Provided annual conferences for nurse educators and nursing assistant educators.
- Published a quarterly Journal.
- Provided outreach education in response to community requests.
- Met with stakeholders on a regular basis: nurse recruiters, nurse educators, nurse executives.
- Live-stream all Board meetings.
- Instituted paperless Board meetings.
- Developed and provided oversight for a pilot study on the use of Certified Nursing Assistants to administer some medications in long term care facilities.
- Decreased backlog of cases from over 1,875 to less than 1000 in 2009. Improved processing and investigation of complaints to an average of less than 7 months from the time a complaint is received until it is placed on a Board agenda.
- Improved processing time of licensure applications from 14 days in 2002 to 7 days in 2009.
- Approved three alternative agencies for credential evaluation of foreign educated nurses.
- Was awarded a grant in 2009 and again in 2011 from National Council of State Boards of Nursing to develop a competency exam for nurses using simulation.
- In 2009 added two new board members: one registered nurse practitioner or clinical nurse specialist and one member being a nursing assistant or nursing assistant instructor to provide representation for disciplines currently regulated.
- Collected data on nursing workforce to allow for workforce planning meeting the future health needs of Arizona.
- In 2009, added exemptions to licensure/certification to include nurses who are licensed in another state to be able to teach electronically or consult in person as long as they do not provide direct patient care or directly supervise patient care for more than 6 months in any calendar year.
- In 2009, also provided title protection for nurse practitioners and clinical nurse specialists and now require them to indicate their specialty area of certification when using the title.
- In 2012 began using a competency evaluation examination to identify unsafe practices in nurses reported to the Board for unsafe practice

Required rules and regulations promulgated.

During the past five years the following rules actions were taken:

- Article 1—amended effective January 31, 2009
- Article 4—amended effective January 31, 2009
- Article 5---R4-19-509 amended effective January 31, 2009
- R4-19-601—expired effective August 31, 2011
- R4-19-605-- expired effective August 31, 2011
- R4-19-701-- expired effective August 31, 2011
- Article 2 –amended effective July 6, 2013
- Article 3—amended effective July 6, 2013
- R4-19-311—amended effective May 31, 2013 and Sept. 10, 2013
- Article 5—amended effective July 6, 2013
- R4-19-702—amended effective July 6, 2013
- R4-19-101—amended effective July 6, 2013
- Article 1, Table 1—amended effective July 6, 2013

5 Year Rule Review Article 1

ARTICLE 1. Definitions and Time-frames

A.A.C. R4-19-101, R4-19-102 and Table 1

The Board amended R4-19-101 and Table 1 in 2009 and 2013; R4-19-102 was amended in 2009.

Information that is Identical Within All Rules—Article 1

1. Authority

These rules were adopted under the Board’s general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1). R4-19-102 and Table 1 were additionally authorized by A.R.S. § 42-1073.

3. Analysis of Effectiveness in Achieving Objectives

These rules effectively achieve their objectives.

4. Analysis of Consistency with State and Federal Statutes and Rules

These rules are consistent with A.R.S. §41-1072 et. seq. regarding time-frames. There are no applicable federal statutes and rules that are the subject of these rules.

5. Agency Enforcement of the Rules

These rules are currently enforced as written.

6. Clarity Conciseness and Understandability of the Rules

The rules in this Article are clear, concise and understandable as written.

7. Written Criticisms Of the Rules Over The Past Five Years

The Board has not received any written criticisms of these rules during the past five years.

8. Economic, Small Business and Consumer Impact Summary

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 1 in 2009 projected no substantial economic impact on the regulated community, the Board, or the general public as a result of these rules. R4-19-101 and Table 1 were amended again in 2013 with no predicted substantial impact. As predicted, no substantial economic impact occurred. AZBN has refunded approximately \$6,000 per year to persons licensed outside the time-frame since 2005. In FY 2012, the Board refunded \$5,635 and in FY 2013 the Board refunded \$6,750. The increased amounts of refunds are believed to be due to increased applications.

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

The Board has not received any analysis as described above.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

These rules have never been reviewed in a five year rule review due to the frequency of amendments.

11. Probable Benefits of the Rule Outweigh the Costs

The Board believes that all Article 1 rules impose the least burden and costs to persons regulated by these rules, including compliance costs necessary to achieve the underlying regulatory objective.

12. **More Stringent than Federal Law**

There is no corresponding federal law.

13. **Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037**

This article is in compliance with A.R.S. §41-1037. R4-19-102 involves time-frames for licenses, certifications and approvals. The Board believes that the licenses, certifications and approvals it issues fall within the definition of general permit. Under ARS § 41-1001 "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing." The Board is authorized to issue licenses to nurses, certificates to nursing assistants and advanced practice nurses, and approve CNA and nursing programs based upon meeting standards set in rule and statute without a public hearing.

14. **Proposed Course of Action**

The Board is in the process of amending R4-19-101. A Notice of Proposed Rulemaking was adopted by the Board at their January 31, 2014 meeting and was published in the *Register* on February 28, 2014. An open

public hearing was held on April 7, 2014. No written or oral comments on the rules were received by the Board. A notice of final rulemaking was submitted to GRRC on or about April 22, 2014.

Subsequent to the publication of the proposed rulemaking, Board staff asked that the definition of family be added to R4-19-101 in a future rulemaking. The Board is planning to make this amendment to R4-19-101 within the next year.

R4-19-102 and Table 1 are effective as written and no amendments are planned.

Analysis of Individual Rules Article 1

R4-19-101 Definitions

2. Objective

Through this rule, the Board defines terms used in Chapter 19.

14. Proposed Course of Action

This rule was reviewed in amending Article 8. The changes identified below were included in the Notice of Final Rulemaking submitted to GRRC on or about April 22, 2014. Definitions, pertinent to Article 8, of “certified medication assistant” and “secure examination” were added. The definition of “admission cohort” was amended to allow for open-entry/exit programs. The definition of “dual relationship” was amended to include a patient’s family. The definitions of “preceptorship” and “preceptor” were amended to include LPN programs that use preceptors for clinical experiences under R4-19-206 (E). Several definitions were

amended related to certified medication assistant programs. The definitions of “regionally accredited,” “NATCEP” and “traineeship” were deleted as the terms are no longer used in Chapter 19. The definition of “nursing practice” was deleted because it conflicts with statutory definitions of registered and practical nursing in A.R.S. §32-1601

R4-19-102 Time-frames for Licensure, Certification, or Approval

2. Objective

Through this rule, the Board informs the public of the time frame requirements and standards.

Table 1. Time-frames

2. Objective

This table lists the specific time frames for each type of license or approval.

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- In 1987, the Nursing Home Reform Act was passed as part of the Omnibus Budget Reconciliation Act (OBRA), establishing various regulatory requirements for nurse aides employed in long-term care facilities receiving federal funds. ASBN has a contract with Department of Health Services (DHS) to monitor, register and approve educational programs for nurse aides employed in nursing home settings. In 1995, the authority to regulate CNAs was placed under the jurisdiction of ASBN. The basic argument for the jurisdiction was that if nurses are to delegate nursing tasks to nurse aides, then nursing should control that aspect of the nurse aide training and approval. Because the job description of nurse aide's fall within the nursing practice domain and licensed nurses are accountable for nursing care on a 24 hour basis, it was reasonable ASBN would assume authority and oversight of the regulation of CNAs.
- In 2001, as part of sunset review, the agency proposed amendments to the Nurse Practice Act to include setting standards for continued competency. The Board established a requirement through rule that all nurses practice nursing for a minimum of 960 hours within the past 5 years to renew licensure. New graduates of nursing programs must become licensed within 2 years of graduation. Applicants who fail to meet these qualifications must take and pass a Board-approved refresher course.
- In 2009 omnibus legislation to amend the Nurse Practice Act allowed the Executive Director to dismiss cases, issue letters of concern, close complaints through settlement and enter into a consent agreement for summary suspension. Other features of the legislation allow the Board to engage in pilot studies for innovation in nursing education, practice and regulation; allow the board to receive monies for specific projects without an appropriation to the state general fund; exempt certain short-term nursing assignments from licensure; changed the licensure renewal date to April 1 and specified conditions for obtaining the medical records of the licensee.
- In 2010 legislation was enacted to allow the Board to certify medication assistants, implementing successful aspects of a 4 year pilot program examining the role in long term care facilities and the effect on medication errors.
- In 2012, the legislature defined the term Certified Registered Nurse Anesthetist and established qualifications and a scope of practice.

Agency's major accomplishments.

As part of the initial strategic plan the Board continually examines its operations and customer services, including workflow and evolution of job duties. In response to the internal assessment and reports from outside entities, Board staff was involved in the following accomplishments over the past five years:

- Instituted on-line renewal of licenses and certificate holders.
- Developed web-site for verification of licensure data.
- Upgraded phone systems for more effective and efficient customer service.
- Provided annual conferences for nurse educators and nursing assistant educators.
- Published a quarterly Journal.
- Provided outreach education in response to community requests.
- Met with stakeholders on a regular basis: nurse recruiters, nurse educators, nurse executives.
- Live-stream all Board meetings.
- Instituted paperless Board meetings.
- Developed and provided oversight for a pilot study on the use of Certified Nursing Assistants to administer some medications in long term care facilities.
- Decreased backlog of cases from over 1,875 to less than 1000 in 2009. Improved processing and investigation of complaints to an average of less than 7 months from the time a complaint is received until it is placed on a Board agenda.
- Improved processing time of licensure applications from 14 days in 2002 to 7 days in 2009.
- Approved three alternative agencies for credential evaluation of foreign educated nurses.
- Was awarded a grant in 2009 and again in 2011 from National Council of State Boards of Nursing to develop a competency exam for nurses using simulation.
- In 2009 added two new board members: one registered nurse practitioner or clinical nurse specialist and one member being a nursing assistant or nursing assistant instructor to provide representation for disciplines currently regulated.
- Collected data on nursing workforce to allow for workforce planning meeting the future health needs of Arizona.
- In 2009, added exemptions to licensure/certification to include nurses who are licensed in another state to be able to teach electronically or consult in person as long as they do not provide direct patient care or directly supervise patient care for more than 6 months in any calendar year.
- In 2009, also provided title protection for nurse practitioners and clinical nurse specialists and now require them to indicate their specialty area of certification when using the title.
- In 2012 began using a competency evaluation examination to identify unsafe practices in nurses reported to the Board for unsafe practice
- In 2015 the legislature authorized the Board to either certify or license nursing assistants. All categories of nursing assistant would be required to complete an approved nursing assistant training and competency evaluation program (NATCEP)

and have the same scope of practice. Licensure would apply to nursing assistants who pass the Board's criminal background check and are under the full authority of the Board. Licensed Nursing Assistants (LNA) would pay application and renewal fees. Certification is open to nursing assistants upon completion of a NATCEP, whereby the nursing assistant would be placed on a registry that meets federal requirements. The jurisdiction of the Board is limited to substantiated instances of abuse, neglect and misappropriation of property.

Rules promulgated in the past 5 years

During the past five years the following rules actions were taken:

- § R4-19-601—expired effective August 31, 2011
- § R4-19-605-- expired effective August 31, 2011
- § R4-19-701-- expired effective August 31, 2011
- § Article 2 –amended effective July 6, 2013
- § Article 3—amended effective July 6, 2013
- § R4-19-311—amended effective May 31, 2013 and Sept. 10, 2013
- § Article 5—amended effective July 6, 2013
- § R4-19-702—amended effective July 6, 2013
- § R4-19-101—amended effective July 6, 2013
- § Article 1, Table 1—amended effective July 6, 2013
- § Article 8—amended effective September 8, 2014

5 Year Rule Review Article 5

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

A.A.C. R4-19-501 to 513

The Board amended R4-19-501-514 effective July 6, 2013

Information that is Identical Within All Rules—Article 5

1. Authority

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1); and specifically under A.R.S. §§ 32-1605.01 (B)(3), 32-1606 (A)(1), (A)(8), (B)(1), (B)(2), (B)(8), (B)(10), (B)(12), (B)(15), (B)(17), (B)(18), (B)(21) and (B)(22), 32-1456, 32-1921, and 32-3208.

3. Analysis of Effectiveness in Achieving Objectives

These rules effectively achieve their objectives.

4. Analysis of Consistency with State and Federal Statutes and Rules

These rules are consistent with state statutes (A.R.S. § 32-1456, 32-1921 and 32-3208) and state and federal regulations regarding DEA licenses. (Controlled Substances Act, 21 U.S.C. § 801 et seq., and Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27)

5. Agency Enforcement of the Rules

These rules are currently enforced as written.

6. Clarity Conciseness and Understandability of the Rules

The rules in this Article are clear, concise and understandable as written.

7. Written Criticisms Of the Rules Over The Past Five Years

The Board has not received any written criticisms of these rules during the past five years.

8. Economic, Small Business and Consumer Impact Summary

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 5 in 2013 projected no substantial economic impact on the regulated community, the Board, or the general public as a result of these rules. As predicted, no substantial economic impact occurred to regulated parties or the public. Although some impact in investigative cases was predicted, complaints have remained stable since 2010. There was one complaint of unprofessional conduct in an advance practice registered nursing (APRN) program which was resolved with a Letter of Concern. There is another complaint currently being investigated against an APRN program.

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

The Board has not received any analysis as described above.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

These rules were reviewed in 2011 and amended as planned in 2013.

11. Probable Benefits of the Rule Outweigh the Costs

The Board believes that all Article 5 rules impose the least burden and costs to persons regulated by these rules, including compliance costs necessary to achieve the underlying regulatory objective.

12. More Stringent than Federal Law

The rules regarding DEA licenses are consistent with federal law and are not any more stringent.

13. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

This article is in compliance with A.R.S. §41-1037. R4-19-102 involves issuing certifications, approvals and prescribing/dispensing authority. The Board believes that the certifications, authorizations, and approvals it issues fall within the definition of general permit. Under ARS § 41-1001 "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing." The Board is authorized to issue certificates to and prescribing authority to advanced practice nurses, and approve APRN nursing programs based upon meeting standards set in rule and statute without a public hearing.

14. Proposed Course of Action

A rulemaking revising R4-19-501 to include added certification exams will be initiated in 2016. No other amendments are planned.

Analysis of Individual Rules Article 1

R4-19-501 Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Program

2. Objective

Through this rule, the Board identifies the roles and populations of care for advanced practice nursing. Additionally the Board identifies the standards for acceptance of national certification for APRN nurses.

14. Proposed Course of Action

The Clinical Nurse Specialist National Certification Exams will be updated in a future rulemaking to include Adult-Gerontological CNS.

R4-19-502 Requirements for APRN Programs

2. Objective

Through this rule, the Board informs educational institutions of the approval requirements for APRN programs.

R4-19-503 Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board

2. Objective

In this rule, the Board specifies the application requirements for schools seeking to establish an APRN program.

R4-19-504. Notice of Deficiency; Unprofessional Program Conduct

2. Objective

In this rule, the Board informs regulated APRN programs of the Board process and their rights if a rule violation is found. The second subsection of this rule informs programs of acts that constitute unprofessional conduct.

R4-19-505. Requirements for Initial APRN Certification

2. Objective

In this rule, the Board provides details regarding application requirements for certification including grandfathering clauses.

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

2. Objective

Through this rule, the Board informs certificate holders of the qualifications to renew an APRN certificate.

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

2. Objective

In this rule the Board provides applicants information on the qualifications for obtaining temporary APRN certification and Prescribing/Dispensing authority.

R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice

2. Objective

With this rule, the Board establishes the standards related to scope registered nurse practitioner (RNP) practice.

R4-19-509. Delegation to Medical Assistants

2. Objective

In this rule, the Board delineates the conditions of delegation and the activities that may be delegated to medical assistants.

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

2. Objective

This rule establishes the requirements for prescribing and dispensing authority and informs RNPs of acts of unprofessional conduct specifically related to prescribing and dispensing.

R4-19-512. Prescribing Drugs and Devices

2. Objective

This rule describes the actions and conditions necessary for safe prescribing.

R4-19-513. Dispensing Drugs and Devices

2. Objective

Through this rule, the Board establishes the required acts when NPs dispense medications.

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice

2. Objective

With this rule, the Board establishes the standards related to scope of clinical nurse specialist practice.

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The purposes of the Board of Nursing are to:

- Establish eligibility standards for licensure for Advanced Practice Nurses (APN's), Registered Nurses (RN's), Licensed Practical Nurses (LPN's), and Licensed Nursing Assistants (LNA's).
- Maintain a Registry that meets federal requirements for Certified Nursing Assistants (CNA's).
- Determine eligibility, examine and license/certify/register qualified applicants.
- Provide for interstate/foreign endorsements.
- Renew licenses/certificates, grant temporary licenses/certificates, and provide for inactive status for those already licensed as requested.
- Set procedures for relicensure/reinstatement/recertification for previously licensed and certified individuals.
- Establish minimum educational standards for programs of nursing.
- Approve nursing education programs.
- Investigate and resolve complaints against regulated parties and impose disciplinary sanctions.
- Monitor regulated parties on probation to ensure patient safety.
- Deny licensure/certification to applicants deemed unsafe to practice due to serious convictions or acts.

- Enforce legal prohibitions against the unlicensed practice of registered nursing/licensed practical nursing and use of title.
- Order evaluations of licensees/certificate holders to determine their ability to practice safely; take disciplinary action based on the results of the evaluation.
- Establish scope of practice for nurses within limits of legislative authority.
- Promulgate rules that regulate nursing.
- Issue Advisory Opinions regarding the function of nursing practice and education.
- Establish a non-disciplinary rehabilitation option for impaired nurses entitled CANDO (Chemically Addicted Nurse Diversion Option) as an alternative to traditional disciplinary action.
- Promote public protection through education and informational services to prevent violations of the Nurse Practice Act.
- Enforce the provisions of the statutes/rules.
- Establish competency standards for maintaining a license

Changes in agency objectives since establishment.

The Arizona State Board of Nursing (AZBN) has made a number of regulatory improvements since the agency began in 1921.

- Disciplinary Actions were rare during the early days (1921-1977) when few complaints were received by the board. Beginning in the 1980's the number of drug related cases increased significantly. In 1987, the AZBN developed an effective non-disciplinary confidential program titled CANDO (Chemically Addicted Nurse Diversion Option) to assist nurses entering into rehabilitation when impaired by substance abuse and thereby reduce the risk to the public. The nurse is out of practice during a period of rehabilitation and can only return when an experienced evaluator assures safety for practice. CANDO averages 50-70 admissions per year with approximately 200 individuals participating in the program on an annual basis.
- The Executive Director may now accept a voluntary surrender of a license or certificate if a respondent chooses this option instead of Board imposed disciplinary action.
- In 1995, the legislature authorized the Board to certify and maintain a register of nursing assistants, a workforce of approximately 28,000. Combined with the 84,000 RNs and 10,000 LPN's, the AZBN manages the largest investigator case load of all the health profession licensing boards. This legislative change along with improved investigative procedures has increased the volume of investigative reports to the Board from an average of 64 cases per month in 1996 to approximately 150 in FY2015.
- Initial licensure examinations have been determined to be psychometrically sound and legally defensible as the test questions clearly relate to the practice of the profession at entry level. The National Council Licensing Exam (NCLEX) is based on empirical job analyses that are performed at a national level every 3 years by the National Council of State Boards of Nursing. Test plans and passing standards are re-evaluated on the same triennial basis to ensure the content and

NCLEX RN and NCLEX PN are reflective of current competencies required for safe and effective practice.

- In 1994, all boards of nursing began offering computerized adaptive testing (CAT), which is offered year round in testing centers with high speed turn around reports, providing applicants with rapid licensure.
- In 1999, AZBN mandated that applicants for licensure/certificate have criminal history reports from the DPS/FBI to ensure applicants were behavior-free from indications of potential harm to the public, i.e. felony convictions. Applicants must provide information about prior behavior before a decision is made to grant legal authority to practice and issue a license/certificate.
- Mandatory reporting of licensee/certificate holders suspected of violating the Arizona Nurse Practice Act has been required for over 15 years. AZBN complies with Federal mandatory reporting laws; when final disciplinary actions are taken, the disciplinary information must be reported to the National Practitioner Data Bank.
- In 1987, the Nursing Home Reform Act was passed as part of the Omnibus Budget Reconciliation Act (OBRA), establishing various regulatory requirements for nurse aides employed in long-term care facilities receiving federal funds. AZBN has a contract with Department of Health Services (DHS) to monitor, register and approve educational programs for nurse aides employed in nursing home settings. In 1995, the authority to regulate CNAs was placed under the jurisdiction of AZBN. The basic argument for the jurisdiction was that if nurses are to delegate nursing tasks to nurse aides, then nursing should control that aspect of the nurse aide training and approval. Because the job description of nurse aide's fall within the nursing practice domain and licensed nurses are accountable for nursing care on a 24 hour basis, it was reasonable AZBN would assume authority and oversight of the regulation of CNAs.
- In 2001, as part of sunset review, the agency proposed amendments to the Nurse Practice Act to include setting standards for continued competency. Board rules were amended to require that all nurses practice nursing for a minimum of 960 hours within the past 5 years to renew licensure. New graduates of nursing programs must become licensed within 2 years of graduation. Applicants who fail to meet these qualifications must take and pass a Board-approved refresher course.
- In 2009 omnibus legislation to amend the Nurse Practice Act allowed the Executive Director to dismiss cases, issue letters of concern, close complaints through settlement and enter into a consent agreement for summary suspension. Other features of the legislation allow the Board to engage in pilot studies for innovation in nursing education, practice and regulation; allow the board to receive monies for specific projects without an appropriation to the state general fund; exempt certain short-term nursing assignments from licensure; changed the licensure renewal date to April 1 and specified conditions for obtaining the medical records of the licensee.
- In 2010 legislation was enacted to allow the Board to certify medication assistants, implementing successful aspects of a 4 year pilot program examining the role in long term care facilities and the effect on medication errors.

- In 2012, the legislature defined the term Certified Registered Nurse Anesthetist and established qualifications and a scope of practice.
- Due to federal laws that prevent the Board from charging for nursing assistant certification, the costs of conducting fingerprint background checks on nursing assistants, and the necessity to use licensing fees from RNs and LPNs for the nursing assistant program, in 2015 the legislature authorized two levels of nursing assistant, effective 7/1/2016. Certified Nursing Assistants (CNAs), a new category of nursing assistant, are those individuals who meet minimal federal requirements, are not subject to criminal background checks and are under limited Board jurisdiction. CNAs pay no fees. Licensed Nursing Assistants (LNAs), similar to pre-7/1/2016 nursing assistants, are individuals who are subject to criminal background checks and full Board jurisdiction. LNAs pay a \$50 licensure fee, a one-time \$50 fingerprint fee and a \$50 renewal fee every 2 years. Applicants may choose either level.

Agency's major accomplishments.

As part of the initial strategic plan the Board continually examines its operations and customer services, including workflow and evolution of job duties. In response to the internal assessment and reports from outside entities, Board staff was involved in the following accomplishments over the past five years:

- Instituted on-line renewal of licenses and certificate holders.
- Developed website for verification of licensure data.
- Upgraded phone systems for more effective and efficient customer service.
- Provided annual conferences for nurse educators and nursing assistant educators.
- Published a Journal semi-annually
- Provided outreach education in response to community requests.
- Met with stakeholders on a regular basis: nurse recruiters, nurse educators, nurse executives.
- Instituted paperless Board and Education Committee meetings.
- Developed and provided oversight for a pilot study on the use of Certified Nursing Assistants to administer some medications in long term care facilities.
- Approved three alternative agencies for credential evaluation of foreign educated nurses.
- Developed a legally defensive simulation exam of nursing competency starting in 2008 and began using the exam in 2012 identify unsafe practices in nurses reported to the Board for unsafe practice
- Collected data on nursing workforce to allow for workforce planning meeting the future health needs of Arizona.
- In 2015 the legislature authorized the Board to either certify or license nursing assistants. All categories of nursing assistant would be required to complete an approved nursing assistant training and competency evaluation program (NATCEP) and have the same scope of practice. Licensure would apply to nursing assistants who pass the Board's criminal background check and are under the full authority of the Board. Licensed Nursing Assistants (LNA) would pay application and renewal fees. Certification is open to nursing assistants upon completion of a NATCEP, whereby

the nursing assistant would be placed on a registry that meets federal requirements. The jurisdiction of the Board is limited to substantiated instances of abuse, neglect and misappropriation of property.

Rules promulgated in the past 5 years

During the past five years the following rules actions were taken:

- § Article 2 –amended effective July 6, 2013
- § Article 3—amended effective July 6, 2013
- § R4-19-311—amended effective May 31, 2013 and Sept. 10, 2013
- § Article 5—amended effective July 6, 2013
- § R4-19-702—amended effective July 6, 2013
- § R4-19-101—amended effective July 6, 2013
- § Article 1, Table 1—amended effective July 6, 2013
- § Article 8—amended effective September 8, 2014

5 Year Rule Review

Articles 4, 6 & 7

ARTICLE 4. REGULATION

A.A.C. R4-19-401, R4-19-402, R4-19-403, R4-19-404 and R4-405

The Board promulgated R4-19-405 in 2009 and amended all other rules in this Article at that time with publication in the *Register* on December 19, 2008, effective January 31, 2009. Rules 4-19-401, 4-19-402 and 4-19-403 were updated in 2012 to reflect statutory renumbering.

Information that is Identical Within All Rules—Article 4

1. **Authority**

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1) and A.R.S. §32-1664.

3. **Analysis of Effectiveness in Achieving Objectives**

These rules effectively achieve their objectives.

4. **Analysis of Consistency with State and Federal Statutes and Rules**

These rules are consistent with the federal and Arizona Uniform Controlled Substance Act (21 U.S.C. 801 et seq; A.R.S. Title 36, Chapter 27) regarding narcotic medications in R4-19-403. These rules are also consistent with A.R.S. §32-3208 regarding reporting criminal charges. These rules are consistent with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

5. **Agency Enforcement of the Rules**

These rules are currently enforced as written.

6. **Clarity Conciseness and Understandability of the Rules**

The rules in this Article are clear, concise and understandable as written, and clarify references to A.R.S. § 32-1601 with the current subsection, which is currently (24).

7. **Written Criticisms Of the Rules Over The Past Five Years**

The Board has not received any written criticisms of these rules during the past five years.

8. **Economic, Small Business and Consumer Impact Summary**

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 4 in , projected no direct economic impact on the regulated community, the Board, or the general public as a result of these rules. There has been no measurable economic impact to the Board or regulated public as a result of these rules.

9. **Analysis submitted by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Board has not received any analysis as described above.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five year review.**

No course of action was recommended in the previous 5-year rule review.

11. **Probable Benefits of the Rule Outweigh the Costs**

The Board believes that all Article 4 rules impose the least burden and costs to persons regulated by these rules, including compliance costs

necessary to achieve the underlying regulatory objective, which is patient and public protection.

12. More Stringent than Federal Law

These rules are not more stringent than federal law.

13. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

Board believes that the licenses certifications, authorizations, and approvals it issues fall within the definition of general permit under ARS § 41-1001.

14. Proposed Course of Action

The Board recommends that these rules not be substantially amended unless there is an identified need either because of changing national standards or stakeholder recommendations. Due to statutory changes, incorrect references to A.R.S. § 32-1601 (22), the definition of unprofessional conduct, will be changed to changed to § 32-1601 (24) through a Notice of Recodification for R4-19-401, R4-19-402 and R4-19-403.

Analysis of Individual Rules Article 4

R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice

2. Objective

Through this rule, the Board informs the public of the standards related to scope of practice for licensed practical nurses.

R4-19-402. Standards Related to Registered Nurse Scope of Practice

2. Objective

Through this rule, the Board informs the public of the standards related to scope of practice for registered nurses.

R4-19-403. Unprofessional Conduct

2. Objective

Through this rules, the Board establishes conduct that is considered harmful or dangerous to the public under A.R.S. § 32-1601 (22) (d). This statute was re-numbered on July 1, 2016 to A.R.S. § 32-1601 (24) (d).

The Board will request the Secretary of State to correct the statutory reference.

R4-19-404. Re-issuance or Subsequent Issuance of License

2. Objective

This rule specifies the conditions under which the Board will re-issue a license that has been suspended, denied or revoked.

R4-19-405. Board Ordered Evaluations

2. Objective

This rule contains the conditions under which the Board may order an evaluation, the types of evaluations ordered and the qualifications of an evaluator used by the Board

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

A.A.C. R4-19-602, R4-19-603, R4-19-604, R-4-19-607, R4-19-608 and R4-19-609

The Board most recently amended all rules in this Article effective June 3, 2003 with publication in the *Register* on April 25, 2003. Concurrent with the 5 year rule review in 2011, the Board allowed Rules 4-19-601, 4-19-605, 4-19-606, 4-19-610, 4-19-611, 4-19-612, 4-19-613, 4-19-614 and 4-19-615 to expire.

Information that is Identical Within All Rules—Article 6

1. **Authority**

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. section 32-1606(A) (1).

3. **Analysis of Effectiveness in Achieving Objectives**

These rules effectively achieves their objectives.

4. **Analysis of Consistency with State and Federal Statutes and Rules**

These rules are consistent with A.R.S. Title 41, Chapter 6, Administrative Procedures and Title 4, Chapter 15, Board of Nursing as specified in each rule reviewed.

5. **Agency Enforcement of the Rules**

These rules are currently enforced as written.

6. **Clarity Conciseness and Understandability of the Rules**

These rules are clear, concise and understandable

7. **Written Criticisms Of the Rules Over The Past Five Years**

The Board has not received any written criticisms of these rules during the past five years.

8. Economic, Small Business and Consumer Impact Summary

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 6, and 7 in 2003 projected no direct economic impact on the regulated community or general public and minimal impact to the Board as a result of these rules. In fiscal year 2015 a total 231 hearings or settlement conferences were concluded. There has been no measurable economic impact to the Board or regulated public as a result of these rules

9. Analysis submitted by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.

The Board has not received any analysis as described above.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

No course of action was indicated in the previous five year review.

11. Probable Benefits of the Rule Outweigh the Costs

These rules provides information for the public and should be retained.

This rule provides necessary information for the public regarding legal representation and should be retained.

12. More Stringent than Federal Law

These rules are not more stringent than federal law.

13. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

Board believes that the licenses certifications, authorizations, and approvals it issues fall within the definition of general permit under ARS § 41-1001.

14. Proposed Course of Action

The Board does not plan to amend these rules.

Analysis of Individual Rules Article 6

R4-19-602 Letter of Concern

2. Objective

This rule informs the public that letters of concern are not subject to appeal.

4. Consistency with Other Statutes and Rules

This rule is consistent with A.R.S. § 41-1092 definition of appealable agency action.

R4-19-603 Representation

2. Objective

This rule provides for participation in a hearing by a respondent and legal counsel

4. Consistency of the Rule with State and Federal Statutes and Rules

The rule is consistent with A.R.S. § § 32-1606 (B) (10) and 32-1664.

R4-19-604 Notice of Hearing; Response

2. Objective

This rule identifies the method the Board uses when notifying regulated parties of a hearing and the obligation of the regulated party to respond to the notice.

4. Consistency of the Rule with State and Federal Statutes and Rules

The rule is consistent with A.R.S. § 41-1092 *et seq.* and A.R.S. § § 32-1606(B) (10) and 32-1664.

R4-19-607 Recommended Decision

2. Objective

This rule details the procedure for rendering and communicating a recommended decision following a hearing.

4. Consistency of the Rule with State and Federal Statutes and Rules

The rule is consistent with A.R.S. §§ 41-1092.08, 32-1606(B) (10) and 32-1664.

R4-19-608 Rehearing or Review of Decision

2. Objective

This rule provides the procedure for requesting a rehearing or review of a Board decision.

4. Consistency of the Rule with State and Federal Statutes and Rules

This rule is consistent with A.R.S. § §41-1092.09, 32-1606(B) (10), 32-1664 and 32-1665.

R4-19-609 Effectiveness of Orders

2. Objective

This rule establishes the effective date of an order of the Board and the grounds for a summary suspension.

4. Consistency with Other Statutes and Rules

This rule is consistent with A.R.S. § § 32-1606(B) (10), 32-1664, 32-1665, 41-1092.08 and 41-1092.11.

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

A.A.C. R4-19-702, R4-19-703, R4-19-704, R4-19-705

The Board most recently amended R4-19-701 in on July 6, 2013 with publication in the *Register* on May 31, 2013. All other rules in this Article were amended effective June 3, 2003 and with publication in the *Register* on April 25, 2003.

Information that is Identical Within All Rules--Article 7

1. **Authority**

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A)(1).

3. **Analysis of Effectiveness in Achieving Objectives**

The rules reviewed effectively achieve their objectives.

4. **Analysis of Consistency with State and Federal Statutes and Rules**

These rules are consistent with A.R.S. §§ 41-1029, 41-1023, 41-1032, 41-1033, and 41-1056.01.

5. **Agency Enforcement of the Rules**

These rules are currently enforced as written.

6. **Clarity Conciseness and Understandability of the Rules**

These rules are clear, concise and understandable as written.

7. **Written Criticisms Of the Rules Over The Past Five Years**

The Board has not received any written criticisms of these rules during the past five years.

8. **Economic, Small Business and Consumer Impact Summary**

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 6, and 7 in 2003 projected no direct economic impact on the regulated community or general public and minimal impact to the Board as a result of these rules. There has been no measurable economic impact to the Board or regulated public as a result of these rules.

9. Analysis submitted by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states

The Board has not received any analysis as described above.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

R4-19-702 was amended in 2013 as part of a larger rule package, consistent with the course of action proposed in the previous 5 year review.

11. Probable Benefits of the Rule Outweigh the Costs

These rules establish the process for public participation in the rulemaking process. In some cases they afford the public more opportunity for participation in rulemaking than the minimum requirements in statute.

The Board believes that rules are effective and provide multiple opportunities for public input in the rulemaking process.

12. More Stringent than Federal Law

The Board is not aware of any federal law that impacts these rules.

13. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

The Board believes that the licenses certifications, authorizations, and approvals it issues fall within the definition of general permit under ARS § 41-1001.

14. Proposed Course of Action

The Board does not plan to amend these rules.

Analysis of Individual Rules Article 7

R4-19-702 Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact.

1. Authority

In addition to the general authorization to make rules, this rule is authorized by A.R.S. § § 41-1033, and 41-1056.01.

2. Objective

This rule establishes the procedures for the public to petition a rule or object to a rule based upon the economic, small business or consumer impact.

4. Analysis of Consistency with State and Federal Statutes and Rules

The current rule was amended in 2013 to be consistent with changes A.R.S. §41-1956.01

R4-19-703 Oral Proceedings

1. Authority

In addition to the general authorization to make rules, this rule is authorized by A.R.S. § 41-1023.

2. Objective

This rule establishes the procedures for oral proceedings and public comment on the rulemakings.

R4-19-704 Petition for Altered Effective Date

1. Authority

In addition to the general authorization to make rules, this rule is authorized by A.R.S. § 41-1032.

2. Objective

This rule establishes the procedure for a member of the public to ask the Board to alter the effective date of a rule.

R4-19-705 Written Criticism of an Existing Rule

1. Authority

In addition to the general authorization to make rules, this rule is authorized by A.R.S. § 41-1056.

2. Objective

This rule establishes the procedure for submitting a written criticism of a rule.

