

**Arizona Board of Occupational Therapy Examiners
Five-Year-Review Report
Title 4, Chapter 43, Articles 1 through 4**

Introduction

The Board adopted rules, as authorized by statute, to provide policies and procedures for issuance and renewal of licenses, for receiving, investigating, and resolving complaints, and for responding to inquiries from consumers as to the license status of individual occupational therapists (OTs) and occupational therapy assistants (OTAs). R4-43-103 was last amended in 1992. R4-43-102, R4-43-201 through R4-43-205, R4-43-301, R4-43-302, and R4-43-404 through R4-43-406 were last amended in 1999. R4-43-101 and R4-43-401 through R4-43-403 were last amended in 2000.

The Board's previous Five-Year- Review of these rules that was approved by GRRC Council on July 1, 2008. The Five-Year- Review Report approved by Council during that time concluded that three rules identified in 2003 would be amended in 2008 and that thirteen additional rules would require minor revisions due to legislation that was introduced. The Board proposed to amend the thirteen rules by June of 2009. The Board drafted revised rules in late 2008 and opened a docket in January 2009. Soon after the docket opening, the Governor issued a rules moratorium.

Subsequent to the 2008 The Five-Year- Review Report, the Boards statutes were updated in late 2008 with the passage of SB1128 and then again in 2013 with the passage of SB1105. In light of the statutory changes the Board has identified 4 rules that require modification.

1. Authorization of rules by existing statutes:

A.R.S. § 32-3404- Provides general authority for the rules

A.R.S. § 32-3426- Provides specific authority for rules R4-43-202, R4-43-204 and R4-43-406.

A.R.S. § 32-3427- Provides specific authority for rule R4-43-102.

A.R.S. § 32-3441- Provides specific authority for rules R4-43-401 AND R4-43-402.

2. Objective of the rules:

The objective of the rules is to establish the Board's policies and procedures for regulating the Occupational Therapy community as authorized by statute. Specifically, the rules do the following: prescribe procedures for issuance and renewal of licenses; prescribe procedures for receiving, investigating, and resolving complaints; and for

responding to inquiries from consumers as to the license status of individual occupational therapists and occupational therapy assistants.

ARTICLE 1. GENERAL PROVISIONS

R4-43-101 Definitions

R4-43-101 was adopted to provide the definitions relating to the policies and procedures of the Board for administering the issuance and renewal of licenses, for receiving, investigating, and resolving complaints, and for responding to the protected and the regulated public regarding the license status of occupational therapy practitioners.

R4-43-102 Fees

R4-43-102 was adopted to provide the regulated public with the various fees for licensure and the forms of acceptable payment.

R4-43-103 Service by the Board

R4-43-103 was adopted to provide the protected and the regulated public with the Board's process for service of official Board decisions, orders, subpoenas and notices as prescribed by A.R.S. § 41-1063.

ARTICLE 2. LICENSURE

R4-43-201 Initial Application

R4-43-201 was adopted to provide potential applicants with the steps and requirements necessary to apply for a license as an occupational therapist or an occupational therapy assistant.

R4-43-202 Renewal License

R4-43-202 was adopted to provide licensees with the steps and requirements necessary to apply for the renewal of a license as an occupational therapist or an occupational therapy assistant as provided for in ARS § 32-3426 (A)(1).

R4-43-203 Continuing Education for Renewal of License

R4-43-203 was adopted to provide licensees with the steps and requirements necessary to complete continuing education units required in to apply for a renewal license as provided for in ARS § 32-3426 (C).

R4-43-204 Inactive License

R4-43-204 was adopted to provide licensees with a mechanism to inactivate a license and provide licensees with the steps required to reactivate an inactive license.

R4-43-205 Procedures for Processing License Applications

R4-43-205 was adopted to inform applicants of the steps involved and time frames required in processing a license.

ARTICLE 3. HEARINGS

R4-43-301 Hearing Procedures

R4-43-301 was adopted to inform licensees and the public of the statutory authorities by which the Board will conduct hearings.

R4-43-302 Rehearing or Review of Decision

R4-43-302 was adopted to inform licensees and the public of the statutory authorities by which the Board will rehear or review a previous decision, provide the process of requesting a rehearing and the reasons why the Board may review a decision.

ARTICLE 4. REGULATORY PROVISIONS

R4-43-401 Supervision of Occupational Therapy Assistants

R4-43-401 was adopted to inform licensees that only a licensed occupational therapist may supervise an occupational therapy assistant and advise licensees of the required levels of supervision based on the occupational therapy assistants experience level.

R4-43-402 Supervision of Occupational Therapy Aides and Other Unlicensed Personnel.

R4-43-402 was adopted to inform licensees that an occupational therapy aide may not provide occupational therapy services and that an occupational therapy aide shall receive continuous supervision.

R4-43-403 Designation of Title

R4-43-403 was adopted to inform the public of the titles that unlicensed personnel and students shall use.

R4-43-404 Limited Permit Practice

R4-43-404 was adopted to set out the Boards requirements for a limited permit and inform licensees as to who is qualified for a limited permit.

R4-43-405 Display of License Certificate

R4-43-405 was adopted to inform licensees and the public of the requirement to display valid licenses at the treatment facility.

R4-43-406 Change of Name or Address

R4-43-406 was adopted to inform licensees of the requirement to keep name and address changes up-to-date so that the Board can contact them when necessary.

3. Analysis of effectiveness of the rules in achieving the objective:

The rules for articles 1-4 effectively achieve their stated objectives.

4. Analysis of consistency with state and federal statutes and rules:

The rules in Articles 1 through 4 are consistent with the Arizona Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Articles 1-10. To the extent necessary, the Arizona Board of Occupational Therapy's rules are consistent with those of the Office of the Secretary of State. There are no federal statutes or regulations with which the Arizona Board of Occupational Therapy rules must be consistent.

The rules in Articles 1 are not consistent with Arizona Revised Statutes Title 32- Professions and Occupations, A.R.S Title 32, Chapter 34 Articles 1-3. Specifically, Senate Bill 1128 of the Forty-eighth Legislature was signed into law in 2008. Under 32-3401 Definitions, terms were added that will need to be included in rule. See the proposed course of action for rules affected by these legislative changes and the Board's suggested changes.

In addition, Senate Bill 1105 of the Fifty- first Legislature was signed into law in 2013. It revises the following statutes: A.R.S. §32-3401 definitions, A.R.S. § 32-3402, A.R.S. § 32-3404, A.R.S. §3 2-3423, A.R.S. § 32-3441, A.R.S. § 32-3442; amends title 32, chapter 34, article 3 of the Arizona Revised Statutes by adding section 32-3446. No additional rules are anticipated with the addition of A.R.S. § 32-3446. See the proposed course of action for rules affected by these legislative changes and the Board's suggested changes.

Although these rules are currently inconsistent with the Boards enabling statutes, the Board is enforcing the rules to the extent that they are consistent with statute.

5. Status of enforcement of the rules:

The Arizona Board of Occupational Therapy Examiners enforces all the following rules to the extent that they are consistent with statute.

6. Analysis of clarity, conciseness, and understandability of the rules:

The Board considers the language of the rules to be clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

The Board has not received any written criticisms regarding any of the rules within the last five years.

8. Comparison of economic, small business, and consumer impact with economic impact statement:

The Economic impact of the 2000 rulemaking was as anticipated for the four rules covered, except that changes are now necessary in R4-43-101 to account for statutory changes. The economic impact of the remaining rules is to provide the procedures

necessary to regulate the OTs and OTAs. The rule provides all of the requirements necessary for the Board to enforce the statute and rule, including discipline of the licensees. On the whole, the rules have a minimal to moderate economic impact on the licensed professionals and the public. The economic impact of the rules on the public is to protect the public from the licensure of persons who may harm them in the course of receiving occupational therapy services.

The Board, in 2003, reported in its economic impact statement (EIS) that fee increases proposed at that time would increase license renewal fees by 34%. The Board further reported that the need for increasing fees came about due to a legislated mandate to go from annual licensing to bi-annual licensing. The EIS stated that the Boards revenues had dropped significantly as a result.

In the Boards last The Five-Year- Review Report was approved in 2008; The Board reported that the revenue disparity reported in 2003 would be dealt with in a rule amendment to be filed later that year. Due to circumstances explained in later in this report, the rules were never amended however; adjustments were made to the fee structure to cover the Boards operating expenses.

In 2008 the Board licensed 1717 occupational therapists and 565 occupational therapy assistants. Currently, 1949 occupational therapists and 774 occupational therapy assistants are licensed by the Board or a 16% increase from 2008 to 2013. Additionally, the Board's budget in 2008 was roughly \$167,930 compared to the Board's current budget of \$162,700 or a 3% decrease from 2008.

The Board will amend its fee rule in July of 2014 to make the rules consistent with the current fee structure. R4-43-102 sets the renewal fees at \$135.00 for an Occupational Therapist and \$70.00 for an Occupational Therapy Assistant. The renewal fees currently being charged are \$200.00 and \$100.00 respectively. The adjustment of renewal fees in rule will not have an economic impact on licensees because the higher fees have been charged since 2003. The Board will also amend additional rules in December of 2014 to be consistent with statutory revisions made in 2008 and in 2013. These revisions will also not cause an impact on consumers or small businesses.

The Board should experience moderate costs to write and implement the proposed rules, and the related economic, small business, and consumer impact statement.

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

None.

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

It was noted in the 2008 The Five-Year- Review Report that the Board would amend three rules identified in the 2003 The Five-Year- Review Report. The report stated that a

docket had been opened in January of 2008 and proposed rule revisions for June of 2008. The Board further proposed that thirteen additional rules would be amended in June of 2009 pending the passing of legislation. Soon after the docket opening, the Governor issued a rules moratorium and the proposed rules were never amended. In a recent review of the Boards past minutes from January of 2008 through September 2013, it was determined that the subject of requesting an exemption from the Governor's rules moratorium was never discussed. It should also be noted that that from April of 2007 until June of 2010 the Board went through 4 Executive Directors. During that time frame, draft rules were attempted but never fully completed due to the lack of continuity.

11. 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 Board believes that with the proposed changes the rules will impose the least burden and costs to the community regulated by the rules. The Board is making every effort to ensure the policies, procedures, paperwork and compliance costs effectively work for the regulated community, but that they are also efficient, cost effective and necessary to achieving the regulatory objectives for the Board.

12. If applicable, a statement that the agency is in compliance with A.R.S. § 41-1037 General Permit:

The rules were not adopted after July 29, 2010. Therefore, analysis related to general permits is not required for the rules in this report. .

13. Stringency Compared with Federal Law:

There are no applicable federal laws with which to compare the stringency of the rules.

14. Course of Action:

The Board plans to submit a rulemaking to Council by December 2014 The Board plans to amend its current rules based on legislation passed since its last two Five-Year-Review Reports. Specifically, the Board plans to amend the following rules:

R4-43-101 Definitions- SB 1128 passed in 2008 and SB 1105 passed in 2013 made modifications to several definitions and added a few new ones. The changes to the statute, brought about by passage of these two pieces of legislation, will require changes to this rule. Specifically, SB1128 revised the definitions of consultation, occupational therapist, occupational therapy, occupational therapy assistant occupational services and unprofessional conduct. SB 1128 removed the definition for direct supervision and added definitions for letter of concern and supervision. SB 1125 modified the definition of

supervision and added to definition of unprofessional conduct. The Board plans to submit a rulemaking to Council by December 2014.

R4-43-102 Fees- Revisions are required to reflect the current fee structure. Under a previous Executive Director, the Boards fees for the renewal of a license were adjusted to meet operating costs. The Board went from an annual renewal to a bi-annual renewal causing a significant decrease in revenues. The issue of fee increases was addressed in the 2003 and later in the 2008 Five-Year- Review Report. A draft rule amendment to increase fees for license renewal never made it to the Council due to a high staff turnover causing a lack of continuity in the Board staff. The Board will present a final rule package to the Council in July 2014 to specifically address fees.

R4-43-103 Service by the Board- A revision is required to update the statute citation referenced.

R4-43-201 Initial application- No revisions are required at this time.

R4-43-202 Renewal of License- No revisions are required at this time.

R4-43-203 Continuing Education for Renewal of License- To maintain consistency with national certification requirements, the Board desires revisions to allow an occupational therapists supervision of a student's fieldwork count as continuing education and to add language requiring all licensees to complete a course on the Arizona Board of Occupational Therapy rules and statutes. The Board plans to submit a rulemaking to Council by December 2014.

R4-43-204 Inactive License- No revisions are required at this time.

R4-43-205 Procedures for Processing License Applications - No revisions are required at this time.

R4-43-301 Hearing Procedures- No revisions are required at this time.

R4-43-302 Rehearing or Review of Decision- No revisions are required at this time.

R4-43-401 Supervision of Occupational Therapy Assistants- No revisions are required at this time.

R4-43-402 Supervision of Occupational Therapy Aides and Other Unlicensed Personnel- SB1105 made revisions to A.R.S. § 32-3441 that may require rule revisions to address the change from non-licensed employees and volunteers to unlicensed personnel and students. The Board plans to submit a rulemaking to Council by December 2014.

R4-43-403 Designation of Title- No revisions are required at this time.

R4-43-404 Limited Permit Practice- SB 1128 revised in A.R.S. §32- 3428 the term Limited Permit to Limited License. A revision will be required for consistency. See the proposed course of action for the Boards time frame for revisions. The Board plans to submit a rulemaking to Council by December 2014.

R4-43-405 Display of License Certificate- SB 1105 revised A.R.S. § 32- 3441 by adding the carrying of a wallet sized card as an additional requirement. A revision will be required to add a wallet sized card to the rule for consistency. The Board plans to submit a rulemaking to Council by December 2014.

R4-43-406 Change of Name and Address- No changes are required at this time.

The Board will continue to work with the public to ensure that these rules not only meet the objectives of the Board, but also consider the needs of the licensees who are required licenses to carry out the practice of occupational therapy. The Board will immediately go

to work on a rules package to specifically address R4-43-102. The Board will present to the Council a final rules package in July 2014.

To accomplish the course of action, the Board has formed a committee consisting of members of the Board and the licensing community to review the current rules and suggest revisions to the Board to be included in a rule package. The Board plans to submit a rulemaking to Council by December 2014.