ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F-16-0904)
Title 6, Chapter 5, Article 24, Appeals and Hearings; Article 50, Child Care Resource and Referral System

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-1**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: October 14, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F-16-0904)**
Title 6, Chapter 5, Article 24, Appeals and Hearings; Article 50, Child Care Resource and Referral System

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This five-year-review report from the Arizona Department of Economic Security (Department) covers 12 rules in A.A.C. Title 6, Chapter 5, Articles 24 and 50. Article 24 relates to hearings with respect to child care assistance, and was last amended in March 1978. Article 50 relates to the statewide child care resource and referral system, and was last amended in July 2002.

Proposed Action

As the report outlines in more detail, no action will be taken on these rules until the Department's higher priority rulemakings are completed. The Department intends to move forward on these rulemakings within the constraints of Executive Order 2016-03 and the context of its rulemaking priorities.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates, and staff agrees, that the rules in Article 24 should be combined with other Department rules concerning appeals and hearings. Section 2405 is ineffective insofar as it references programs that are no longer subject to the Department's

authority, and establishes procedures that are inconsistent with the Arizona Administrative Procedure Act (APA).

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Department has received no written criticisms of these rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. As general authority, the Department cites to A.R.S. § 41-1954(A)(3), which requires the Department to "[a]dopt rules it deems necessary or desirable to further the objectives and programs of the [D]epartment."

5. Has the agency analyzed the rules' consistency with statutes and other rules?

Yes. The Department indicates that Section 2405 establishes procedures that are inconsistent with the APA.

Additionally, the Department notes that the U.S. Department of Health and Human Services Department published final rules on September 30, 2016 that amend Child Care Development Fund regulations in accordance with Child Care and Development Block Grant Act of 2014. The Department is analyzing the final regulations and will incorporate any necessary changes within a future rulemaking for Article 50.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced to the extent that they are consistent with statute and that they do not conflict with operational practice.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that references to "Child Protective Services" throughout the rules detract from their overall clarity, conciseness, and understandability. In addition, Section 2405 attempts to address too many topics and it often uses archaic syntax. Also, Sections 5009 and 5010 reference Site Codes (S.C.) in the mailing address, though they have been replaced by Mail Drop numbers.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Department indicates that the rules are not more stringent than the aforementioned corresponding federal law.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules were adopted prior to July 29, 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates that, in its 2011 five-year-review report, it planned to amend Article 24 within 18 months after the expiration of the moratorium, or after being granted an exception from the moratorium. The Department, however, did not request an exception from the moratorium.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-1**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: October 14, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F-16-0904)**
Title 6, Chapter 5, Article 24, Appeals and Hearings; Article 50, Child Care Resource and Referral System

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

No economic, small business, and consumer impact statement (EIS) was prepared for the Article 24 rulemaking completed in 1978. The rules in Article 50 were made under an exemption from the regular rulemaking process, so there is no EIS available for Article 50.

The Article 24 rules establish procedures for the appeal and hearing process regarding child care assistance. The Article 50 rules establish the procedures involved in the statewide Child Care Resource and Referral (CCR&R) system including the types of services permitted. CCR&R provides a database for many services related to child care in Arizona.

Key stakeholders that are impacted by Article 24 are the Department and applicants for social services. Key stakeholders that are impacted by Article 50 are the users of the CCR&R. These stakeholders include children, parents, child care centers, and family care providers.

The Department estimates that hearings and appeals under Article 24 cost $1,117.32 in FY 2015.

In FY 2015, the total funding for CCR&R services was $2,131,773.14. These services included 4,568 phone requests for child care referrals and 10,346 internet requests for child care referrals. The Department states that 8,189 children in need of care were impacted in FY 2015.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department concludes that the rules in Article 24 require minor revisions due to unclear language. The Department also proposes moving Article 24 to a different chapter in order to be included with other Department rules regarding appeals and hearings. The Department anticipates submitting a rulemaking to address these issues provided the moratorium is lifted or the Department is granted an exception. Once amended, the Department states that the Article 24 rules will impose the least burden and cost to those regulated by the rules.

The Department concludes that the rules in Article 50 impose the least burden and costs to persons regulated by the rule, and the Department does not intend to take any action on the rules in Article 50.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Timothy Jeffries
Director

RECEIVED
JUN 29 2016
GRRC

June 29, 2016

Nicole A. Ong, Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-year Review Report for A.A.C. Title 6, Chapter 5, Department of Economic Security – Social Services, Articles 24, 50, 55, 58, 59, 60

Dear Ms. Ong:

Enclosed is the Department of Economic Security's Five-year Review Report on the above referenced Articles. Included with in the report are copies of the authorizing statutes and rules. There are no past economic impact statements associated with these rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091. The Department has not reviewed the rules in the following Articles, and intends to let them expire under A.R.S. § 41-1056(J): Article 55, Article 58, Article 59, and Article 60.

Thank you for your attention to this report. If you have any questions, or require more information, please contact me at (602) 542-6555. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

Sincerely,

Robert Hobbs
Lead Rules Analyst
(as Director's designee)

Enclosures

Arizona Department of Economic Security

5-Year Review Report

Title 6. Economic Security

Chapter 5. Department of Economic Security

Social Services

Article 24.

Appeals and Hearings

Article 50.

Child Care Resource and Referral System

Article 55.

Child Protective Services

Article 58.

Family Foster Parent Licensing Requirements

Article 59.

Group Foster Home Licensing Standards

Article 60.

Comprehensive Medical/Dental Program for Foster Children

June 30, 2016

Revised: October 6, 2016

I. INTRODUCTION

A. GENERAL

A.R.S. § 8-451, effective May 29, 2014, created the Department of Child Safety (DCS) to which the responsibilities and authority for the functions governed by A.A.C., Title 6, Chapter 5, Articles 55, 58, 59, and 60 were transferred. Therefore, the rules reviewed in this report are limited to the rules which govern actions of and parties regulated by the Department of Economic Security (Department) as contained in A.A.C., Title 6, Chapter 5, Articles 24 and 50.

The rules in Article 24 set forth administrative appeal and hearing procedures and are used by the Department to govern appeal and hearing procedures with respect to child care assistance.

The rules in Article 50 specify requirements for a statewide child care resource and referral system. These rules specify the procedures for this program, including the types of child care programs that are eligible to be listed with Child Care Resource and Referral (CCR&R), the items that must be submitted to the Contractor, the agency with which the Department contracts for the provision of referral services, and who may be excluded from the CCR&R database. In addition, the rules explain the referral process, which includes the information collected from consumers by the Contractor, the type of information the Contractor must provide to each consumer, and requirements for recording complaints against child care providers.

B. RULES NOT REVIEWED IN THIS REPORT

The Department did not review the rules in the following Articles, and intends that they expire because they concern functions of the Department of Child Safety and have been replaced by rules that have been promulgated by the Department of Child Safety:

Article 55.	Child Protective Services
Article 58.	Family Foster Parent Licensing Requirements
Article 59.	Group Foster Home Licensing Standards
Article 60.	Comprehensive Medical/Dental Program for Foster Children

II. Analysis of Rules

A. Statutory Authority

General Authority: A.R.S. § 41-1954(A)(3)

Specific Authority:

Article 24: A.R.S. §§ 46-804 and 46-809

Article 50: A.R.S. §§ 41-1967, 41-1967.01, 46-802(4) through 46-802(6), and 46-809(3)

B. Objective

Article 24

R6-5-2404. Basis for a hearing

The objective of this rule is to set forth the Department actions which may be appealed. The purpose of this rule is to clarify and explain which Department actions may be appealed and which may not.

R6-5-2405. Hearing process

The objective of this rule is to explain the manner in which hearings are scheduled and conducted. The purpose of this rule is to familiarize the parties with the process used, to define terms, and enable participation.

Article 50

R6-5-5001. Definitions

The objective of this rule is to set forth uniform definitions for key terms used in Article 50. The purpose of this rule is to ensure the public understands the terms used in Article 50.

R6-5-5002. Provider Participation Requirements

The objective of this rule is to specify information that a child care provider must submit to be considered for inclusion in the CCR&R database and to specify procedures that the child care resource referral contractor will follow before adding a provider to the database. The purpose of this rule is to ensure that the child care resource and referral contractor obtains information necessary to establish the child care resource and referral database.

R6-5-5003. Notification of Changes

The objective of this rule is to describe reporting requirements for child care providers listed in the CCR&R database. The purpose of this rule is to ensure that the database is maintained with current information at all times.

R6-5-5004. Referrals Not Guaranteed

The objective of this rule is to explain that referrals are not guaranteed for each participating provider. The purpose of this rule is to ensure that consumers receive information based on their needs and not based on participating providers' economic benefit.

R6-5-5005. Referral Process

The objective of this rule is to describe the information needed from both providers and consumers and to give guidance via a step-by-step referral process. The purpose of this rule is to ensure that the consumers receive high quality referral service and educational information.

R6-5-5006. Monitoring; Complaint Recording and Reporting Requirements

The objective of this rule is to describe the monitoring and investigation procedures for each type of child care provider. It also explains the contractor requirements pertaining to complaints and outlines the process to be followed when a complaint is filed. The purpose of this rule is to ensure that each complaint is communicated to the appropriate regulatory agencies and handled in precise manner within the required time period.

R6-5-5007. Provider Listing Status

The objective of this rule is to describe the criteria that require changes in provider listing status in the CCR&R database, and the timeframes and procedures pertaining to different types of child care provider groups. The purpose of this rule is to ensure that consumers do not receive referrals for a child care provider placed on an adverse action.

R6-5-5008. Provider Exclusion or Removal

The objective of this rule is to establish the grounds for exclusion or removal of participating child care providers from the CCR&R database. This section also explains the procedures for reinstatement. The purpose of this rule is to ensure that the CCR&R

database lists only the child care providers who meet the required qualifications.

R6-5-5009. Administrative Review Process

The objective of this rule is to outline the process to follow when the Department receives information indicating that a participating child care provider's listing status may change. The purpose of this rule is to ensure a consistent administrative review process is in place.

The objectives of this rule are to outline:

1. The process for the Department to follow to notify the provider of a change in listing status and what to include in the notice;
2. The timeframes and process for the provider to follow to request an administrative review;
3. The timeframe and who from the Department conducts the administrative review; and
4. The procedures for the Department to follow in notifying the provider of the results of the administrative review.

It further stipulates the provider may appeal the Department's administrative review decision. The purpose of this rule is to ensure a consistent administrative review process is in place.

R6-5-5010. Administrative Appeal Process

The objective of this rule is to specify the timeframe during which the Department's administrative review decision can be appealed and to explain required procedures for

both providers and the Department. The purpose of this rule is to ensure a consistent administrative appeal process is in place.

C. Effectiveness

Article 24

The rules in Article 24 could be more effective if combined with other Department rules concerning appeals and hearings within a separate chapter for this subject. The benefits and possible structure of such a revision will be evaluated as part of any future rulemaking pertaining to Article 24.

R6-5-2404 is effective because it clearly states those actions taken by the Department that may be appealed.

R6-5-2405 is not effective because it references programs, including child welfare licensing and foster home licensing, that are no longer subject to the rule and establishes procedures that are inconsistent with controlling statutory authority, including A.R.S. §§ 41-1061 and 41-1992.

Article 50

The Department believes the rules in Article 50 are effective, in that they are meeting their objectives, and are consistent with federal and state law, current program policy, and procedures.

D. Consistency

Because of the age of the rules there are incorrect statutory references in the Articles reviewed. The Department plans to update the references.

Article 24

R6-5-2404 is consistent with state statutes and rules as listed below.

A.R.S. § 41-1061(A)

A.R.S. § 41-1991 Appeals; procedures

A.R.S. § 46-804. Appeal

A.A.C. R6-5-4924(A). Appeals

There are no federal statutes and rules that govern the subject matter of this Article.

R6-6-2405 is inconsistent with A.R.S. § 41-1061(A), and Department policy and practice concerning advance notice of hearings and administrative review of the hearing officer's decision. A.R.S. § 41-1061(A) provides for 20 days' notice of hearing. R6-5-2405 provides minimum of 15 days' notice of hearing.

Article 50

The rules in Article 50 are consistent with state law and current program policy and procedures as indicated below:

45 CFR § 98.51 Activities to improve the quality of child care

A.R.S. § 41-1967. Child care resource and referral system; immunity.

The U.S. Health and Human Services Department published a Notice of Proposed Rulemaking on December 24, 2015. This proposed rule makes changes to Child Care Development Fund regulations to detail provisions of the Child Care and Development Block Grant Act of 2014 in order to help parents make informed consumer choices and access information to support child development. The final regulations were published on September 30, 2016. The Department is in the process of analyzing the final regulations and will incorporate any necessitated rule changes within a future rulemaking for Article 50.

E. Enforcement Policy

Article 24

The rules in Article 24 are consistently enforced by the Department to the extent that they are consistent with statute.

Articles 50

The Department enforces these rules to the extent that they do not conflict with operational practice as identified in Section F. below.

F. Clear, Concise, and Understandable

Article 24

R6-5-2404. Basis for a Hearing

This rule is clear, concise, and understandable.

R6-5-2405 Hearing Process

This rule is not clear, concise, and understandable. The rule attempts to address too many topics and it often uses passive voice or other archaic syntax. The rule would be clearer if it were rewritten in simpler, straight-forward language.

Article 50

The Department believes that the rules in Article 50 are clear, concise, and understandable with the following exceptions:

R6-5-5009. Administrative Review Process

This rule is not clear, concise, and understandable as it references the Site Code (S.C.) in the mailing address, which may be confusing to the public as S.C. numbers have been replaced by Mail Drop numbers.

R6-5-5010. Administrative Appeal Process

This rule is not clear, concise, and understandable as it references the Site Code (S.C.) in the mailing address, which may be confusing to the public as S.C. numbers have been replaced by Mail Drop numbers.

References to “Child Protective Services” throughout Article 50 detract from the clarity, conciseness, and understandability of the Article as they do not reflect the 2014 transfer

of child safety functions to the Department of Child Safety, which may be confusing to the public.

G. Written Criticisms

The Department has not received any written criticism regarding the rules in Chapter 5, Articles 24 and 50.

H. Economic Impact Comparison

Article 24

The rules in Article 24 were made in 1978 and no economic impact statement was prepared the time of the rulemaking.

Appellate Services Administration (ASA) is authorized by Arizona Revised Statutes to establish appeal tribunals to hear and decide appeals for adverse actions described in Article 24.

ASA is funded through both federal and state appropriations. The estimated total costs incurred by ASA in SFY 2015 in connection with the Article 24 hearings at the Office of Appeals and the Appeals Board are $1,117.32.

Article 50

Because the rules in Article 50 were filed under an exception from formal rulemaking procedures, the Department did not prepare an Economic Impact Statement for these rules. These rules assist the public in identifying prospective child care providers, and provide child care providers with an opportunity to advertise their services to prospective clients.

The Department of Economic Security, Child Care Administration contracted with two agencies until June 2015 to provide services to consumers and child care providers throughout Arizona. Starting SFY 2016, the Department reduced the number of contractors to one due to a recent decrease in the phone referrals and an increase in the web referrals.

Consumers can call a toll free number throughout Arizona to receive referrals to all types of child care providers or receive referrals on-line through the CCR&R website. Information on child care supply and demand is provided, provider training is delivered, and detailed information and consumer education materials is provided to consumers to assist them in what to look for in selecting quality child care.

In SFY 2015, total funding for CCR&R services was $2,131,773.14. Administratively, the Child Care Administration funds a portion of one full-time position to oversee contract administration, reporting requirements, and to provide technical assistance to contractors on all aspects of the service. Collectively, approximately 20 FTEs are funded at the agencies to provide referral and recruitment services, outreach, internet

maintenance, training administration, and management operations. A total of 4,568 requests for child care referrals were processed by telephone in SFY 2015, impacting 8,189 children in need of care. In addition, approximately 10,346 consumers received child care referrals on-line through the CCR&R website.

During the final quarter of SFY 2015, there were 3,154 providers listed in the CCR&R database. Of these, 2,006 were child care centers, and 1,148 were family care providers. Of the 2,006 child care centers, 1,533 are contracted with DES to provide child care services to families receiving child care subsidies.

I. Business Competitive Analysis

The Department did not receive a business competitive analysis from a member of the public during the process of preparing this report.

J. Course of Action from Previous 5-Year Review Report

In the 2011 Five-Year Review Report approved by Council, the Department indicated that it was working closely with the Governor's Office to evaluate its priorities and workload, and that it may request an exception from the moratorium to proceed with rulemaking to address the needed changes identified in the report with respect to Article 24. The Department anticipated submitting this rule package to the Governor's Regulatory Review Council within 18 months after the expiration of the moratorium, or after being granted an exception from the moratorium.

The moratorium that was in place expired and was replaced by a series of subsequent regulatory moratoriums. Within the Department's priorities and workload, rulemaking to address changes to Article 24 never rose to a level to request a moratorium exception and no changes have been made to Article 24 since the previous Five-year Review Report.

The Department indicated that it had not planned to take any action on the rules in Article 50.

K. Determination of Burden and Costs

With the amendments proposed in this report, the Department believes that the rules would impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

L. CORRESPONDING FEDERAL LAW

The rules in Articles 24 and 50 are neither more burdensome than, nor in conflict with, corresponding federal statutes and regulations.

There are no federal statutes and rules that govern the subject matter of Article 24. The current rules in Article 50 are neither more burdensome than, nor in conflict with, corresponding federal statutes and regulations as stated in 45 CFR § 98.51 Activities to improve the quality of child care.

The U.S. Health and Human Services Department published a Notice of Proposed Rulemaking on December 24, 2015. This proposed rule makes changes to Child Care Development Fund regulations to detail provisions of the Child Care and Development Block Grant Act of 2014 in order to help parents make informed consumer choices and access information to support child development. The final regulations were published on September 30, 2016. The Department is in the process of analyzing the final regulations and will incorporate any necessitated rule changes within a future rulemaking for Article 50.

M. COMPLIANCE WITH A.R.S. § 41-1037

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization.

N. Proposed Action

Article 24

All Department rulemaking was placed on hold as a result of Executive Order 2016-03 that became effective on February 10, 2016. In response, the Department requested permission to proceed with sixteen high priority rulemakings that align with the justifications detailed in the Executive Order. As of June 28, 2016, the Department has received approval to proceed with fifteen of the rulemakings. The amendments to Article

24 were not included in the Department's initial request. The Department will keep the amendments to Article 24 on its list of rulemakings to consider within the constraints of the Executive Order and the context of its rulemaking priorities.

Article 50

The Department does not plan to take any action on the rules in Article 50, except for the statutory reference updates referenced in the "Consistency" section, which will also be considered within the constraints of the Executive Order and the context of its rulemaking priorities.

Department of Economic Security – Social Services
-TITLE 6. ECONOMIC SECURITY

CHAPTER 5. DEPARTMENT OF ECONOMIC SECU-RITY SOCIAL SERVICES

ARTICLE 24. APPEALS AND HEARINGS

Article 24 consisting of Sections R6-5-2401 through R6-5-2405 adopted effective March 1, 1978.

Former Article 24 consisting of Sections R6-5-2401 through R6-5-2404 repealed effective March 1, 1978.

R6-5-2401. Expired

Historical Note

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2401 repealed, new Section R6-5-2401 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2401 repealed, new Section R6-5-2401 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

R6-5-2402. Expired

Historical Note

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2402 repealed, new Section R6-5-2402 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2402 repealed, new Section R6-5-2402 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

R6-5-2403. Expired

Historical Note

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2403 repealed, new Section R6-5-2403 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2403 repealed, new Section R6-5-2403 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

R6-5-2404. Basis for a hearing

A. A person will be granted a hearing for any of the following reasons:
1. Right to apply for social services has been denied.
2. Application is denied in whole or in part.
3. Action on an application has not been taken by the Department within 30 days of the date of application.
4. Service is suspended, terminated or reduced when such action has occurred as a result of an eligibility determination.

B. Change in law or policy. A hearing shall not be granted when a change in federal or state law or policy requires service adjustments or discontinuance for classes of recipients.

Historical Note

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2404 repealed, new Section R6-5-2404 adopted effective March 1, 1978 (Supp. 78-2).

R6-5-2405. Hearing process

A. Filing of appeal
1. A request for a hearing shall be filed in writing with the Department or provider within 15 calendar days after the mailing date of the decision letter, except that for appeals on denying, revoking or suspending a license of a child welfare agency or foster home the request shall be filed within 20 calendar days.
2. Except as otherwise provided by statute or by Department regulation, any appeal, application, request, notice, re- port, or other information or document submitted to the Department shall be considered received by and filed with the Department:
   a. If transmitted via the United States Postal Service or its successor, on the date it is mailed. The mailing date will be as follows:
      i. As shown by the postmark.
      ii. In the absence of a postmark the postage-meter mark of the envelope in which it is received;
      iii. If not postmarked or postage-meter marked, or if the mark is illegible, the date entered on the document as the date of completion.
   b. If transmitted by any means other than the United States Postal Service or its successor, on the date it is received by the Department.
   c. The submission of any appeal, application, request, notice, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation or to delay or other action of the United States Postal Service or its successor.
   d. Any notice, determination, decision or other data mailed by the Department shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the notice, determination, decision or other data unless otherwise indicated by the facts. Computation of time shall be made in accordance with Rule 6(a) of the Rules of Civil Procedure, 16 A.R.S.

3. Benefits shall not be reduced or terminated prior to a hearing decision unless due to a subsequent change in household eligibility another notice of adverse action is received and not timely appealed.
4. The local office or provider shall advise the client of any community legal services available and, when requested, shall assist in completing the hearing request.

B. Notice of hearing

1. Hearings will be held at the local office or any other place mutually agreed upon by the hearing officer and appellant. They shall be scheduled not less than 20 nor more than 30 days from the date of filing of the request for hearing. The appellant shall be given no less than 15 days notice of hearing, except that the appellant may waiver the notice period or request a delay. For appeals on denying, revoking or suspending a license of a child welfare agency or foster home, however, the hearing shall be held within ten days of the date of filing of the request for hearing.
2. The notice of hearing shall inform the appellant of the date, time, and place of the hearing, the name of the hearing officer, the issues involved, and of his rights to: present his case in person or through a representative; examine and copy any documents in his case file and all documents and records to be used by the agency at the hearing at a reasonable time prior to the hearing as well as at the hearing; obtain assistance from the local office in preparing his case; and of his opportunity to make inquiry at the local office about the availability of community legal resources which could provide representation at the hearing.
3. Appellant, in lieu of a personal appearance, may submit a written statement, under oath or affirmation, setting forth the facts of the case provided that the statement is submitted to the Department prior to or at the time of the hearing. All parties shall be ready and present with all witnesses and documents at the time and place specified in the notice of hearing, and shall be prepared at such time to dispose of all issues and questions involved in the appeal.
4. The hearing officer may take such action for the proper disposition of an appeal as he deems necessary, and on his own motion, or at the request of any interested party upon a showing of good cause disqualify himself, or may continue the hearing to a future time or reopen a hearing before a decision is final to take additional evidence. If an interested party fails to appear at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or may make his decision upon record and such evidence as may be presented at the scheduled hearing. If, within ten days of the scheduled hearing, appellant files a written application requesting reopening of the proceedings and establishes good cause for failure to appear at the scheduled hearing, the hearing shall be rescheduled. Notice of the time, place, and purpose of any continued, reopened or rescheduled hearing shall be given to all interested parties.

C. Prehearing summary

1. A prehearing summary of the facts and grounds for the action taken shall be prepared and forwarded to the hearing officer no less than four days prior to the hearing.
2. The summary shall be provided to the appellant prior to the commencement of the hearing.

D. Subpoena of witnesses. The hearing officer may subpoena any witnesses or documents requested by the Department or claimant to be present at the hearing. The request shall be in writing and shall state the name and address of the witness and the nature of his testimony. The nature of the witnesses' testimony must be relevant to the issues of the hearing, otherwise the hearing officer may deny the request. The request for the issuance of a subpoena shall be made to give sufficient time, a minimum of three working days, prior to the hearing. A subpoena requiring the production of records and documents shall specifically describe them in detail and further set forth the name and address of the custodian thereof.

E. Review of file. In the presence of a Department representative, the appellant and/or his authorized representative shall be permitted to review, obtain or copy any Department record necessary for the proper presentation of the case.

F. Conduct of the hearing

1. Hearings shall be conducted in an orderly and dignified manner.
2. Hearings are opened, conducted and closed by the hearing officer who shall rule on the admissibility of evidence and shall direct the order of proof. He shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses, the production of books, papers, correspondence, memoranda and other records he deems necessary as evidence in connection with a hearing.
3. Evidence not related to the issue shall not be allowed to become a part of the record.
4. The hearing officer may, on his own motion, or at the request of the appellant or Department representative, exclude witnesses from the hearing room.
5. The worker, supervisor or other appropriate person may be designated Department representative for the hearing.
6. The appellant and Department representative may testify, present evidence, cross-examine witnesses and present arguments.
7. The appellant may appear for himself or be represented by an attorney or any other person he designates.
8. A full and complete record shall be kept of all proceedings in connection with an appeal, and such records shall be open for inspection by the claimant or his representative at a place accessible to him. A transcript of the proceedings need not, however, be made unless it is required for further proceedings. When a transcript has been made for further proceedings, a copy shall be furnished without cost to each interested party.

G. Hearing decision

1. The hearing decision shall be rendered exclusively on the evidence and testimony produced at the hearing, appropriate state and federal law, and Department rules governing the issues in dispute.
2. The decision shall set forth the pertinent facts involved, the conclusions drawn from such facts, the sections of applicable law or rule, the decision and the reasons thereof. A copy of such decision, together with an explanation of the appeal rights, shall be delivered or mailed to each interested party and their attorneys of record not more than 60 days from the date of filing the request for appeal, unless the delay was caused by the appellant.

3. In those cases where the local office must take additional action as a result of a decision, such action must be taken immediately.
4. All decisions in favor of the appellant apply retroactively to the date of the action being appealed, or to the date the hearing officer specifically finds appropriate.
5. When a hearing decision upholds the proposed action of reducing, suspending or terminating a grant, an overpayment is the result.
6. All hearing decisions will be made accessible to the public, subject to meeting the provision for safeguarding confidential information relating to the client.
7. Decision of the hearing officer will be the final decision of the Department unless a reconsideration is requested in accordance with subsection (I).

H. Withdrawal of appeal. An appeal may be withdrawn as follows:

1. Voluntary withdrawal. This may be accomplished by completing and signing the proper Department form or by submitting a letter properly signed.
2. Abandonment or involuntary withdrawal. This occurs when an appellant fails to appear at a scheduled hearing and within ten days thereof fails to request a rescheduled hearing or fails to appear at a rescheduled hearing which he has requested. A hearing may not be considered abandoned if the claimant provides notification up to the time of the hearing that he is unable, due to good cause, to keep the appointment and that he still wishes a hearing.

I. Reconsideration

1. An appellant, within ten calendar days after the decision was mailed or otherwise delivered to him, may request the Director to review the decision. The request shall be in writing and should set forth a statement of the grounds for review, and may be filed personally or by mail.
2. After receipt of an application for leave to appeal, the Director shall:
   a. Deny the application, or
   b. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered, or
   c. Grant the application and decide the appeal on the record.
3. The Director shall promptly adopt his decision which shall be the final decision of the Department. A copy of the decision, together with a statement specifying the rights for judicial review, shall be distributed to each interested party.

Historical Note

Adopted effective March 1, 1978 (Supp. 78-2).

ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM

R6-5-5001. Definitions

The following definitions apply in this Article.

1. "ADE" means the Arizona Department of Education, which administers the CACFP at the state level.
2. "Alternate approval" means a status the ADE confers on an uncertified, unlicensed provider that demonstrates compliance with CACFP child care standards to the ADE.
3. "Caregiver state licensing ratio requirements" means Arizona Department of Health Services (DHS) regulations that mandate DHS oversight of child care facilities with five or more children in care for compensation where child care is provided for periods of less than 24 hours per day.
4. "Child care" means a compensated service that is provided to a child unaccompanied by a parent or guardian during a portion of a 24-hour day. The service includes supervised and planned care, training, recreation, and socialization.
5. "CACFP" means the Child and Adult Care Food Program, funded and administered at the federal level by the Food and Consumer Services, a program of the U.S. Department of Agriculture.
6. "CCR&R" means child care resource and referral, a service the Department administers under A.R.S. § 41-1967.
7. "Center" means the same as "child care facility" in A.R.S. § 36-881(3).
8. "Certified" or "licensed" means a provider holds a license as prescribed in A.R.S. § 36-882, or is certified under A.R.S. § 46-807 or A.R.S. § 36-897.
9. "Child with special needs" means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, within a child care setting, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child with a disability.
10. "Compensation" means something given or received in return for child care, such as money, goods, or services.
11. "Contractor" means an agency with which the Department contracts for provision of CCR&R services.
12. "Customer" means a person who is requesting information from a CCR&R contractor.
13. "Database" means a computerized collection of CCR&R facts, figures, and information for licensed, certified, and registered providers and customers arranged for ease and speed of retrieval.
14. "Department" or DES means the Arizona Department of Economic Security.
15. "Dropped for cause" means an ADE Sponsoring Organization has terminated a family child care provider from participation in the CACFP.
16. "Exclude" means to refuse to include a particular provider in or to remove a provider from the CCR&R database.
17. "Family child care" means child care provided by a certified or registered provider in the provider's own home.
18. "In-home child care" means child care provided in a child's own home.

19. "Information only listing" means a provider listed on the CCR&R who will receive training information and other information about child care issues and activities, but who will not receive any referrals.
20. "Listing status" means the condition under which a provider may receive a referral (referral listing) or is restricted from receiving a referral (information only listing).
21. "Over-Ratio Referral Form" means a communication tool used to relay to the Department of Health Services (DHS) information concerning a potential violation of caregiver state licensing ratio requirements.
22. "Personally identifiable information" means any information about a person other than a provider, that, when considered alone, or in combination with other information, identifies or permits another person to readily identify the person who is the subject of the information. Personally identifiable information includes:
    a. Name, address, and telephone number;
    b. Date of birth or age;
    c. Physical description;
    d. School;
    e. Place of employment; and
    f. Any unique identifying number, such as driver's license number, a social security number, or regulatory license number.
23. "Program Administrator" means the person who oversees the Child Care Administration, a unit of the Department.
24. "Provider" means an adult who, or a facility that, provides child care services.
25. "Provider type" means a category of provider or program such as a center, family child care, and in-home child care.
26. "Referral" means the information listed in R6-5-5005(C), (D), and (E), that a Contractor gives to a customer.
27. "Referral listing" means that a contractor may refer a provider listed on the CCR&R registry or database to customers, and the provider may receive training and other information about child care issues and activities.
28. "Registered provider" means a family child care provider who is an adult and is not licensed or certified by any government agency, but who meets the requirements to be listed in the CCR&R registry.
29. "Registry" means the list of providers that:
    a. Are not licensed or certified by a government agency,
    b. Voluntarily list with CCR&R, and
    c. Meet the requirements under A.R.S. § 41-1967 to receive referrals and training information.
30. "Regulated" means a provider who is required to meet licensing or certification standards set by a government agency, including a federal, state, or tribal government agency.
31. "Revocation" means the permanent removal of a child care provider's license or certificate by a government agency.
32. "SDA" means service delivery area, which is a specific geographic area where CCR&R services are offered.
33. "Sponsoring organization" means a public or non-profit private organization that administers the CACFP on behalf of ADE.
34. "Suspension" means that a regulatory agency has temporarily removed a provider's certificate or license.
35. "Work day" means Monday through Friday, excluding Arizona state holidays.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5002. Provider Participation Requirements

A. To be considered for inclusion in the CCR&R database, a provider shall submit the following information to the Contractor for the provider's SDA:
1. Provider's name;
2. Address;
3. Phone number;
4. Days and times the facility is open;
5. Ages of children accepted;
6. Capacity;
7. Regulatory affiliation, if any;
8. Meals provided to children in care;
9. Training and experience;
10. Accreditation;
11. Fees;
12. School transportation;
13. DES Provider ID, if applicable;
14. The provider's choice of listing status; and
15. DHS Child Development Center (CDC) or Small Group Home (SGH) number.

B. Regulated Providers: Before adding a regulated provider to the CCR&R database, the Contractor shall confirm the provider's regulatory affiliation with the appropriate regulatory agency. For the purpose of this subsection, confirmation of the regulatory affiliation is based solely on the accuracy of the information obtained from the regulatory agency.

C. Registered Providers: The provisions in this subsection govern provider participation requirements for registered family child care providers.

1. In addition to the information listed in subsection (A), a registered family child care provider shall complete and submit to the Contractor, on Department-approved forms, a notarized sworn statement and a notarized certification statement attesting that the provider is not subject to exclusion or removal from the CCR&R database under any of the grounds specified in A.R.S. § 41-1967(E).
2. Before adding a registered family child care provider to the CCR&R registry and database, a Contractor shall review the provider's sworn statement and certification statement described in subsection (C)(1) and include on the registry only those providers who affirm that they are not subject to exclusion or removal under A.R.S. § 41-1967(E).
3. Before adding a registered family child care provider to the CCR&R registry and database, a Contractor shall receive clearance from the Department that neither a provider nor anyone providing care in the provider's home has had a child abuse or neglect investigation that has been substantiated by Child Protective Services (CPS) in this state.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5003. Notification of Changes

A. A provider listed on the CCR&R database shall notify the Contractor of any changes to the information or statement given under R6-5-5002(A) or (C)(1).

B. A provider may modify self-initiated changes in listing status at any time by notifying the Contractor.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5004. Referrals Not Guaranteed

A. A Contractor shall make referrals to participating providers on a random basis based on a family's self-reported needs.

B. A Contractor shall not:

1. Guarantee the number or frequency of referrals to a participating provider; or
2. Guarantee that listing on the CCR&R will result in economic benefit or gain to a participating provider.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5005. Referral Process

A. To obtain a referral, a customer shall give the contractor the following information, if available, about the customer's child care needs:

1. Customer name;
2. Address;
3. Phone number;
4. Days and times child care is needed;
5. Preferred type of child care provider;
6. Location where care is needed or preferred, and
7. Age of child.

B. A Contractor shall give a customer a referral that is consistent with the customer's stated preferences.

1. The Contractor shall not make a referral unless the Contractor can give the customer the names of at least three potential providers within the customer's search parameters.
2. If the Contractor cannot name at least three potential providers meeting the customer's stated preferences, the Contractor shall ask the customer to expand the search parameters until the Contractor can name at least three potential providers.

C. The Contractor shall provide the customer with provider profile information on each referred provider, including the following:

1. Provider's name;
2. Address or major cross streets;
3. Phone number;
4. Days and hours of operation;
5. Ages of children accepted;
6. Ratio and capacity;
7. Regulatory affiliation, if any;
8. Meal information;
9. Training and experience;
10. Accreditation;
11. Fees and available subsidies;
12. School transportation.

D. As part of a referral, a Contractor shall give each customer written information that includes the following:

1. That the Contractor selects providers based on the customer's stated preferences;
2. That the Contractor provides referrals and does not recommend, endorse, or guarantee any particular child care provider;
3. That the Contractor does not regulate, monitor, or verify information supplied by a provider;
4. That a child's parent or guardian is solely responsible for choosing an appropriate child care provider to meet a family's needs; and
5. That a provider's listing status may change after their initial placement on the registry or database and that customers are encouraged to call back periodically for updated information.

E. As part of a referral, a Contractor shall provide the customer with the following Department-approved educational information:

1. A list of criteria to consider when selecting quality child care;
2. A description of the types of child care providers in Arizona;
3. A description of CCR&R services and a list of office locations and phone numbers statewide; and
4. An explanation of the process for filing a child care related complaint.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5006. Monitoring; Complaint Recording and Reporting Requirements

A. Monitoring and Investigation: Neither the Department nor its Contractors monitor or investigate the activities of a provider, or investigate any complaint about a provider, except as otherwise prescribed by law for a family child care provider.

B. Regulated Providers: Upon receipt of a complaint about a regulated provider, a Contractor shall refer the complainant to the appropriate regulatory agency, law enforcement agency, or Child Protective Services.

C. Registered Providers: The provisions in this subsection govern complaints about a registered provider.

1. Any person may complain about a registered family child care provider on the registry by notifying a Contractor. Upon receipt of a complaint on a registered family child care provider, a Contractor shall:
   a. Refer the complainant to the appropriate investigative agency (law enforcement or child protective services), if the issue raised in the complaint is suspected child abuse or neglect. The contractor shall forward a complaint involving law enforcement or child protective services to the DES Child Care Administration for resolution;
   b. Refer the complainant to DHS and forward an over-ratio referral form to DHS if the complaint alleges that the provider is caring for more children than the law allows; or
   c. Take a complaint made in reference to a CACFP home provider not regulated by any other agency and forward the complaint to ADE for resolution by its sponsoring agencies.
   d. Take the complaint if it raises an issue other than those described in subsections (C)(1)(a), (b) or (c).
2. If the Contractor takes the complaint as under subsection (C)(1)(c) or (d), the Contractor shall obtain and record, on a Department approved form, the following information, if available:
   a. Provider name and address;
   b. Summary of the complaint, including date and time of incident;
   c. Name, address, and phone number of the person making the complaint, unless the complainant indicates that the complainant or someone else may come to substantial harm. The Contractor shall document a complainant's claim that substantial harm may result as a result of disclosure of the complainant's name, as prescribed in A.R.S. § 41-1010; and
   d. If applicable, witness information, such as name, address, and phone number.
3. The person recording the information shall sign and date the form.
4. After redacting personally identifiable information, the Contractor shall send the complaint form to the provider for response within three work days.
5. The provider shall respond to the complaint by completing the provider response portion of the complaint form within 30 days of the complaint mailing date;
6. The Contractor shall allow the public to inspect the complaint, and the provider's response, if given, with all personally identifiable information redacted. After the 30-day provider response period has expired, the Contractor shall make a complaint available for public inspection at the Contractor's office or the Contractor may mail a copy of the complaint.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5007. Provider Listing Status

A. Regulated Providers:

1. When the Department learns that a regulatory agency has suspended a regulated provider's license, certificate, or alternate approval, the Department shall direct a Contractor to change the provider's listing status from referral listing to information only listing, using the process in R6-5-5009.
2. If a Contractor has changed a provider to information only listing status under subsection (A)(1), the Department shall direct the Contractor to return the provider to referral listing status if the regulatory agency removes the provider's suspension status.

3. The Department shall notify the provider in writing when the Department returns the provider to referral status. The Department shall send the notice within 10 work days of the change in status, and shall include the effective date of the change.

B. Registered Providers:

1. When the Department receives a complaint or is notified that a registered provider may have failed or may be unable to meet the needs of a family due to one of the following circumstances, the Department shall direct a Contractor to change a registered provider's listing status from referral listing to information listing using the process in R6-5-5009:
   a. A child has allegedly been abused, neglected, exploited, or abandoned while in the registered provider's care;
   b. A registered provider has allegedly been involved in activities or circumstances that may threaten the health, safety, or emotional well-being of a child, including, acts of physical violence, domestic disputes, or incidents involving deadly weapons or dangerous or narcotic drugs; or
   c. As determined by DHS, a registered provider has allegedly violated state law by providing care to more than four children at any one time for compensation.
2. If a Contractor has changed a registered provider to information only listing status, as prescribed in subsection (B)(1), the Department shall direct the Contractor to return the registered provider to referral listing status if one of the following occurs:
   a. Child Protective Services or a law enforcement agency determines that the allegation cannot be substantiated;
   b. Child Protective Services or a law enforcement agency determines that the threat to a child has been eliminated; or
   c. DHS determines that the registered provider may continue child care activities without obtaining a certificate or license.
3. As used in subsection (B)(2), substantiation by a law enforcement agency means that law enforcement has referred a case to a prosecutorial agency with a recommendation to file charges.
4. The Department shall notify the registered provider in writing when the provider is returned to referral status. The Department shall send the notice within 10 work days of the change in status, and shall include the effective date of the change.

Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5008. Provider Exclusion or Removal

A. The Department may direct a Contractor to exclude or remove a provider from the database according to the process in R6-5-5009, for the following reasons:

1. The provider fails or refuses to provide information as requested by the Department or a Contractor;
2. A regulatory agency or sponsoring organization verifies that the provider's license, certificate, or alternate approval has been denied, revoked, terminated, or dropped for cause;
3. The Department learns that information in the written, sworn, and notarized statements submitted by the provider under R6-5-5002(C) is false;
4. The provider is subject to removal or exclusion for any reason listed in A.R.S. § 41-1967(E); or,
5. The provider fails to comply with these rules.

B. A Contractor may summarily and without notice remove a provider from the CCR&R database for the following reasons:

1. The Contractor is unable to contact the provider because:
   a. The provider's phone is disconnected;
   b. The provider is no longer at the last known address and has given no forwarding address; or
   c. The provider has died; or
2. The provider requests removal.

C. A provider removed under subsection (B) may request reinstatement by calling the Contractor for the provider's SDA and providing current information.

D. Upon receipt of a request for reinstatement, the Contractor shall update the information listed in R6-5-5002 and, if applicable, confirm that the provider has submitted information requested by the Department or Contractor.

E. The Contractor shall reinstate the provider unless there are grounds for removal under subsections (A)(1) through (5).

Historical Note

Adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5009. Administrative Review Process

A. When the Department receives information indicating that the Department may need to change a provider's listing status or remove or exclude a provider, the Department Program Administrator or designee shall review the information and decide whether grounds exist as listed in R6-5-5007 or R6-5-5008(A).

B. If the Department decides to change a provider's listing status or to remove or exclude a provider, the Department shall:

1. Notify the Contractor to change the listing status or to remove or exclude the provider; and
2. Within 10 work days of the effective date of the change of listing status, removal or exclusion, send the provider written notice via certified mail of the action taken.

C. The notice shall include the following information:

1. The effective date of the change in listing status or the removal or exclusion;
2. The reason for the change in listing status or the removal or exclusion;

3. The statutory provision requiring the provider's change in listing status or the removal or exclusion;
4. An explanation of the provider's right to an administrative review; and,
5. A statement explaining where the provider may file a written request for an administrative review and the time period for doing so.

D. The Department shall mail the notice to the provider's last known address. The mailing date is presumed to be the date appearing on the notice.

E. A provider may request an administrative review by filing a written request for review with the Department, within 15 work days after the mailing date of the Department's notice.

F. The provider shall mail the written request for administrative review to:
Department of Economic Security
Child Care Administration
Program Administrator
P.O. Box 6123 S.C. 801A
Phoenix, Arizona 85005

G. In the written request, the provider shall include the reason for requesting an administrative review and any documentation supporting the reinstatement request.

H. A request for an administrative review is timely if:
1. The Department receives it within the 15-day appeal period in subsection (E); or
2. The envelope in which the request was mailed is postmarked or postage-meter marked within the period in subsection (E).

I. The Program Administrator or designee shall review the Department's decision and all documentation submitted by the provider.

J. The Program Administrator or designee shall notify the provider and the Contractor of the results of the administrative review within 15 work days from the date the Department receives the request for review.
1. The decision shall be in writing and mailed to the provider's last known address. The date on the decision is presumed to be the mailing date.
2. The decision shall include information about the provider's right to further appeal.

K. The provider may appeal the Department's decision under R6-5-5010.

Historical Note

Adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

R6-5-5010. Administrative Appeal Process

A. A provider may appeal the Department's administrative review decision under 6 A.A.C. 5, Article 75 by filing a request for an appeal with the Department within 15 work days after the mailing date of the Department's administrative review decision described in R6-5-5009(J).

B. A provider shall mail the written request for an appeal to:
Department of Economic Security
Child Care Administration
Program Administrator
P.O. Box 6123 S.C. 801A
Phoenix, Arizona 85005

C. In the written request, the provider shall include the reason for requesting an appeal and any documentation supporting the request.

D. The Department's actions in reference to removal or exclusion from the database or changes in listing status are not appealable under this Article if the action is based on:
1. Failure to clear a fingerprint or criminal background check; or
2. Failure to clear a Child Protective Services background check

E. A request for an appeal is timely if:
1. The Department receives it within the 15-day appeal period in subsection (A); or
2. The envelope in which the request is mailed is postmarked or postage-meter marked within the 15-day period prescribed in subsection (A).

Historical Note

Adopted effective November 19, 1996 (Supp. 96-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

ARTICLE 55. CHILD PROTECTIVE SERVICES

R6-5-5501. Definitions

The definitions in A.R.S. §§ 8-531, 8-201, and 8-801, and the following definitions apply in this Article:
1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-201(1).
2. "Abuse" means the same as A.R.S. § 8-201(2).
3. "Aggravating factor" means a specific circumstance that increases the risk of harm to a child and may result in a shorter investigation response time.
4. "Alleged abuser" means a child's parent, guardian, or custodian accused of child maltreatment.

5. "Alternative investigation" means, under R6-5-5507, a method to determine that a report of child maltreatment is unsubstantiated without a field investigation.
6. "Alternative response" means a report referred to Family Builders for assessment and services and not investigated by CPS according to Laws 1997, Chapter 223, § 2.
7. "Caregiver" means a child's parent, guardian, or custodian.
8. "Child" means a person less than age 18.
9. "Child Abuse Hotline," or "the Hotline," means a statewide, toll-free telephone service, including TDD service, that the Department operates 24 hours per day, seven days per week, to receive calls about child maltreatment.
10. "CHILDS" means the Children's Information Library and Data Source, which is a comprehensive automated system to support child welfare policies and procedures and includes information on investigations, ongoing case management, and payments.
11. "CHILDS Central Registry" means the Child Protective Services Central Registry, a confidential computerized database within CHILDS, that the Department maintains according to A.R.S. § 8-804.
12. "Child welfare agency" has the same meaning as in A.R.S. § 8-501(A)(1).
13. "CPS" means Child Protective Services, a program within the Administration for Children, Youth and Families (ACYF), a division of the Department designated to receive and investigate allegations of child maltreatment and provide protective services as described in subsection (40).
14. "CPS Administrator" means the DES Administrator responsible for operation of CPS, or that person's designee, which may include the Field Operations Manager, the CPS District Program Manager ("DPM"), the CPS Assistant District Program Manager ("APM"), or the CPS Local Office Manager.
15. "CPS Specialist" has the same meaning ascribed to "protective services worker" in A.R.S. § 8-801(2).
16. "CPS-CIU" means the Child Protective Services Central Intake Unit that operates the Child Abuse Hotline, screens incoming communications, and transmits reports to a CPS unit.
17. "Custodian" means a person defined in A.R.S. § 8-201(8). For CPS reporting purposes, a custodian is also any person with whom the child resides at the time of a maltreatment and includes a:
    a. Friend,
    b. Relative,
    c. Foster parent, and
    d. Child welfare agency.
18. "DCYF" means the Department's Division of Children, Youth and Families, an administrative unit that includes CPS.
19. "DDD" means the Department's Division of Developmental Disabilities.
20. "Delinquent act" has the same meaning prescribed in A.R.S. § 8-201(9).
21. "Department" means the Arizona Department of Economic Security.
22. "Exploitation" means use of a child by a parent, guardian, or custodian for material gain, which may include forcing a child to panhandle, steal, or perform other illegal activities.
23. "Family" means persons, including at least one child, who are related by blood or law, who are legal guardians of a child, or who reside in the same household.
24. "Family assessment" means a process that:
    a. CPS uses to evaluate a family's strengths, weaknesses, and problems;
    b. Is based on the family's history, observations about the family, professional opinions, and other information; and
    c. Includes a child safety assessment to determine the probability of risk to a child under R6-5-5512.
25. "Family Builders" means a program that allows CPS to refer selected reports to community-based providers for a family assessment and services according to Laws 1997, Chapter 223, § 2.
26. "Guardian" means the same as A.R.S. § 8-531(9).
27. "Incoming communication" means a telephonic, written, or in-person contact to CPS that is received by or ultimately directed to the Child Abuse Hotline.
28. "Licensing specialist" means a person who is:
    a. Designated by the Department or another state licensing agency; and
    b. Responsible for licensing, supervision, support, and monitoring of foster homes or child welfare agencies.
29. "Lifestyle" means a way of life or pattern of conduct that reflects the values and attitudes of a child's parent, guardian, or custodian.
30. "Maltreatment" means abuse, neglect, abandonment, or exploitation of a child. When used in reference to CPS activities, maltreatment means that a parent, guardian, or custodian:
    a. Has committed an act of maltreatment,
    b. May commit an act of maltreatment,
    c. Has permitted another person to commit an act of maltreatment, or
    d. Had reason to know that another person might commit an act of maltreatment and did not act to prevent the potential maltreatment.
31. "Mandated reporter" means a person who is required to report suspected child maltreatment under A.R.S. § 13-3620.
32. "Minor hygienic problem" means a body condition that does not pose a risk of serious or immediate harm, such as body odor, dirty hair, matted hair, dirty clothing, and treated chronic head lice.
33. "Mitigating factor" means a specific circumstance that reduces the risk of harm to a child and may permit a longer investigation response time.

34. "Neglect" or "neglected" means the same as A.R.S. § 8-201(21).
35. "Non-abusive caregiver" means a parent, guardian, or custodian who is not the subject of a CPS report or an investigation of alleged maltreatment.
36. "Notice of removal" means a form of notification that CPS gives to a person other than a caregiver when CPS removes a child and places the child in temporary custody.
37. "Ongoing protective services" are voluntary or involuntary social services designed to help a family resolve problems that contribute to child abuse and may include counseling, parenting classes, parent aide services, and voluntary foster care placement.
38. "Out-of-home placement" means a place where a child resides when the child is unable to reside at home because of maltreatment and includes:
    a. A relative home,
    b. A foster home,
    c. A licensed child welfare agency,
    d. A behavioral health facility,
    e. An unlicensed nonrelative,
    f. An independent living program, and
    g. A group home for persons with developmental disabilities.
39. "Probable cause" means that the Department has some evidence that an allegation is more likely to be true than not true.
40. "Protective services" means the same as A.R.S. § 8-801(1).
41. "PSRT" means the DCYF Protective Services Review Team that administers the process described in A.R.S. § 8-811 for appeal of proposed substantiated findings of abuse or neglect.
42. "Report" means a classification assigned to an incoming communication after the Child Abuse Hotline has screened the communication and found it to include:
    a. An allegation of maltreatment about a person who is currently a child, and
    b. Sufficient information for CPS to locate the child who is the subject of the maltreatment.
43. "Screening" means an initial process of determining whether an incoming communication contains an allegation of child maltreatment and should be classified as a report.
44. "Standard response time" means the period between the time a local CPS office receives a report from the Hotline and an action is taken to determine that a child victim is safe, in the absence of aggravating or mitigating factors.
45. "Substantiated" means that a CPS Specialist has concluded, after an investigation, that there is probable cause to believe an alleged abuser committed an act of child maltreatment.
46. "TDD" means a telecommunication device for the deaf.
47. "Unsubstantiated" means that a CPS Specialist has concluded, after an investigation, that there is no probable cause to believe an alleged abuser committed an act of child maltreatment.

Historical Note

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5501 repealed, new Section R6-5-5501 adopted effective December 8, 1983 (Supp. 83-6). Amended by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5502. Receipt and Screening of Information; Child Abuse Hotline

A. The Department operates a Child Abuse Hotline to receive and screen incoming communications. If a person calls, visits, or writes a Department office other than the Child Abuse Hotline to report child maltreatment, the Department shall refer the person or written communication to the Hotline.

B. The Department accepts anonymous calls of alleged maltreatment.

C. When the Hotline receives a communication, the Hotline staff shall:
1. Ask a caller's identity;
2. Use the standardized questions listed in Appendix 1 to this Article, to determine:
    a. The type of maltreatment alleged, and
    b. Whether to classify the communication as a report, and
3. Check the CHILDS Central Registry and other DES computer databases for prior reports on the same persons.

D. When the Department receives an oral report from a mandated reporter, the Department shall ask the mandated reporter to file a written statement confirming the oral report.

Historical Note

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5502 repealed, new Section R6-5-5502 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Numbering of subsection (C)(3) amended to correct typographical error (Supp. 00-2).

R6-5-5503. Non-Reports

Unless a communication includes an allegation of child maltreatment, the Department shall not classify as a report statements concerning the following matters:
1. A child's absence from school;
2. A child age 8 or older who allegedly committed a delinquent act;
3. Siblings of a child age 8 or older who allegedly committed a delinquent act.;

4. A child whose parents are absent but made arrangements for the child's care;
5. A child who is receiving treatment from an accredited Christian Science practitioner, or other religious or spiritual healer, unless the child's health is:
   a. In imminent harm, under R6-5-5512(B); or
   b. Endangered by lack of medical care;
6. A child with minor hygienic problems;
7. The lifestyle of a child's parent, guardian, or custodian;
8. Custody disputes, including:
   a. A noncustodial parent who is denied visitation by the custodial parent, and
   b. A relative or other person who wants legal custody of a child; and
9. Spiritual neglect of a child or the religious practices or beliefs to which a child is exposed.

Historical Note

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5503 repealed, new Section R6-5-5503 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5504. Preliminary Screening Classifications

A. Screening Classifications. After preliminary screening, Child Abuse Hotline staff shall classify a communication into one of the following categories:
1. A communication that is a non-report, or
2. A report for investigation.

B. Communication that is a non-report.
1. If a caller describes a problem that does not involve child maltreatment, the Hotline staff shall refer the caller to a community resource that can help with the problem.
2. If a communication involves a child who is already in the Department's care, custody, and control, the Hotline staff shall record the information and send it to the child's case manager for action. If a communication involves a licensed out-of-home care provider, the Hotline shall also notify the provider's licensing specialist or the appropriate licensing authority.
3. If a communication involves suicidal or homicidal behavior, or presents a danger to self or others, the Hotline staff shall refer the caller to law enforcement or behavioral health services.
4. If a communication involves an incorrigible or delinquent child who is age 8 or older, the Hotline staff shall refer the caller to the local county juvenile probation office.
5. If a communication involves child maltreatment by a person other than a child's caregiver, without the caregiver's knowledge, the Hotline staff shall notify, and direct the caller to notify, local law enforcement.

C. Review of non-reports.
1. If the information provided by a caller is not a report, the CPS Hotline staff shall:
   a. Record the information;
   b. Inform a caller that the information is not a report; and
   c. If a caller disagrees with the decision not to take a report, advise the caller that a request may be made for a supervisory review.
2. If a caller requests a supervisory review, the Hotline staff shall transfer the caller to an available supervisor. The caller may request further review by the Child Abuse Hotline Assistant Program Manager, Hotline Program Manager, and ultimately, the ACYF Field Operations Manager.
3. A Child Abuse Hotline supervisor or a CPS quality assurance specialist shall review all communications not classified as a report within 48 hours of receipt to verify that the communication was properly classified.

D. Communication that is a report for investigation.
1. If a communication contains the information required for a report, the Hotline staff shall gather additional information using the standardized questions listed in Appendix 2.
2. The Hotline staff shall assign each report a priority code and may assign a tracking code.
3. The Hotline staff may shorten or lengthen the response time based on aggravating or mitigating factors received during the screening.
4. The Hotline staff shall give the caller the name and phone number of the local office supervisor receiving the report.
5. The Hotline staff shall enter the report information into CHILDS.
6. The Hotline staff shall immediately transmit the report to a local office for disposition.

Historical Note

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5504 repealed, new Section R6-5-5504 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5505. Priority Codes; Initial Response Time

A. Priority codes and initial response times are:
1. Priority 1: High Risk;
   a. Standard Response Time: two hours;
   b. Mitigated Response Time: 24 hours.

2. Priority 2: Moderate Risk;
   a. Standard Response Time: 48 hours;
   b. Aggravated Response Time: 24 hours;
   c. Mitigated Response Time: 72 hours.
3. Priority 3: Low Risk;
   a. Standard Response Time: 72 hours;
   b. Aggravated Response Time: 48 hours;
   c. Mitigated Response Time: 72 hours excluding weekends and Arizona state holidays.
4. Priority 4: Potential Risk;
   a. Standard Response Time: seven days;
   b. Aggravated Response Time: 72 hours excluding weekends and Arizona state holidays.

B. All response times are measured from the time that the CPS local office receives the report from the Child Abuse Hotline to the time action is taken to determine the current safety of the alleged victim.

C. To comply with the priority response time, entities other than CPS, such as law enforcement personnel, emergency personnel, or paramedics, may initially respond to a report.

D. If law enforcement or emergency personnel initially respond to a report, CPS shall respond and investigate the report no later than the mitigated response time for the designated priority.

Historical Note

Former Section R6-5-5505 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5506. Methods for Investigation of Reports

A. Upon receipt of a report, a CPS unit supervisor:
1. May aggravate or mitigate the response time, if the Child Abuse Hotline has not assigned a mitigating or aggravating factor, but shall not change any aggravating or mitigating factors assigned by the Hotline; and
2. Shall assign one of the following dispositions:
   a. Field investigation;
   b. Alternative investigation under R6-5-5507;
   c. Legally prohibited investigation. A federal, state statute, or court order prohibits CPS from investigating if, for example:
      i. The alleged maltreatment occurs on a United States military base or Tribal reservation land, or
      ii. A court orders CPS not to investigate; or
   d. Alternative response, such as reports referred to Family Builders.

B. The CPS unit supervisor shall document the action taken and the disposition.

Historical Note

Former Section R6-5-5506 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5507. Alternative Investigation

A. Upon receipt of a report, a CPS unit supervisor may conduct an alternative investigation.

B. To conduct an alternative investigation, CPS shall contact a mandatory reporting source who is currently involved with the family and can provide information that:
1. The child and other children residing in the home are not:
   a. Current victims of maltreatment, or
   b. At risk of imminent harm; and
2. The allegations are unsubstantiated.

C. A CPS administrator shall review and approve any decision to conduct an alternative investigation.

D. If information gathered during an alternative investigation indicates that an alleged victim may be at risk of harm, the CPS Supervisor shall immediately assign the case for field investigation.

E. CPS shall not conduct an alternative investigation if an allegation involves an alleged victim who is:
1. Already in Department custody,
2. Currently the subject of an open CPS case,
3. In a DES- or DHS-licensed or certified facility, or
4. In a DES-licensed family foster home.

Historical Note

Former Section R6-5-5507 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5508. Conduct of a Field Investigation

A. When conducting a field investigation, a CPS Specialist shall determine:
1. The name, age, location, and current physical and mental condition of all children in the home of the alleged victim;
2. Whether any child in the home has suffered maltreatment; and

3. Whether any child in the home is at risk of maltreatment in the future.

B. A CPS Specialist shall investigate allegations using the following methods:
1. Interview the alleged victim;
2. Interview the alleged victim's caregiver who allegedly committed the abuse;
3. Interview other adults and children residing in the home;
4. Interview other persons who may have relevant information, including the reporting source, medical personnel, relatives, neighbors, and school personnel;
5. Review available documentation including medical and psychiatric reports, police reports, school records, and prior CPS files; or
6. Consult with law enforcement.

C. A CPS Specialist may interview a child without prior parental consent under A.R.S. § 8-802(C)(2).

D. A CPS Specialist may exclude the alleged abuser from participating in an interview with the alleged victim, the alleged victim's siblings, or other children residing in the alleged victim's household.

E. Before interviewing a caregiver, a CPS Specialist shall:
1. Orally inform the caregiver of the rights and duties under A.R.S. § 8-803(B);
2. Give the caregiver a written statement summarizing the same information; and
3. Ask the caregiver to sign a written acknowledgment of receipt of the information.

F. A CPS Specialist may take temporary custody of a child under A.R.S. §§ 8-821(A) and (B) and 8-802(C)(4). The CPS Specialist shall take temporary custody of an alleged victim if the alleged victim needs to be examined and the caregiver will not consent to the examination.

G. If a CPS Specialist finds more allegations of maltreatment during the investigation, the CPS Specialist shall incorporate the allegations into the report and investigate under this Article.

Historical Note

Former Section R6-5-5508 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5509. Establishing Probable Cause of Child Maltreatment

To determine whether to recommend a substantiated allegation of maltreatment, the CPS Specialist shall consider all information gathered during the investigation, including:
1. Whether the alleged abuser or non-abusive caregiver admitted the maltreatment;
2. Whether a child provided a developmentally appropriate description of maltreatment;
3. Witness statements from persons other than the caregivers and the alleged victim;
4. Physical or behavioral signs of maltreatment or damage;
5. Medical opinions and opinions from treating professionals, including any conflict of opinion;
6. The consistency of the information provided; and
7. History of child maltreatment.

Historical Note

Former Section R6-5-5509 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5510. Investigation Findings; Required Documentation

After completing an investigation, a CPS Specialist shall:
1. Unsubstantiate the allegations or make a proposed finding that the allegation is substantiated based on whether the CPS Specialist finds probable cause to believe maltreatment occurred, and after considering the information listed in R6-5-5509;
2. Determine whether the family has any unresolved problems involving child maltreatment and needs further services;
3. Document in the case record the reason for the finding;
4. Include in the case record any oral and written statements or other documentation provided by a caregiver;
5. Notify the PSRT of a proposed substantiated allegation finding under A.R.S. § 8-811;
6. Enter an unsubstantiated allegation finding into the CHILDS Central Registry and send the caregiver written notice of the unsubstantiated allegation finding.

Historical Note

Former Section R6-5-5510 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5511. Ongoing Services; Imminent Harm Not Identified; Case Closure

A. If a finding is unsubstantiated or substantiated without unresolved problems, the CPS Specialist shall close the case.

B. If a finding is unsubstantiated or substantiated, and there is no risk of imminent harm to a child, but the family has unresolved problems that create a potential for maltreatment, CPS shall determine whether to open the case for ongoing protective services if:
1. A family requests ongoing protective services, or
2. A dependency action is pending.

C. CPS shall offer a family voluntary protective services before filing a dependency action.

D. When CPS offers a family voluntary protective services, CPS shall:

1. Document the family's acceptance or refusal of services,
2. Document any services provided, and
3. Document any action that CPS has taken to ensure that a child is safe.

E. To determine how to proceed for ongoing services, CPS shall consider the following criteria:
1. Whether a family acknowledges past maltreatment or potential for future maltreatment,
2. Whether the services are available to help a family address risk factors, and
3. Whether a family is willing to cooperate with the provision of services.

Historical Note

Former Section R6-5-5511 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5512. Procedures for Substantiated Reports; Removal; Imminent Harm

A. If CPS recommends a substantiated finding of maltreatment, CPS shall determine whether the child can safely remain in the home or needs to be removed.

B. The following situations indicate imminent harm and require CPS to intervene as provided in R6-5-5513:
1. No caregiver is present and a child cannot care for himself or herself or for other children in the household;
2. A child has severe or serious nonaccidental injuries that require immediate medical treatment, such as:
   a. Head injury, with risk of damage to the central nervous system;
   b. Internal injuries;
   c. An injury resulting in coma;
   d. Multiple plane injuries indicative of battering;
   e. Facial bruises;
   f. Fractures or bruises in a nonambulatory child;
   g. Instrumentation injury with risk of impairment; or
   h. Immersion burns;
3. A child requires immediate medical treatment for a life-threatening medical condition or a condition likely to result in impairment of bodily functions or disfigurement, and the child's caregiver is not willing or able to obtain treatment;
4. A child is suffering from nutritional deprivation that has resulted in malnourishment or dehydration to the extent that the child is at risk of death or permanent physical impairment;
5. A doctor or psychologist determines that a child's caregiver is unable or unwilling to provide minimally adequate care;
6. The physical or mental condition of a child's caregiver endangers a child's health or safety, such as a caregiver who:
   a. Exhibits psychotic behavior and fails to take prescribed medications,
   b. Suffers from a deteriorating physical condition or illness, or
   c. Takes prescribed or nonprescribed drugs that result in a child being neglected;
7. The home environment has conditions that endanger a child's health or safety, such as human or animal feces, undisposed-of garbage, exposed wiring, access to dangerous objects, or harmful substances that present a substantial risk of harm to the child;
8. A doctor or psychologist has determined that:
   a. A child's caregiver has emotionally damaged the child;
   b. The child is exhibiting severe anxiety, depression, withdrawal, or aggressive behavior due to the emotional damage; and
   c. The caregiver is unwilling or unable to seek treatment for the child; or
9. A CPS Specialist has probable cause to believe that a caregiver has engaged in sexual conduct with a child or has allowed the child to participate in sexual activity with others.

C. In situations not listed in subsection (B), a CPS specialist shall determine the risk of imminent harm and need for removal by:
1. Doing a family assessment to identify family strengths and risk factors; and
2. Evaluating all facts and circumstances surrounding a child and family situation, including the following:
   a. Whether a law enforcement official or medical professional expresses concern about risk to the child victim if the child victim returns to or remains in the home;
   b. The alleged abuser's behavior towards the child victim;
   c. Other adults in the household's behavior towards the child victim;
   d. Whether the child victim resides with a parent or other adult who is willing and able to protect the child;
   e. The conditions of the home environment and whether those conditions threaten the child victim's safety or physical health;
   f. Whether there has been a pattern of maltreatment, particularly a pattern of incidents of increasing severity;
   g. The nature and severity of the alleged maltreatment;
   h. Whether DES is able to provide services to the child or family to alleviate conditions or problems that pose a risk of maltreatment, without the need for removal;
   i. Whether the child's caregiver refuses access to a child or declined an offer of in-home services;
   j. The family's strengths and risk factors;
   k. The child's current physical and mental condition; and
   l. Whether the child victim has injuries that require immediate medical treatment.

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Historical Note

Former Section R6-5-5512 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5513. Alternatives to Involuntary Removal; Voluntary Placement; Removal

A. Before removing a child from home without the consent of the child's caregiver, CPS shall consider whether:
1. CPS may help the family obtain resources such as emergency food, shelter, clothing, or utilities, so that the child can safely remain in the home;
2. CPS may enter into an agreement with the child's caregivers that provides for the alleged abuser to leave the home and for remaining family members to protect the child;
3. The caregiver identifies a relative or friend who can temporarily care for the child without court intervention or orders;
4. CPS may help the protective caregiver and the child leave the home of the alleged abuser;
5. CPS may place the child in voluntary foster care under A.R.S. § 8-806.

B. If a child is at risk of imminent harm and the alternative methods identified in subsection (A) will not eliminate the risk of harm, CPS shall take temporary custody of the child as provided in A.R.S. § 8-821.

C. CPS shall document the placement alternatives considered and the reasons for not selecting the options listed in subsection (A).

Historical Note

Former Section R6-5-5513 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5514. Removal Review

A. Under A.R.S. § 8-822(3), within 48 hours of removing a child and before filing a dependency petition, CPS shall have a removal review team assess alternatives to continued out-of-home placement and the need for CPS to file a dependency petition.

B. The removal review team shall include the CPS specialist who conducted the investigation and removed the child and the CPS specialist's supervisor. The removal review team shall also include at least one other qualified professional such as a psychologist or counselor.

C. The removal review team shall consider the factors listed in R6-5-5512 and R6-5-5513(A) to determine whether to return a child, pursue a voluntary placement option, or file a dependency petition.

D. The team shall document, in the child's case record, alternatives considered and the reason for the action taken.

E. Within 48 hours of removing a child, DES shall either file a dependency petition or return the child, as required by A.R.S. § 8-821.

Historical Note

Former Section R6-5-5514 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5515. Procedures for Investigations of Maltreatment in a Licensed Child Welfare Agency

A. Before CPS investigates an allegation of maltreatment in a licensed child welfare agency ("agency"), the CPS Specialist shall advise the agency's chief executive officer, or that person's designee, of the following:
1. The nature of the allegation,
2. How CPS will conduct the investigation,
3. The names of the agency staff members and children that the CPS Specialist plans to interview, and
4. The rights listed in subsection (C).

B. Notwithstanding subsection (A), CPS may conduct an unannounced investigation if:
1. The agency's chief executive officer is the subject of a maltreatment allegation, or
2. Prior notice of the investigation may jeopardize the safety of a child in the agency's care.

C. When CPS investigates an allegation of maltreatment at an agency, the agency may:
1. Seek legal counsel at any time during the investigation;
2. Present information about the allegation before CPS issues a finding; and
3. Receive:
   a. An oral status report on the progress of an investigation not completed within 21 days,
   b. A copy of the report with personally identifiable information redacted, and
   c. Written notice of the investigation finding.

D. The Department shall document the investigation and findings in an agency's licensing file.

Historical Note

Former Section R6-5-5515 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5516. Procedures for Investigations of Out-of-Home Care Providers

A. In this Section, an "out-of-home care provider" means:
1. A child in the custody of the Department by court order or voluntary foster care under A.R.S. § 8-806 and placed with:
   a. An unlicensed nonrelative,
   b. An unlicensed relative,

c. A licensed family foster home,
d. A certified adoptive home; and
2. A family child care home provider certified by the Department under A.R.S. § 46-807.

B. A CPS Specialist shall notify the following of an investigation of an allegation of abuse or neglect by an out-of-home care provider:
1. The parent or legal guardian of each child in the home,
2. The case manager or supervisor for each child in the home,
3. The attorney and guardian ad litem for each child in the home, and
4. The provider's licensing or certification specialist.

C. When CPS investigates an allegation of sexual abuse, a CPS Specialist shall audiotape or videotape all interviews.

D. Unless a situation jeopardizes the safety of a child, a CPS Specialist shall consult with the following individuals before removing a child from an out-of-home care provider:
1. The child's case manager or supervisor,
2. The foster home licensing specialist or supervisor,
3. The ACYF District Program Manager, and
4. The Assistant Attorney General if the child is in the physical custody of the provider.

E. CPS shall notify the parent or legal guardian of each child in the provider's care, the out-of-home care provider, and each child's case manager of the investigation findings.

F. CPS shall hold a case conference in three days, if CPS intends to substantiate a report to discuss the investigation findings and to determine the Department's recommendations regarding licensing.

G. An out-of-home care provider may bring a person representing the provider's interests to the case conference after waiving the provider's right to confidentiality.

H. The Department shall document the investigation and findings in the case record.

Historical Note

Former Section R6-5-5516 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

R6-5-5517. Repealed

Historical Note

Former Section R6-5-5517 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5518. Repealed

Historical Note

Former Section R6-5-5518 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5519. Repealed

Historical Note

Former Section R6-5-5519 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5520. Repealed

Historical Note

Former Section R6-5-5520 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5521. Repealed

Historical Note

Former Section R6-5-5521 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5522. Repealed

Historical Note

Former Section R6-5-5522 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5523. Repealed

Historical Note

Former Section R6-5-5523 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5524. Repealed

Historical Note

Former Section R6-5-5524 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5525. Repealed

Historical Note
Former Section R6-5-5525 repealed effective December 8, 1983 (Supp. 83-6).

R6-5-5526. Repealed

Historical Note
Former Section R6-5-5526 repealed effective December 8, 1983 (Supp. 83-6).

Appendix 1. Pre-screening Cue Questions

1. May I have your name, phone number, and relationship to the child? (Assure the reporting source he or she can remain anonymous. Explain that CPS will not be able to contact him/her for additional information without a name and phone number.)
2. What is your concern about the child? How old is the child?
3. What is the family's home address? Does the child live there? If not, where can we locate the child, that is, school, day care, relative? Who is living in the home?
4. Do you know who abused or neglected the child? If so, who? (This includes staff of a licensed or certified DES facility or foster or child care home or a licensed DHS Level I, II, or III Behavioral Health Treatment facility.) Do you know when he or she will see the child next?
5. Did the _____ (parent, guardian, or custodian) know about the abuse or neglect?
6. Is the _____ (parent, guardian, or custodian) letting the child see this person?

Historical Note
New Appendix 1 adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

Appendix 2. Cue Questions

IF IT IS DETERMINED TO HAVE ALL OF THE ELEMENTS OF A REPORT FOR FIELD INVESTIGATION (that is, a child victim, maltreatment by a parent, guardian, or custodian, and the child can be located), CHECK CPSCR AND GATHER REPORT DEMOGRAPHICS.

Include the address of the child, the name of the apartment complex, trailer park, and directions as needed.

PHYSICAL ABUSE CUE QUESTIONS:

1. Describe the injury (size, shape, color, and location).
2. Do you know when the injury occurred? Has abuse occurred before? How often does the abuse occur?
3. Did the child say what happened?
4. Do you know if the child was seen by a medical doctor? If so, what is the name and phone number of the doctor? If the source is a medical doctor, is the injury consistent with the explanation?

If the call concerns a licensed or certified DES facility, foster or child care home, or a DHS Level I, II, or III Behavioral Health Treatment facility, ask:

5. Did the injury occur as a result of restraint?
6. What kind of restraint was used?
7. Why was the child restrained?
8. Will the staff person have contact with the child or other children in the facility?
9. Do you know the name of the licensing specialist? If so, what is the name and phone number?
10. Do you know the name of the child's case manager? If so, what is the name and phone number?

EMOTIONAL ABUSE CUE QUESTIONS:

1. Specifically, what is the person doing (to have the impact on the child)?
2. Have you noticed a change in the child's behavior?
3. What signs or behaviors is the child exhibiting?
4. Do you think the child's behavior is related to what the parent, guardian, or custodian is doing? If so, how?
5. Do you know if the child has seen a medical doctor, psychologist, or mental health professional? If so, what is the name and phone number? Do you know the diagnosis?

NEGLECT CUE QUESTIONS:

A. INADEQUATE SUPERVISION

1. Is the child alone NOW? If yes, how long has the child been alone? Where is the person who is supposed to be watching the child? When will the person return? Have you called the police?
2. If the child is not alone, who is watching the child now? What are your concerns about the person who is watching the child?
3. Do you know how often and when this happens?
4. What happens when the child is alone or inadequately supervised?
5. Does this child know how to contact the parent, guardian, or custodian?
6. Does the child have emergency numbers and know how to use the phone?
7. Do you know if anyone is checking on the child? If so, what is the name and phone number? How often?

If the call concerns a licensed or certified DES facility, foster or child care home, or DHS Level I, II, or III Behavioral Health Treatment facility, ask:

8. What supervision was being provided at the time of the sexual conduct or physical injury between the children?

9. Did the facility or foster or child care home know that the child may physically or sexually assault another child?
10. Did the staff or foster or child care home person know that the child may physically or sexually assault another child?
11. What steps were being taken to prevent the child from assaulting other children?
12. What steps are being taken to restrict contact between the child and other children?
13. Do you know the name of the licensing specialist? If so, what is the name and phone number?
14. Do you know the name of the child's case manager? If so, what is the name and phone number?

B. SHELTER

1. When was the last time you saw the child or the home?
2. Describe any health or safety hazards where they live. Has anything happened to the child?
3. Do you know how long they have been in this situation?
4. Do you know why they live like this?

C. MEDICAL CARE

1. What are the child's symptoms?
2. Is the parent, guardian, or custodian aware of the problem?
3. Do you know when they last saw a medical doctor? Who was the medical doctor? If so, why?
4. Do you know the reasons the person is not getting medical care for the child?

If reporting source is a medical doctor or doctor's representative, ask only the following questions:

5. What is the medical or psychiatric condition or diagnosis of this child and when did it begin?
6. What medical care is needed?
7. What will happen if the child does not receive the medical care?
8. What are your concerns about the parent, guardian, or custodian response to the problem?

D. FOOD

1. What makes you believe the child is not getting enough food? Describe the physical condition of the child.
2. Do you know if someone else is feeding the child? If so, who?
3. When was the last time you saw the child or have you been in the home? If so, describe the food you saw.
4. Do you know if the child has seen a medical doctor? If so, what is the name and phone number?

E. CLOTHING

1. Describe what the child is wearing and the weather conditions.
2. What effect is it having on the child?

SEXUAL ABUSE CUE QUESTIONS:

1. Why do you think the child has been sexually abused or is at risk of sexual abuse (activities, physical signs, or behaviors)?
2. Who saw these activities, signs, or behaviors?
3. Has the child told anyone? If so, who and when?
4. What is the child saying about sexual abuse?
5. Do you know where and when this last occurred?
6. Do you know what contact this person has with the child?
7. Do you know if the child *has* seen a medical doctor? If so, what is the name and number?

ABANDONED CUE QUESTIONS:

1. Do you know where the parent is now?
2. When did the parent last have contact with the child?
3. When do you think the parent is coming back?
4. What arrangements did the parent make for care of this child?
5. How long are you able or willing to care for the child? Are there relatives available?
6. If so, what is the name, address, phone number?

DRUG-EXPOSED INFANTS CUE QUESTIONS:

1. Has the child or mother been tested? If so, what are the results?
2. What is the name of the medical doctor or hospital?
3. What is the parental history of drug use? (What drugs, when was last drug use, used during what trimester?)
4. What is the parental history of drug treatment?
5. Describe the medical and physical condition of the child?
   a. Birth weight,
   b. Gestational age ,
   c. Apgar score,
   d. Prenatal care.
6. Have preparations been made in the home for the new baby?

NONSEXUAL EXPLOITATION CUE QUESTIONS:

1. Describe how the child is being exploited.
2. What reason was given for the exploitation?
3. How long has this been going on?

POTENTIAL ABUSE AND NEGLECT CUE QUESTIONS:

1. Describe behaviors (of the parent, guardian, custodian, or child) that give you reason to believe that abuse or neglect may occur.

2. Has abuse or neglect happened before? If so, when and where?
3. Has the _____ (parent, guardian, or custodian) expressed concerns about hurting or not being able to care for the child?

CLOSURE CUE QUESTIONS

1. Do you know what school or child care facility the child attends? If so, what is the name of the school or child care facility? Dismissal or pick-up time?
2. Has the child expressed concerns about going home? If so, what did the child say to you?
3. Has law enforcement been notified? DR or Badge number?
4. Does the child have any of these special needs or problems?
   a. Abuse of drugs or alcohol,
   b. Bizarre behavior,
   c. Extremely angry or volatile,
   d. Physically ill,
   e. Mentally ill,
   f. Language other than English.
5. Does the _____ (parent, guardian, or custodian) have any of these special needs or problems:
   a. Abuse of drugs or alcohol,
   b. Bizarre behavior,
   c. Extremely angry or volatile,
   d. Physically ill,
   e. Mentally ill,
   f. Language other than English.
6. Do you know if CPS or any other agency has been involved with this family?
7. If this report is assigned for field investigation, are there any issues we need to be aware of to ensure the worker's safety (guns, dogs)?

Historical Note

New Appendix 2 adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

ARTICLE 58. FAMILY FOSTER PARENT LICENSING REQUIREMENTS

R6-5-5801. Definitions

In addition to the definitions contained in A.R.S. §§ 8-201, 8-501, and 8-531, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-546(A)(1).
2. *"Abuse" means the infliction or allowing physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to section 8-223 and which is caused by the acts or omissions of an individual having care,* [physical] *custody and control of a child. Abuse shall include inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.* A.R.S. § 8-546(A)(2).
3. "Adult" means a person age 18 years or older.
4. "Applicant" means a person who submits a written application to the Licensing Authority or a licensing agency to become licensed, or to renew a license as a foster parent. An applicant means both spouses if the adult household caregivers are married, except for a person seeking licensure solely as an in-home respite foster parent.
5. "Case plan" means a written document which is a distinct part of a child's case record, and which identifies the child's permanency goal and target date, desired outcomes, tasks, time-frames, and responsible parties.
6. "Child placing agency" or "placing agency" means:
   a. The Department, a county probation Department, or the Administrative Office of the Arizona Supreme Court, which are all statutorily authorized to place children into out-of-home care; and
   b. Any other person or entity authorized to receive children for care, maintenance, or placement in a foster home because the Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505.
7. "Corrective action" means a plan that describes steps a foster parent must take to remedy violations of foster care requirements within a specified period of time.
8. "CPS" means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
9. "CPSCR" means the Child Protective Services Central Registry, a computerized database, which CPS maintains pursuant to A.R.S. § 8-546.03.
10. "Department" or "DES" means the Department of Economic Security.
11. "Developmentally appropriate" means an action which takes into account:
    a. A child's age and family background;
    b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
    c. A child's individual pattern and timing of growth, personality, and learning style.

12. "De-escalation" means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupts a child's behavior crisis and calms the child.
13. "DHS" means the Department of Health Services.
14. "Discipline" means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to generally accepted levels of social behavior.
15. "Exploitation" means the act of taking advantage of, or making use of a child selfishly, unethically, or unjustly for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
16. "Foster care requirements" mean the standards for lawful operation of a foster home as prescribed in A.R.S. § 8-501 et seq. and 6 A.A.C. 5, Article 58.
17. "Household" means a group of people who regularly occupy a single residence.
18. "Household member" means a person who resides in an applicant's or foster parent's household for 21 consecutive days or longer, or who resides in the household periodically throughout the year for more than a total of 21 days.
19. "In-home respite foster parent" means an individual licensed to provide respite care in a licensed family foster home that is not that individual's own home.
20. "License" means a document issued by the Licensing Authority to a foster parent which authorizes the foster parent to operate a foster home in compliance with foster care requirements.
21. "Licensed medical practitioner" means a person who holds a current license or certification as a physician, surgeon, nurse practitioner or physician's assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; §§ 32-2501 et seq., Physician's Assistant; and A.R.S. §§ 32-1601 et seq. Nursing and A.A.C. R4-19-503, Registered Nurse Practitioner.
22. "Licensing agency" means a person who or an entity which performs an investigative family study of an applicant for an initial or renewal foster home license, as prescribed in R6-5-5803 and R6-5-5812, and which monitors the foster home, as prescribed in R6-5-5815. "Licensing agency" includes the Department and may include county probation departments.
23. "Licensing Authority" means a DES administrative unit which makes foster home licensing determinations, including issuance, denial, suspension, revocation, and imposition of corrective action.
24. "Maltreatment" means abuse, neglect, exploitation, or abandonment, of a child.
25. "Mechanical restraint" means:
    a. An article, device, or garment that:
        i. Restricts a child's freedom of movement or a portion of a child's body;
        ii. Cannot be removed by the child; and
        iii. Is used for the purpose of limiting the child's mobility;
    b. But does not include an orthopedic, surgical, or medical device which allows a child to heal from a medical condition or to participate in a treatment program.
26. "Neglect" has the same meaning ascribed to it in A.R.S. § 8-546(A)(7).
27. *"Parent or parents" means the natural or adoptive parents of the child.* A.R.S. § 8-501(A)(8).
28. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include the firm but gentle holding of a child with no more force than necessary to protect the child or others from harm.
29. "Professional foster care" means a foster family based model of care provided by an individual who has received specialized training to provide care and services within a support system of clinical and consultative services to special care children.
30. "Professional foster home" means the licensed foster home of an individual or couple authorized to provide professional foster care.
31. *"Receiving foster home" means a licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition.* A.R.S. § 8-501(A)(9).
32. "Respite care" means the provision of short term care and supervision of a foster child to temporarily relieve a foster parent from the duty to care for the child.
33. "Respite foster parent" means a licensed foster parent authorized to provide respite care.
34. "Safeguard" means to take reasonable measures to eliminate the risk of harm to a foster child and to ensure that a foster child will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
    a. Locking up a particular substance or item;
    b. Putting a substance or item out of the reach of a child who is not mobile; or
    c. Erecting a barrier which prevents a child from reaching a particular place, item, or substance;
    d. Mandating the use of protective safety devices; or
    e. Providing supervision.
35. "Service team" means the group of persons listed in R6-5-5828(A) who participate in the development and review of a child's case plan.
36. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
37. "Sleeping area" means a single bedroom or a cluster of two or more bedrooms located in an adjacent area of a dwelling.

38. "Special care child" means a foster child who has not achieved expected norms for the child's developmental stage in one or more of the following areas: physical, medical, mental, psychological, intellectual, emotional, and social. This includes a child who experiences difficulty in establishing or maintaining developmentally appropriate interpersonal relationships.
39. "Swimming pool" means any natural or man-made body of water used for swimming, recreational, or decorative purposes, which is greater than 12 inches in depth, and includes spas and hot tubs.
40. "Work day" means Monday through Friday between 8:00 a.m. and 5:00 p.m., excluding Arizona state holidays.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5801 repealed, new Section R6-5-5801 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5801 repealed, new Section R6-5-5801 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5802. Application for Initial License

A. A person who wishes to become licensed as a foster parent shall apply to a licensing agency on a form specified by the licensing agency.

B. An applicant shall provide the licensing agency with at least the following information on each applicant:

1. Personally identifying information, including:
   a. Name,
   b. Date of birth,
   c. Social Security number,
   d. Ethnicity,
   e. Telephone number,
   f. Current address,
   g. Length of Arizona residency, and
   h. Current marital status and marital history;
2. Personally identifying information on the applicant's household members, including:
   a. Name,
   b. Date of birth,
   c. Social Security number, and
   d. Relationship to applicant;
3. Personally identifying information on the applicant's children who do not live with the applicant, including emancipated children, as follows:
   a. Name,
   b. Current address,
   c. Telephone number, and
   d. Date of birth;
4. The applicant's monthly or yearly household budget, showing assets, obligations, debts, and income;
5. Medical statements for the applicant and any adult household member who will regularly care for foster children, showing that the applicant and household member meet the requirements prescribed in R6-5-5823(4); the statement shall:
   a. Include a description of the person's general health, and identify any medical problem or physical condition that will prevent or limit the person from caring for a foster child, or that may negatively impact a foster child;
   b. Include a list of all regularly prescribed medications and the purpose of each medication; and
   c. Be signed and dated by a licensed medical practitioner who shall have examined the person within six months prior to the date of application for licensure;
6. Immunization records for each child household member;
7. A current statement and history of physical and mental health and treatment on the applicant and the applicant's household members, to the extent that such information has not already been provided in response to subsections (B)(5) and (6); the statement and history may be a self-declaration of illness and treatment;
8. Employment information, including names and addresses of prior employers and positions held during the last 10 years;
9. Family relationship and support system information on the applicant's family and family of origin;
10. If the applicant is employed outside the home, the applicant shall provide a statement explaining the child care arrangements the applicant would make for a foster child during the applicant's working hours;
11. If the applicant is self employed, or conducts a business activity within the home, a statement explaining how the activities related to this business will not interfere with the care of a foster child;
12. A description of:
    a. The applicant's daily routine and activities; and
    b. The applicant's hobbies, and any education or volunteer activities in which the applicant regularly participates;
13. A description of any spiritual or religious beliefs and practices observed in the applicant's home;
14. Information on administrative or judicial proceedings in which the applicant has been or is a party, including:
    a. Proceedings involving allegations of child maltreatment;
    b. Dependency actions;
    c. Actions involving severance or termination of parental rights;
    d. Child support enforcement proceedings;

e. Adoption proceedings;
f. Criminal proceedings other than minor traffic violations;
g. Bankruptcy; and
h. Suspension, revocation, or denial of a license or certification;

15. The name, address, and telephone number of at least five references who can attest to the applicant's character and ability to care for children; no more than two of the references may be related to the applicant by blood or marriage; for married applicants, at least two of the five references shall know the applicants as a couple;
16. A description of the applicant's home and neighborhood;
17. A statement from the applicant as to:
    a. The number of foster children the applicant would consider for placement; and
    b. The characteristics of foster children the applicant would consider for placement; and
    c. The characteristics of children, if any, for whom the applicant does not want to provide foster care;
18. A description of the applicant's prior experience, if any, as a foster parent, including:
    a. The state in which the applicant provided foster care;
    b. Whether the applicant was licensed, certified, or approved to provide care; and
    c. Whether any disciplinary action was taken against the applicant;
19. A description of the applicant's prior history of adoption certification, if any, including prior applications for certification, and the location and date of any certification denials;
20. A description of the applicant's child care experience and child rearing practices;
21. A statement from the applicant regarding the applicant's motivation for becoming a foster parent;
22. A statement from the applicant describing how all other household members feel about the decision to foster children;
23. A statement authorizing the licensing agency and the Licensing Authority to:
    a. Verify the information contained in or filed with the application;
    b. Perform background checks on the applicant and the applicant's household members, as prescribed in R6-5-5803 and R6-5-5807; and
    c. Arrange for DHS to conduct a health and safety inspection of the applicant's home, as prescribed in A.R.S. § 8-504 and R6-5-5804;
24. A statement from the applicant attesting to the truth of the information contained in the application; and
25. The applicant's signature and date of application.

C. The applicant and all adult household members shall also submit to fingerprinting and a criminal history check as prescribed in A.R.S. § 46-141 and this subsection.

1. On a form provided by the Department, the applicant and each adult household member shall certify whether he or she has ever committed, is awaiting trial for, or has ever been convicted of any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    a. Sexual abuse of a minor or vulnerable adult;
    b. Incest;
    c. First or second degree murder;
    d. Kidnapping;
    e. Arson;
    f. Sexual assault;
    g. Sexual exploitation of a minor or vulnerable adult;
    h. Commercial sexual exploitation of a minor or vulnerable adult;
    i. Felony offenses within the previous 10 years involving the manufacture or distribution of marijuana or dangerous or narcotic drugs;
    j. Robbery;
    k. A dangerous crime against children as defined in A.R.S. § 13-604.01;
    l. Child abuse or abuse of a vulnerable adult;
    m. Sexual conduct with a minor;
    n. Molestation of a child or vulnerable adult;
    o. Voluntary manslaughter; and
    p. Aggravated assault.
2. On a form provided by the Department, the applicant and each adult household member shall certify whether he or she has ever been convicted of, found by a court to have committed, or has committed, any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    a. A sex offense;
    b. A drug-related offense;
    c. A theft-related offense;
    d. A violence-related offense;
    e. Child neglect or neglect of a vulnerable adult; and
    f. Contributing to the delinquency of a minor.

D. If an applicant applies to the Department as the licensing agency, the Department shall send the applicant a notice of administrative completeness or deficiencies, as prescribed by A.R.S § 41-1074, indicating the additional information, if any, that the applicant must

provide for a complete application package as described in R6-5-5806. The Department shall send the notice after receiving the application and before expiration of the administrative completeness review time-frame described in R6-5-5813(2)(a).

E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Department may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5802 repealed, new Section R6-5-5802 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5802 repealed, new Section R6-5-5802 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5803. Investigation of the Applicant

A. The licensing agency to which the applicant has applied shall investigate the applicant. Except as otherwise provided in subsection (E) for an in-home respite foster parent, the investigation shall include the measures listed in this Section.

1. A representative of the licensing agency shall personally interview the applicant and the applicant's household members; the interviews shall:
   a. Occur on at least two separate occasions, at least one of which shall take place at the applicant's residence;
   b. Comprise no less than four hours of face-to-face contact, at least one hour of which shall be at the applicant's residence;
   c. Include at least one separate interview with each member of the applicant's household who is age 5 or older; and
   d. Include at least one joint interview with both applicants if the applicants are married.
2. During the interviews described in subsection (A)(1), the investigator shall explore any instances of family problems and how the applicant has overcome problems in the applicant's current family and family of origin.
3. The licensing agency shall obtain written statements from at least three of the applicant's personal references listed under R6-5-5802(B)(15) and shall personally contact (either in a face-to-face meeting or a telephone call) at least one of the references.
4. The licensing agency shall verify the applicant's financial condition through a review of one or more of the documents listed in subsection (B)(8).
5. The licensing agency shall investigate and evaluate the applicant's past experiences, if any, serving as a foster parent.
6. The licensing agency shall assess the applicant and the family's commitment to providing foster care, and the time available to devote to the care of a foster child.

B. The licensing agency shall request, and the applicant shall provide, supporting documentation the licensing agency deems necessary to determine an applicant's fitness to serve as a foster parent and ability to comply with foster care requirements. The documentation may include the following:

1. A physician's statement regarding the physical health or immunization record of the applicant's household members;
2. A statement from a psychiatrist or psychologist regarding the mental health of the applicant or the applicant's household members;
3. Birth certificate;
4. Marriage license;
5. Driver's license and automobile registration;
6. Dissolution or divorce papers and orders, including child support documentation;
7. Military discharge papers;
8. Tax returns, pay stubs, W-2 statements, and existing financial statements;
9. Bankruptcy papers;
10. Insurance policy information;
11. Immigration or legal residency registration papers; and
12. Documents related to or filed in judicial or administrative proceedings listed under R6-5-5802(B)(14).

C. Except as otherwise provided in subsection (E), the licensing agency shall verify that the applicant and adult household members have submitted a fingerprinting and criminal background form as prescribed in R6-5-5802(C).

D. The licensing agency shall document all personal contacts made, and all information obtained during the investigation.

E. When a person is seeking licensure solely as an in-home respite foster parent, the licensing agency is not required to:

1. Interview the applicant's spouse and other household members;
2. Conduct the applicant's interview at the applicant's home;
3. Verify the applicant's financial condition as required by subsection (A)(4) and R6-5-5805(B)(7);
4. Obtain supporting documentation for the applicant's spouse or other household members as required by this Section; or
5. Document information on the applicant's spouse and household members in the investigative report or application package as required by R6-5-5805 and R6-5-5806.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Amended effective August 15, 1979 (Supp. 79-4). Former Section R6-5-5803 repealed, new Section R6-5-5803 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5803 repealed, new Section R6-5-5803 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5804. Inspection of the Foster Home; DHS Inspection Report

A. The licensing agency shall contact the Department of Health Services (DHS) to request that a DHS representative:

1. Inspect the foster home, as prescribed in A.R.S. § 8-504 and this Section; and
2. Issue a report describing whether the foster home satisfies foster care requirements.

B. The applicant shall cooperate with the DHS representative by making the home available for inspection and allowing the DHS representative unrestricted access to the entire foster home and the surrounding premises to perform the following checks on the systems, equipment, and conditions:
1. Check the home's heating, cooling, ventilation and lighting systems, and major appliances;
2. Look at furniture, fixtures, and equipment for evidence of loose hardware, rusting parts, and other damage;
3. Check walls, ceilings, and floors for evidence of flaking paint or plaster, loose tiles, boards, and panels, and exposed or unsafe wiring that may pose a danger or health risk to a child;
4. Check the home and surrounding premises for evidence of dirt, animal waste, and vermin;
5. Check whether the sewage disposal system functions and is in good repair;
6. Check the system, method, and timing for refuse and waste storage and removal;
7. Check whether dangerous objects, materials, or conditions, have been locked, safeguarded, or removed as prescribed in this Article;
8. Determine whether the home has the equipment and space prescribed in R6-5-5838 through R6-5-5846.

C. The DHS representative shall prepare a written report of the inspection and send a copy to the licensing agency.

D. To determine if a foster home and its surrounding premises are safe, sanitary, and in good repair, the licensing agency or Licensing Authority shall evaluate the DHS written report to determine whether the home has any natural or man-made conditions that pose a risk of harm to a foster child, and whether a foster parent has taken or can take reasonable measures to eliminate that risk of harm and ensure that a foster child will not be harmed by a particular object, substance, or activity.

E. This Section does not apply to a person seeking licensure solely as an in-home respite foster parent.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5804 repealed, new Section R6-5-5804 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5804 repealed, new Section R6-5-5804 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5805. Investigative Report and Licensing Recommendation

A. The licensing agency shall summarize the results of the investigation in a written report, which shall include:
1. A recommendation to grant or deny a license;
2. Any recommendations for terms, conditions, or limitations to be placed on the license.

B. In determining whether to recommend that a license be granted or denied, the licensing agency and Licensing Authority shall consider all information acquired during the investigation, and all factors bearing on the applicant's fitness to foster a child and comply with foster care requirements including:
1. Instances of family problems in the applicant's current family or family of origin, including whether the applicant was maltreated as a child, and the applicant's success in overcoming those problems;
2. The applicant's past history of parenting or caring for children;
3. The length and stability of the applicant's marital relationship, if applicable;
4. The applicant's age and health;
5. Past, significant disturbances or events in the applicant's immediate family, such as involuntary job separation, bankruptcy, divorce, or death of spouse, child, or parent;
6. Past criminal history or record of child maltreatment for the applicant or the applicant's household members;
7. The applicant's financial stability, exclusive of anticipated foster care maintenance payments, and ability to financially provide for a foster child;
8. The applicant's history of providing financial support to the applicant's other children, including compliance with court ordered child support obligations; and
9. The DHS report on the foster home and whether the applicant has corrected any deficiencies or problems noted in the report.

C. The investigative summary shall specifically note any instances where an applicant has been:
1. Charged with, been convicted of, pled no contest to, or is awaiting trial on charges of an offense listed in R6-5-5802(C); and
2. A party to an action for dependency or termination of parental rights.

D. R6-5-5805(B)(3), (7), and (9) do not apply to a person seeking licensure solely as an in-home respite foster parent.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5805 repealed, new Section R6-5-5805 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5805 repealed, new Section R6-5-5805 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5806. Complete Application Package: Contents

A. The licensing agency shall send a complete application package to the Licensing Authority for consideration.

B. A complete application package includes the following:
1. A copy of the applicant's completed application form and criminal history certification form containing the information prescribed in R6-5-5802(B) and (C);
2. The investigative report, as prescribed in R6-5-5805;
3. Evidence that the applicant and adult household members have been fingerprinted and their fingerprints subjected to a criminal history check;

4. Evidence that the applicant has completed the training prescribed by A.R.S. § 8-509(B) and R6-5-5825(A), or a statement of hardship as prescribed in R6-5-5810; and
5. Evidence that the applicant's dwelling has passed the health and safety inspection prescribed by A.R.S. § 8-504 and R6-5-5804.

C. Upon receipt of an application package from a licensing agency other than the Department, the Licensing Authority shall:
1. Determine whether the application is complete; and
2. Send the applicant and the licensing agency a notice of administrative completeness or deficiencies, as prescribed by A.R.S. § 41-1074, within the administrative completeness review time-frame described in R6-5-5813(1)(a).

D. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the licensing agency may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Amended as an emergency effective May 28, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former Section R6-5-5806 repealed, new Section R6-5-5806 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5806 repealed, new Section R6-5-5806 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5807. CPSCR Check; Additional Investigation by Licensing Authority

A. The Licensing Authority shall conduct a CPSCR check on the applicant and, with the exception of an in-home respite foster parent applicant, on all household members for reports of child maltreatment.

B. Upon receipt of a complete application package, as prescribed in R6-5-5806, the Licensing Authority may do additional investigation, as prescribed in this Section, if the Licensing Authority needs additional information in order to determine the applicant's fitness to serve as a foster parent, and ability to comply with foster care requirements.
1. The Licensing Authority may directly obtain information by:
   a. Interviewing the applicant, either in-person or telephonically;
   b. Contacting additional references;
   c. Verifying information provided in the application package, including past history of licensure as a foster parent;
   d. Visiting the applicant's home; and
   e. Requesting additional supporting documentation as prescribed in R6-5-5803(B).
2. The Licensing Authority may contact the licensing agency and request that the licensing agency obtain additional information, as prescribed in subsection (B)(1).

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5807 repealed, new Section R6-5-5807 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5807 repealed, new Section R6-5-5807 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5808. License: Form; Issuance; Denial; Term; Termination

A. Within 30 days of receiving a complete application, the Licensing Authority shall issue a written licensing decision.
1. If the Licensing Authority grants the license, the Licensing Authority shall send the license with the notification letter. The license shall be in the name of the applicant and the foster home location as identified in the application. The license shall specify the number, age, and gender of children the foster home may accept.
2. The Licensing Authority may place terms on the license as to the type of child the foster home may accept for placement. Such terms may include the following:
   a. A restriction that the foster home can accept only a specifically named child or specifically named children; and
   b. A provision that the home can provide a particular service, or accept children with particular behavior problems or physical conditions.
3. A license for a person being licensed solely as an in-home respite foster parent shall include only the licensee's name and the type of care, but no specific location or other terms.
4. If the Licensing Authority denies the license, the notice shall include the reasons for the denial, with a statement of the applicant's right to appeal the licensing decision, as prescribed in R6-5-5821.

B. A license expires one year from the date of issuance. If a foster parent receives a provisional license as prescribed in R6-5-5810, and the provisional license is converted to a regular license during the licensing year, the regular license shall expire one year from the date the provisional license was issued.

C. A foster parent shall not transfer or assign a license. A license expires if the foster parent moves to a different dwelling unless the licensing agency has first notified the Licensing Authority of the planned move or a foster parent has requested an amendment to the license as prescribed in R6-5-5814. This requirement does not apply to a person licensed solely as an in-home respite foster parent.

D. Issuance of a license does not guarantee placement of a foster child.

E. A license terminates when:
1. The license expires by its own terms and is not renewed;
2. The Licensing Authority revokes the license pursuant to disciplinary proceedings as prescribed in R6-5-5819;
3. The foster parent moves out of state; or
4. The foster parent voluntarily surrenders the license.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5808 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5809. Provisional License

Notwithstanding any other provision of this Article, the Licensing Authority may issue a provisional license to a foster parent who has not completed training, when the Licensing Authority makes a finding of hardship as prescribed in A.R.S. § 8-509(D). The Licensing Authority may find a condition of hardship when failure to issue a provisional license would result in displacement of a child or the inability to place a particular child.

1. The term of a provisional license shall not exceed six months,
2. A provisional license is not renewable.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Amended subsection (G) as an emergency effective March 12, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-2). Amended effective August 15, 1979 (Supp. 79-4). Amended as an emergency effective May 28, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5809 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5810. Application for License Renewal

A. At least 60 days before the expiration date of a license, the licensing agency shall send a foster parent a notice of license expiration.

B. A foster parent may apply to a licensing agency for license renewal by submitting a complete renewal application to the licensing agency at least 30 days before the expiration of the current license.

C. A complete renewal application shall contain the following information:

1. A description of any changes to the information provided in the original application or last renewal application, including changes in personal, family, social, medical, or financial circumstances;
2. At least once every third year following original licensure, a licensed medical practitioner's statement on the physical health of the foster parent and any household members who regularly care for children;
3. Evidence that the foster parent has obtained the annual training required by A.R.S. § 8-509(C); and
4. The statements, signature, and date prescribed in R6-5-5802(B)(23) through (25).

D. A foster parent shall submit copies of the supporting documents listed in R6-5-5803(B) if so requested by the licensing agency.

E. The foster parent and adult household members shall comply with any investigative requirement for fingerprint clearance.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5809 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5811. Renewal Investigation; Licensing Report and Recommendation

A. A licensing agency that receives a renewal application shall conduct a face-to-face interview with the foster parent at the foster parent's residence. The licensing agency is not required to conduct the interview of a person licensed solely as an in-home respite foster parent at the person's residence. During the interview, the licensing agency shall discuss the following:

1. The foster parent's experiences in serving as a foster parent during the expiring licensing year;
2. Any changes identified in the renewal application; and
3. Any complaints made against the foster parent during the expiring licensing year.

B. The licensing agency shall obtain any supplemental information the agency needs to determine the foster parent's continuing fitness to serve as a foster parent.

C. The licensing agency shall request a statewide criminal history records information check every year for the foster parent and, with the exception of an in-home respite foster parent, all adult household members.

D. The licensing agency shall request that DHS perform a health and safety inspection of the foster parent's home, as prescribed in R6-5-5804, at least once every third year following original licensure. This inspection is not required of a person licensed solely as an in-home respite foster parent.

E. The licensing agency shall summarize the results of the renewal investigation in a report and make a licensing recommendation as prescribed in R6-5-5805. The report shall explain any complaints, as described in R6-5-5816, R6-5-5817, and R6-5-5818, made against the foster parent during the expiring license period.

F. No less than 15 working days before the date that the applicant's current license expires, the licensing agency shall provide the Licensing Authority with a complete renewal application as prescribed in R6-5-5810, and the agency's renewal investigation report as prescribed in R6-5-5811.

Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5811 adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5812. Renewal License

A. The Licensing Authority shall process a renewal application package following the procedures described in R6-5-5806(C), R6-5-5807, and R6-5-5808.

B. In determining whether to renew a license, the Licensing Authority shall consider the renewal application package, and the foster parent's past record of service, including conduct during all prior licensing periods.

C. The Licensing Authority may renew a foster parent's license when the foster parent:

1. Demonstrates the ability to fulfill foster care requirements,
2. Has complied with foster care requirements during prior licensing periods, and

3. Has cooperated with the licensing agency in providing the information required for license renewal.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5813. Licensing Time-frames

For the purpose of A.R.S. § 41-1073, the Department has adopted the licensing time-frames listed in this Section.

1. Initial applications submitted to a licensing agency other than the Department: When a person applies for foster parent licensure through a licensing agency other than the Department, and the licensing agency submits the completed application package to the Licensing Authority on behalf of the applicant, the licensing time-frames are:
   a. Administrative completeness review time-frame: 30 days;
   b. Substantive review time-frame: 30 days; and
   c. Overall time-frame: 60 days.
2. Initial application submitted to the Department as the licensing agency: When a person applies directly to the Department for foster parent licensure, and the Department performs the activities described in R6-5-5803 through R6-5-5806, the licensing time-frames are:
   a. Administrative completeness review time-frame: 90 days;
   b. Substantive review time-frame: 30 days; and
   c. Overall time-frame: 120 days.
3. Renewal applications submitted to a licensing agency other than the Department: When a person applies for renewal of a foster parent license through a licensing agency other than the Department, and the licensing agency submits the completed renewal application package to the Licensing Authority on behalf of the applicant, the licensing time-frames are:
   a. Administrative completeness review time-frame: 21 days;
   b. Substantive review time-frame: 21 days; and
   c. Overall time-frame: 42 days.
4. Renewal applications submitted to the Department as the licensing agency: When a person applies directly to the Department for renewal of a foster parent license, and the Department performs the activities described in R6-5-5812, the licensing time-frames are:
   a. Administrative completeness review time-frame: 40 days;
   b. Substantive review time-frame: 20 days; and
   c. Overall time-frame: 60 days.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5814. Amended License; Change in Household Members

A. The following changes require a license amendment:
1. A change in any circumstances or conditions placed on the license, as prescribed in R6-5-5808(A)(2);
2. Expanded or reduced capacity of the foster home;
3. A move to a different residence;
4. The divorce of the foster parent, if the divorce changes any circumstance or condition placed on the license;
5. Marriage of the foster parent;
6. The death of the foster parent's spouse if the death changes any circumstance or condition placed on the license; and
7. A change of name.

B. The foster parent may request a license amendment or the licensing agency may initiate the amendment in response to an observed change. The Licensing Authority may issue an amended license to reflect a change in circumstances when the change does not cause the foster parent or foster home to fall out of compliance with foster care requirements.

C. If the foster parent has moved to a different residence or remodeled an existing residence, the Licensing Authority shall not issue an amended license until the different or remodeled residence has passed a health and safety inspection as prescribed in R6-5-5804.

D. An amended license expires at the end of the foster parent's current licensing year.

E. If the foster parent adds a household member during the course of a licensing year, the foster parent shall:
1. Obtain prior approval from the licensing agency;
2. Ensure that a new adult household member submits a criminal history certification and submits to fingerprinting as prescribed in R6-5-5802(C), within 10 work days of the member's arrival;
3. Ensure that a new child household member obtains any missing, routine immunizations within 30 calendar days of the member's arrival; and
4. Cooperate in additional interviews and submit additional documentation that the licensing agency or Licensing Authority may require to determine whether the addition of the new member will cause the foster parent to fall out of compliance with foster care requirements.

F. In determining whether to approve the addition of the new household member, the licensing agency shall consider:
1. The relationship of the new household member to the foster parent;
2. The length of time the foster parent has known the new household member;
3. The background of the new household member including any criminal history;
4. The financial arrangements, if any, between the foster parent and the new household member;

5. What, if any, child care responsibilities the new household member may have;
6. Whether the new household member has any physical or emotional conditions that present a risk to foster children and current household members; and
7. Whether the home will still meet the equipment and space requirements prescribed in R6-5-5838 through R6-5-5846 with the additional of the new household member.

G. If the foster parent marries during the course of a licensing year:
1. The foster parent's spouse shall submit an application for a license as prescribed in R6-5-5802 and R6-5-5803;
2. The foster parent's spouse shall be investigated in accordance with R6-5-5803, R6-5-5805, R6-5-5806, R6-5-5807, R6-5-5823, and R6-5-5824; and
3. The foster parent shall comply with subsection (E) and with subsection (C) if the foster parent moves.

H. A person licensed solely as an in-home respite foster parent is exempt from the requirements of subsections (B)(2) and (3), (C), (E), (F), and (G).

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5815. Monitoring the Foster Home and Family

A. A licensing agency shall monitor its foster homes.

B. Monitoring activities may include the following:
1. Announced and unannounced visits to the foster home;
2. Interviews with the foster parent and household members over age 5;
3. Interviews with foster children placed with a foster parent, if developmentally appropriate; any interviews with a foster child may occur with the foster child separated from the foster parent; and
4. A review of any records a foster parent is required to maintain.

C. A foster parent shall cooperate with monitoring requirements by:
1. Making the foster home available for inspection, and
2. Participating in interviews and permitting interviews with household members.

D. When a licensing agency finds a violation of a foster home requirement, the licensing agency shall orally notify the Licensing Authority of the violation, and shall follow the oral report with a written report that shall include a recommendation for any licensing action or a corrective action plan, as prescribed in R6-5-5818 and R6-5-5819.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5816. Investigation of Complaints About a Foster Home

A. When a licensing agency receives a complaint about a foster home or licensee, the licensing agency shall:
1. Immediately report allegations of child abuse, neglect, or maltreatment to Child Protective Services Central Intake as prescribed in A.R.S. § 13-3620; and
2. Report all complaints to the Licensing Authority within five days and investigate all complaints, not reported to CPS, as prescribed in this Section.

B. An investigation may include:
1. Interviews with the complaining party and members of the foster home;
2. Inspections of the foster parent's records and documents related to the issues raised in the complaint;
3. Interviews of witnesses to the matters at issue; and
4. Any other activities necessary to substantiate or refute the complaint.

C. The licensing agency shall complete the investigation within 60 days. If the investigation cannot be completed within 60 days, the licensing agency shall notify the Licensing Authority and provide a date for completion of the investigation.

D. When the investigation is completed, the licensing agency shall send the Licensing Authority a written summary of the results.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5817. Licensing Authority Action On Complaints

After the licensing agency reports the results of its investigation, the Licensing Authority shall determine what action to take against a licensee, as prescribed in this Section.
1. If the licensee did not violate foster care requirements, the Licensing Authority shall take no further action.
2. If the licensee violated a foster care requirement, but has corrected the problem giving rise to the violation, the Licensing Authority shall record the incident in the licensing file, and may take no further action.
3. If the licensee violated a foster care requirement and there is reasonable cause to believe that the licensing violation is continuing or may reoccur, the Licensing Authority shall take licensing action as prescribed in R6-5-5819, or require corrective action as prescribed in R6-5-5818.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5818. Corrective Action

A. If a deficiency giving rise to a substantiated complaint is correctable within a specified period of time and does not jeopardize the health or safety of a foster child, the Licensing Authority, in consultation with the licensing agency, may place the foster parent on a corrective action plan to remedy the deficiency.

B. In determining whether to require corrective action, the Licensing Authority shall consider the following criteria:
1. The nature of the violation;
2. Whether the violation can be corrected;
3. Whether the foster parent understands the violation and shows a willingness and ability to participate in corrective action;
4. The length of time required to implement corrective action;
5. Whether the same or similar violations have occurred on prior occasions;
6. Whether the foster parent has had prior corrective action plans, and, if so, the foster parent's success in achieving the goals of the plan;
7. The foster parent's history as a foster parent; and
8. Other similar or comparable factors demonstrating the foster parent's ability and willingness to follow through with a corrective action plan and avoid future violations.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5819. License Denial, Suspension, and Revocation

A. The Licensing Authority may deny, suspend, or revoke a license when:
1. An applicant or licensee has violated or is not in compliance with foster care requirements, Arizona state or federal statutes, or city or county ordinances or codes;
2. An applicant or licensee refuses or fails to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
3. An applicant or licensee misrepresents or fails to disclose material information to the Licensing Authority, the licensing agency, or a placing agency regarding qualifications, experience, or performance of duties;
4. An applicant or licensee is unable to meet the physical, emotional, social, educational, or psychological needs of children; or
5. A licensee fails to comply with a corrective action plan.

B. In determining whether to take disciplinary action against a licensee, or to grant or renew a license, the Licensing Authority may consider the applicant or licensee's past history from other licensing periods, and shall consider a repetitive pattern of violations of applicable child welfare or foster care rules or statutes, as evidence that a license applicant or licensee is unable or unwilling to meet the needs of children.

C. The Licensing Authority shall deny a license when an applicant, licensee, or household member has been convicted of or is awaiting trial on the criminal offenses listed in R6-5-5802(C)(1) in Arizona or the same or similar offenses in other jurisdictions.

D. The Licensing Authority may deny a license when an applicant, licensee, or household member has been convicted of, found by a court to have committed, or is reasonably believed to have committed any criminal offense, other than those listed in R6-5-5802(C)(1). To determine whether the criminal history of an applicant, licensee, or household member affects a person's fitness to be a licensee, the Licensing Authority shall consider all relevant factors, including the following:
1. The extent of the person's criminal record;
2. The length of time which has elapsed since the offense was committed;
3. The nature of the offense;
4. The mitigating circumstances surrounding the offense;
5. The degree of participation by the person in the offense;
6. The extent of the person's rehabilitation, including:
   a. Completion of probation or parole;
   b. Whether the person has made restitution or paid compensation for the offense;
   c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling; and
   d. Personal references attesting to the person's rehabilitation.

E. The Licensing Authority may deny, suspend, or revoke a license if the applicant, licensee, or household member is, or resides with, a person who has a record of substantiated or undetermined child maltreatment in this state or any other jurisdiction. To determine whether an applicant, licensee, or household member's history of child maltreatment affects a person's fitness to serve as a foster parent, the Licensing Authority shall consider all relevant factors, including, but not limited to, the following:
1. Whether the person was subjected to child maltreatment in his or her family of origin;
2. The extent of the person's child maltreatment record;
3. The length of time which has elapsed since the maltreatment occurred;
4. The nature of the maltreatment;
5. The circumstances surrounding the maltreatment;
6. The degree to which the person participated in the maltreatment;
7. The extent of the person's rehabilitation;
8. Whether the person is on probation or parole; and
9. Whether legal proceedings were initiated as a result of the maltreatment.

F. The person seeking to establish fitness to be a licensee under subsection (D) has the burden of proving mitigating circumstances, indirect involvement, and the completion of probation or parole.

G. The Licensing Authority shall not deny, suspend, or revoke the license of an in-home respite foster parent based on the actions of the foster parent's household members as identified in (C), (D), and (E) unless such actions interfere with the foster parent's ability to comply with this Article or relate to any child for whom the foster parent provides respite care.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5820. Adverse Action; Notice; Effective Date

A. When the Licensing Authority denies, suspends, or revokes a license, the Licensing Authority shall send a written, dated notice of the action by certified mail to:
1. The applicant or licensee;
2. The licensing agency; and
3. The placing agency for any child placed with the licensee at the time of the action.

B. The notice shall specify:
1. The action taken and the date the action will be effective;
2. A citation to the legal authority, and a description of the reasons supporting the action; and
3. The procedures by which the applicant or licensee may contest the action taken, and the time periods in which to do so.

C. A revocation is effective:
1. Twenty-one days after the postmark date of the revocation notice; or
2. If the licensee appeals the revocation, on the date that an administrative hearing officer issues a written decision affirming the revocation.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5821. Appeals

A. An applicant or licensee may appeal the denial, suspension, or revocation of a license as prescribed in 6 A.A.C. 5, Article 75. Imposition of a provisional license or a corrective action plan is not appealable.

B. To appeal, an applicant or licensee shall file a written notice of appeal with the Licensing Authority no later than 20 days from the date of the notice prescribed in R6-5-5820(A) and (B).

C. The notice of appeal shall specify the action being appealed and a statement of why the Licensing Authority's action was wrong.

D. Appeals from the decision of a hearing officer are governed by A.R.S. §§ 41-1992(D) and 41-1993 and A.A.C. R6-5-7518 through R6-5-7520.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1). Amended June 4, 1998 (Supp. 98-2).

R6-5-5822. Alternative Methods of Compliance

A. The Licensing Authority, in consultation with the Attorney General's office, may substitute an alternative method of compliance for a foster care requirement contained in this Article and not otherwise required by law if the following conditions are met:
1. The Licensing Authority, in consultation with the licensing or placing agency, determines that placement in the foster home requesting an alternative method of compliance is in the best interests of a particular foster child; and
2. The purpose of the requirement being replaced is fulfilled through the alternative method of compliance.

B. If the Licensing Authority approves an alternative method of compliance for a foster care requirement contained in this Article, the Licensing Authority shall make written findings of fact and conclusions explaining how the requirements of subsection (A) are met.

C. The Licensing Authority has no obligation to approve an alternative method of compliance and shall consider the particular facts and circumstances of each case when making such a determination.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5823. Foster Parent: General Qualifications

To qualify for and maintain licensure as a foster parent, a person shall meet the criteria listed in this Section.
1. The person shall be at least 21 years old at the time of application.
2. The person shall have sufficient income, exclusive of the foster care maintenance payment, to meet the needs of the foster parent and the foster parent's own children and household members.
3. The applicant, foster parent, and adult household members shall be free of conviction or indictment for, or involvement in the criminal offenses listed in R6-5-5802(C).
4. The applicant, foster parent, and household members shall not have any physical or mental health conditions which preclude compliance with foster care requirements.
5. Each child residing in the foster home shall have all childhood immunizations appropriate to the child's age and health.
6. An applicant or foster parent shall not:
   a. Conduct home business activities which prevent the applicant or foster parent from caring for a foster child in accordance with foster care requirements; or

b. Provide foster care for adults.
7. An applicant's or foster parent's household members shall agree to and support the decision to provide foster care.
8. An applicant or foster parent shall:
   a. Cooperate with the licensing agency, the placing agency, and the Licensing Authority regarding any inspections or investigative activities; and
   b. Provide information as prescribed in this Article.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5824. Foster Parent: Personal Characteristics
To qualify for and maintain licensure as a foster parent, a person shall be a responsible, stable, emotionally mature individual who can exercise sound judgment. A person meets this requirement by demonstrating the following characteristics on the person's application and during the interview and investigation process:
1. The ability to realistically determine which foster children the person can accept, work with, and successfully integrate into the person's family;
2. Knowledge of child development, nutrition, health, and the various experiences a child may have, with which the foster parent may need assistance and guidance;
3. The willingness and ability to protect children from harm;
4. Knowledge and understanding of child discipline and ways of helping a child build positive personal relationships;
5. The following personal attributes:
   a. The capacity to give and receive affection;
   b. Enjoyment in being a parent or foster parent;
   c. Flexibility in expectations, attitudes, behavior, and use of help when it is needed;
   d. The ability to deal with separation, loss, frustration, and conflict;
6. The capacity to respect persons with differing life styles and philosophies, and persons of different races, cultures, and religious beliefs;
7. The ability to accept a foster child's relationship with the child's parent and birth family; and
8. The willingness and ability to commit the time necessary to provide a foster child with supervision and guidance in accordance with foster care requirements and a foster child's individual needs.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5825. Training and Development
A. Before receiving an initial license, an applicant shall complete at least 12 clock hours of initial foster parent training as prescribed in A.R.S. § 8-509(B). The training shall cover at least the following subjects:
1. Characteristics and needs of children who may be placed in the foster home;
2. The role of the foster parent as a member of the care and treatment team;
3. The importance of birth parent and family involvement in a child's life;
4. Methods for appropriately addressing the cultural, ethnic, and religious needs of a child in care;
5. Attachment, separation, and loss issues for children and families;
6. Behavior management policies and practices as prescribed in R6-5-5833;
7. Confidentiality;
8. Emergency procedures;
9. Resources and supportive services available to foster children and foster parents;
10. Foster care payment procedures;
11. Placing agency and Licensing Authority contact persons and procedures;
12. The impact of fostering on the foster parent and the foster parent's own family;
13. Addressing and coping with the impacts described in subsection (A)(12);
14. Specialized topics related to child welfare, health, growth, or development; and
15. The Indian Child Welfare Act of 1978 (PL 95-608).

B. Each licensing year, prior to license renewal, a foster parent shall attend and complete at least six clock hours of ongoing training as prescribed in A.R.S. § 8-509(C). Annual training may include:
1. Advanced training in the subjects listed in subsection (A);
2. Special subjects relating to child health, growth, or development, including:
   a. Child management techniques based on the developmental needs of children in care;
   b. Discipline, crisis intervention, and behavior management techniques; and
3. Review of placing agency policies.

C. An applicant or licensee shall also complete any additional training required by the Licensing Authority, or the foster parent's licensing agency or placing agency to develop specialized skills and to meet or maintain compliance with foster care requirements.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5826. Compliance With Licensing Limitations; Adult - Child Ratios

A. A foster parent shall limit the number of children in the home as prescribed in subsections (A)(1) and (2). As used in this Section, "children in the home" means any child in the foster home, including children placed for respite care, child care services, or baby-sitting, the foster parent's own children, and children residing in the foster home.
1. At all times, the total number of children in the home who are 5 years old or under shall not exceed more than four in the care of one adult.
2. At all times, the total number of children in the home who are less than 1 year old, shall not exceed more than two in the care of one adult.

B. A foster parent shall not care for more foster children than allowed and identified on the foster parent's license, and shall not exceed five foster children in addition to other children in the home.

C. A foster parent shall abide by any terms or conditions placed on the foster parent's license when accepting a child for placement.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5827. Placement Agreement

A. For each child placed with a foster parent the foster parent shall have a written placement agreement meeting the requirements of subsection (B) with the foster child's placing agency.

B. The placement agreement shall set forth the responsibilities of both the placing agency and the foster parent regarding:
1. Provision of services for the foster child, including medical care, dental care, mental health care, other social services or treatment, and transportation;
2. Requirements for interaction with the foster child's birth family.

C. If a foster parent does not receive a copy of a placement agreement at the time of placement, the foster parent shall obtain an agreement within five work days following the date of placement. If the placing agency refuses to provide an agreement, the foster parent shall notify the Licensing Authority.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5828. Participation in Case Planning

A. A foster parent is a member of the service team for a foster child in the care of the foster parent. The service team includes the case manager, the foster parent, the licensing agency representative, and persons providing services, such as attorneys, physicians, psychologists, therapists, Court Appointed Special Advocates, and school, law enforcement, and probation personnel.

B. A foster parent shall participate as a team member by:
1. Attending team meetings when:
   a. The foster parent receives reasonable advance notice of the date, time, and place of the meeting; and
   b. The meetings are held at a time and place which is accessible to the foster parent, and compatible with the foster parent's work schedule and child care schedule;
2. Participating in team meetings through alternative methods, which may include:
   a. Telephonic conference calls,
   b. Submission of oral comments, and
   c. Expressing concerns and comments to other team members who will attend the meeting;
3. Reporting to the team on the foster child's progress and problems;
4. Assisting in development of the case plan; and
5. Assisting in case plan reviews.

C. A foster parent shall implement the case plan by:
1. Performing the tasks assigned to the foster parent in the case plan,
2. Helping a foster child to attain any goals identified in the case plan,
3. Assisting a foster child to obtain any services specified in the case plan, and
4. Observing any limitations or conditions contained in the case plan.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5829. Daily Care and Treatment of a Foster Child; Foster Child Rights

A. Non-exploitation and equitable treatment
1. A foster parent shall not exploit a foster child or permit a child to be exploited.
2. A foster parent shall permit a foster child to exercise the rights, freedoms, and responsibilities of family life in a manner that is comparable to those exercised by foster family members, subject to:
   a. Reasonable and developmentally appropriate household rules, and
   b. Restrictions prescribed in a foster child's case plan and foster care requirements.
3. As used in this Section, "reasonable" means conduct which takes into account:
   a. The foster family's physical environment,
   b. The chores and responsibilities assigned to other household members,
   c. The foster child's school schedule and educational needs, and

d. The foster child's social and recreational needs.

B. Religious and ethnic heritage
1. A foster parent shall recognize, encourage, and support the religious beliefs, cultural and ethnic heritage, and language of a foster child and the child's birth family.
2. A foster parent shall coordinate with the placing agency to provide opportunities for each foster child to participate in religious, cultural, and ethnic activities.
3. A foster parent shall not directly or indirectly compel a foster child to participate in religious activities or cultural and ethnic events against the child's will or the wishes of the child's birth parent.

C. Interaction with parents and birth family. A foster parent shall maintain a working relationship with a foster child's parent, birth family, and other significant persons, in accordance with the child's case plan and in cooperation with the placing agency staff.

D. Food and nutrition
1. A foster parent shall provide a foster child with well-balanced daily meals and sufficient food to meet the child's nutritional needs.
2. The foster parent shall provide for a foster child's special dietary needs as prescribed in the child's case plan, or the orders of a licensed medical practitioner.

E. Education
1. A foster parent shall send a foster child to public school unless alternative educational arrangements, such as private, charter, or home schooling, have been approved in the child's case plan.
2. A foster parent shall help the child in obtaining other educational services as prescribed in the child's case plan.

F. Clothing
1. A foster parent shall provide a foster child with clean, seasonal clothing appropriate to the child's age, sex, size, and individual needs.
2. A foster parent shall permit a foster child to participate in making decisions about clothing choices to the extent developmentally appropriate for the child.

G. Funds
1. A foster parent shall use monies provided by the placing agency for designated purposes only.
2. A foster parent shall retain receipts to document the use of designated monies except monies designated for room and board.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5830. Medical and Dental Care

A. A foster parent shall arrange for a foster child to have routine medical and dental care which shall include an annual medical exam, semi-annual dental exams, immunizations, and standard medical tests.

B. When a foster child is placed with a foster parent, the foster parent shall determine whether the child has had a comprehensive medical exam within the past two months, and, for a child age 3 or older, a dental exam within the past six months.

C. If a foster child has not had the medical or dental exam, the foster parent shall schedule the child for an exam within two weeks after the foster child is placed with the foster parent.

D. As used in subsection (B), a comprehensive medical exam shall include:
1. Screening for communicable disease,
2. Screening for vision and hearing,
3. A general physical examination by a licensed physician,
4. Provision of any routine immunizations or immunization boosters, and
5. Tests appropriate for the child's age and history.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5831. Child Care

A. A foster parent shall have a plan for supervision and care of a foster child placed with the foster parent.

B. The plan shall be consistent with the foster child's case plan, and with the child's developmental, emotional, and physical needs, and the needs of the foster parent.

C. A foster parent shall inform the placing agency and obtain approval for use of any person given the responsibility for care of a foster child, unless otherwise provided for in the child's case plan. The case plan may include the name of a specific child care agency or provider, and may give the foster parent discretion to allow the child to go on overnight visits with specifically named persons.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5832. Transportation

A. A foster parent shall provide or arrange appropriate local transportation to meet the routine educational, medical, recreational, social, spiritual, and therapeutic needs of a foster child, in accordance with the child's case plan, or, if not specified in the case plan, as provided in the placement agreement.

B. A foster parent transporting foster children shall have a valid driver's license.

C. A foster parent shall provide for the safety of a foster child when the child is transported in a motor vehicle by:

1. Providing and using safety restraints appropriate to the age and weight of each child transported; and
2. Prohibiting the number of persons in any vehicle from exceeding the number of available seats and seat belts in the vehicle.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5833. Behavior Management; Discipline; Prohibitions

A. A foster parent shall set limits and rules for children in care. The foster parent shall tell the children about the foster parent's expectations regarding child behavior, including forbidden conduct, and the foster parent's methods for disciplining children who violate expectations, limitations, and rules.
1. A foster parent shall use discipline which is reasonable, developmentally appropriate, related to the infraction, and consistent with any guidelines in the child's case plan.
2. A foster parent shall use disciplinary methods which help a foster child to build self-control, self-reliance, and self-esteem.
3. A foster parent shall communicate rules, consequences, and disciplinary methods to a foster child in a manner appropriate to the child's age, developmental capacity, and ability to understand.
4. A foster parent shall explain the foster parent's limits, rules, and expectations to any placing agency or person that places a child with the foster parent.

B. A foster parent shall not delegate the responsibility for imposing discipline on a foster child to any person other than an adult assigned responsibility for the foster child, as prescribed in R6-5-5831(C), and made known to the child. If a foster parent delegates supervisory responsibility to another person, the foster parent shall instruct the person in the foster home limits, rules, and expectations, disciplinary methods specific to the foster child, and the limitations prescribed in this Article.

C. A foster parent shall not punish or maltreat a foster child, and shall not allow any other person to do so. As used in this Section, "punishment or maltreatment" include, but are not limited to, the following actions:
1. Any type or threat of physical hitting or striking inflicted in any manner upon the body;
2 Verbal abuse, including arbitrary threats of removal from the foster home;
3. Disparaging remarks about a foster child or a foster child's birth family members or significant persons;
4. Deprivation of meals, clothing, bedding, shelter, or sleep;
5. Denial of visitation or communication with a foster child's birth family members and significant persons when such denial is inconsistent with the foster child's case plan;
6. Cruel, severe, depraved, or humiliating actions;
7. Locking a foster child in a room or confined area inside or outside of the foster home; and
8. Requiring a foster child to remain silent or be isolated for time periods that are not developmentally appropriate.

D. A foster parent shall not use mechanical restraints.

E. A foster parent shall not use physical restraint unless:
1. Permission to use physical restraint is specified in the child's case plan; and
2. The foster parent has been trained in the proper use of the physical restraint to be used with a particular foster child.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events

A. Within two hours after a foster child suffers any of the following events, a foster parent shall notify the child's placing agency:
1. Death;
2. Serious illness or injury requiring hospitalization or emergency room treatment;
3. Any non-accidental injury or sign of maltreatment;
4. Unexplained absence;
5. Severe psychiatric episode;
6. Fire or other emergency requiring evacuation of the foster home;
7. Removal of a foster child from the foster home by any person or agency other than the placing agency, or attempts at such removal; and
8. Any other unusual circumstance or incident which might seriously affect the health, safety, or the physical or emotional well-being of a foster child.

B. Within 48 hours of occurrence, a foster parent shall notify the placing agency of any other events likely to affect the well-being of a foster child in the foster parent's care, including the following circumstances:
1. Involvement of a foster child with law enforcement authorities;
2. Serious illness or death involving a member of the foster family's household or a significant person;
3. Change in foster family or household composition; and
4. Absence of one foster parent from a two-parent household for more than seven continuous days.

C. Within 24 hours of giving notice as prescribed in subsection (A) or (B), a foster parent shall send the placing agency and licensing agency a written report on the event. The report shall include the following information:
1. A description of the event, with the date and time of occurrence;
2. The names and telephone numbers of any persons involved in the event;
3. Any measures taken to address, correct, or resolve the event, including treatment obtained, and persons notified.

D. Within two days of receipt of the written report prescribed in subsection (C), the licensing agency shall send the written report to the Licensing Authority.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home

A. A foster parent shall notify the licensing agency of any changes in the foster family's composition including, but not limited to the following events:
1. Marriage;
2. Divorce;
3. Addition of a new household member, including a temporary visitor expected to stay one month or longer; and
4. Death or departure of a current household member.

B. A foster parent shall notify the Licensing Authority of any substantial changes to the foster home, including:
1. Fire or emergency requiring evacuation of the foster home;
2. Moving to a new residence; and
3. Remodeling the foster home.

C. When a foster parent has advance knowledge of an event or change listed in subsection (A) or (B), the foster parent shall give reasonable advance notice of the anticipated event or change. Reasonable advance notice means notice which permits the licensing agency time to conduct an inspection, and the Licensing Authority time to issue an amended license, as prescribed in R6-5-5814, without disruption of a placement.

D. If the event or change is unexpected, a foster parent shall give notice as soon as the event occurs or change is known.

E. For events or persons not specifically listed in subsection (A) or (B), the foster parent shall give notice within five work days of the event or change.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5836. Maintenance of a Foster Child's Records

A. A foster parent shall maintain records for each foster child placed with the foster parent in accordance with the placing agency's requirements and this Section.

B. The foster parent shall ensure that the records include at least the following:
1. Information on a foster child, the foster child's birth family, and any other significant persons in the foster child's life, if the placing agency has provided such information to the foster parent, as follows:
   a. Name,
   b. Address,
   c. Telephone number, and
   d. A description of the person's relationship to the child.
2. A record of the foster child's contacts with birth family members and other significant persons, including the person contacted, and the date and method of contact (visit, telephone call, or written communication);
3. Medical and health information provided by the placing agency;
4. A consent form or notice from the foster child's guardian authorizing the foster parent to obtain routine, nonsurgical medical care, and emergency medical and surgical treatment for the foster child;
5. A record of the medical and dental care provided to the foster child during the placement, including:
   a. Date of appointment;
   b. Description of any illness, injury, or health problem;
   c. Name, address, and telephone number of the medical practitioner who treated the child; and
   d. Resulting diagnosis and treatment, any prescribed medications, and any hospitalization;
6. Reports of any medical tests, information, or counseling received regarding routine, emergency, chronic, or handicapping conditions;
7. A copy of the child's current case plan;
8. Any progress notes the foster parent may record;
9. Notations or records of significant incidents, events, and activities;
10. Identification of any schools attended with dates of attendance, any school reports;
11. Memorabilia to help the foster child retain a memory of placement and a life record; the memorabilia may include photographs, diaries, journals, souvenirs, scrapbooks, and art projects;
12. Placement agreement with the placing agency;
13. A clothing inventory (clothing brought with the foster child at the time of placement) and a record of clothing purchased for the child during placement; and
14. At the time of the child's departure from the foster home, a description of the foster child's daily routine and personal preferences and habits such as favorite foods, fears, and bedtime routines.

C. A foster parent shall provide the record to the placing agency upon termination of the foster child's placement.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5837. Confidentiality

A. A foster parent shall maintain the confidentiality of all personally identifiable information about a foster child and a foster child's birth family. A foster parent may release information when so authorized by a foster child's placing agency, and, in an emergency, when release is necessary to protect the health or safety of the child.

B. A foster parent shall safeguard a foster child's records in a manner that prevents loss, tampering, or unauthorized use.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5838. Foster Home: General Requirements

A. The foster home parent shall:

1. Keep the foster home safe, in good repair, and sanitary, as described in R6-5-5804(C) through (E) and R6-5-5838 through R6-5-5846; and
2. Keep the outside area around the foster home free from objects, materials, and conditions which constitute a danger to the occupants.

B. If the foster parent accepts and provides care to a child with special physical needs, the foster parent shall equip the foster home with any equipment needed to accommodate the particular child's special needs.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5839. Foster Home: General Safety Measures

A. The foster home shall have a telephone or other mechanical device allowing two-way communication with the outside community.

B. A foster parent shall safeguard all hazardous chemicals, cleaning materials, toxic substances, and hazardous materials, objects, and equipment.

C. A foster parent shall safeguard medical equipment and lock medications, except that the foster parent shall safeguard those medications that must be immediately and readily available for a family member or foster child.

D. When a foster home has a private source of water, the foster parent shall have evidence that a state or local health authority has approved the water as potable water.

E. The foster parent shall maintain the warm water in the foster home at a temperature that does not exceed 120° F.

F. A foster parent shall store firearms and ammunition in locked storage which is inaccessible to children.

1. A firearm shall be trigger-locked or fully inoperable while in storage.
2. Ammunition shall be stored in a location separate from firearms.

G. A foster parent shall not maintain any animal that poses a danger to a foster child.

H. A foster parent shall provide evidence that dogs belonging to the foster family or routinely present on the foster home premises, have current vaccinations against rabies.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5840. Exterior Environment; Play Area; Play Equipment

A. The foster parent shall keep the outside play areas clean and safe. The play area shall be fenced if there are conditions which may pose a danger to a child playing outside. The age and developmental abilities of the child are considerations for determining risk to the child.

B. The foster parent shall provide a variety of safe play equipment, toys, and supplies for each child. The age and developmental abilities of the child and standards in the community are considerations for determining the variety of play equipment, toys, and supplies required.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5841. Swimming Pools and Pool Safety

A. A foster home's swimming pool shall meet the requirements of this Section and the "swimming pool/spa" and "swimming pool guidelines" Section in the Sanitation Inspection Guidelines published by the Department of Health Services (DHS) (January 1996), and not including any later amendments or editions, which are incorporated by reference. Copies of these sections from the guidelines are available for inspection at the Secretary of State's Office, Public Services Department, 1700 West Washington, Phoenix, Arizona 85007, and for inspection and copying at the Department of Economic Security, Authority Library, 1789 West Washington, Phoenix, Arizona 85007, and the DHS, Office of Child Care Licensure, 1647 East Morten, Suite 230, Phoenix, Arizona 85020.

B. If the foster parent cares for a foster child who is age 5 or under, the swimming pool shall be fenced so that the pool is separated from the house, or, otherwise made physically inaccessible to a foster child.

C. A foster parent shall supervise a child who is in the swimming pool or surrounding area, in accordance with the child's age, capabilities, and developmental level.

D. A foster parent shall have at least one person currently certified in cardiopulmonary resuscitation (CPR) present in the foster home's swimming pool area when a foster child age 13 and under is swimming in the foster home swimming pool.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements

A foster parent shall provide safe sleeping arrangements which accommodate the privacy needs of a foster child, as prescribed in this Section.

1. The foster family and a foster child shall sleep in bedrooms. An unfinished attic, a basement area, or a space normally and primarily used for passageways and purposes other than sleeping are not bedrooms.
2. A bedroom in the foster home shall have a finished ceiling, floor-to-ceiling permanently affixed walls, a door, finished flooring, light, ventilation, and a usable exit to the outdoors.
3. A foster parent shall provide each foster child with a bed.
   a. The bed shall be appropriate to a child's age and needs.
   b. For the purpose of this Section, "bed" does not include a cot, couch, convertible couch, portable bed, sleeping bag or mat, except as approved by the Licensing Authority.
   c. No foster child shall sleep in a bunk bed of more than two tiers.
   d. A foster child under age 8 shall not sleep in the top bunk of a two tier bunk bed.
4. A foster parent shall provide the following for each foster child:
   a. A sanitary mattress;
   b. A clean pillow;
   c. Clean bed linens;
   d. Blankets or covers, as appropriate to the weather;
   e. A waterproof protective mattress cover, as needed; and
   f. Furniture or shelving near the bed to store clothing and personal belongings.
5. A foster parent shall not allow a foster child to share a bedroom with an adult except as specified in this subsection.
   a. A foster child under age 3 may share a bedroom with the foster parent.
   b. A foster child who is age 3 or older may share a bedroom with the foster parent when:
      i. The sleeping arrangement and the reason for it are described in a foster child's case plan; or
      ii. The foster child temporarily requires the foster parent's attention during sleeping hours.
   c. A foster child who has regularly shared a bedroom with another child in the foster home who has turned 18 may continue to share the bedroom with the child who has turned 18 unless the placing agency determines that the arrangement is contrary to the best interests of the foster child.
6. A foster parent shall not allow a foster child who is age 6 or over to share a bedroom with a child of the opposite gender.
7. Notwithstanding any other provision of this Section, a foster child who is a minor parent may share a room with her own child.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5843. Bathrooms

A. A foster home shall have at least one toilet, one wash basin, and one bathtub or shower.

B. A foster parent shall:
1. Maintain the foster home's toilets, washbasins, bathtubs, and showers in good working order; and
2. Have slip resistant flooring for bathtubs and showers.

C. A foster home bathroom shall have interior plumbing with both warm and cold water.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5844. Kitchen

A. A foster home shall have a kitchen that is equipped for safe and sanitary preparation, serving, and storage of food.

B. The kitchen shall have interior plumbing with both warm and cold water.

C. The kitchen shall have an operable refrigerator, stove, and oven.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5845. Fire Safety and Prevention

A. The foster parent shall install and maintain at least 1, single-station smoke detector approved by a nationally recognized testing laboratory in the following areas of the foster home:
1. On each floor in a multi-story dwelling;
2. In each separate sleeping area.

B. A foster parent shall install and maintain at least one ABC-type fire extinguisher on each floor of the foster home; except if the foster home is a manufactured home, the foster parent shall have at least two fire extinguishers placed at opposite ends of the home.

C. A foster parent shall not use portable space heaters during sleeping hours.

D. A foster home shall not rely on portable space heaters as the sole source of heat.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5846. Emergencies, Exits, and Evacuation

A. A foster parent shall have a plan for emergency evacuation of the foster home.

B. All household members and persons who care for a foster child in the foster home shall be knowledgeable about the emergency and evacuation plans and procedures.

C. Within 48 hours after a foster child is placed in a foster home, a foster parent shall give the foster child a developmentally appropriate explanation of the emergency and evacuation plan, and ensure that the foster child can follow the plan in the event of a fire or emergency.

D. A foster home shall have the following exits:

1. On each floor used by a foster child, two exits which are remote from one another;
2. On each floor, at least one exit with a direct, unobstructed and safe means of travel to the outdoors, and a safe method to reach street or ground level;
3. A window serving as a second exit only if:
   a. It is accessible to children and care-givers;
   b. It can be readily opened; and
   c. It is of a size and design to permit a child or care-giver to pass through it; and
4. On windows with security bars or devices, an emergency release mechanism maintained in good repair.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5847. Special Provisions for a Receiving Foster Home

A foster parent who operates a receiving foster home shall comply with all foster home requirements, in addition to the following:

1. A receiving foster parent shall be prepared to accept a foster child, according to the capacity and terms of the foster home license, 24 hours per day, seven days per week, unless the foster parent has made other arrangements with the placing and licensing agency.
2. A receiving foster parent may simultaneously provide receiving care, family foster care, and respite care so long as the total number of children in the foster home at any one time does not exceed the ratios prescribed in R6-5-5826 and the terms of the foster home license.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5848. Special Provisions for a Respite Foster Home

A. A foster parent who operates a respite foster home shall comply with all foster home requirements, except as provided in this Section.

1. A respite foster parent may simultaneously provide respite care, family foster care, and receiving care so long as the total number of children in the foster home at any one time does not exceed the ratios prescribed in R6-5-5826 and the terms of the foster home license.
2. A respite foster parent may use sleeper sofas, rollaway beds, couches, cots, and sleeping bags or mats as acceptable sleeping accommodations for a child receiving respite care, provided the respite care does not exceed six consecutive days.

B. A respite foster parent shall request and receive information and instruction from the regular foster home licensee on at least the following:

1. Information and instruction about the specific personal care of a child in respite care;
2. Information and instruction about the provision of medications required by a child in respite care;
3. Behavior management policies and practices and specific instructions for a child in respite care; and
4. Emergency contacts and telephone numbers for a child in respite care.

Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5849. Special Provisions for an In-home Respite Foster Parent

A. A person applying for licensure solely as an in-home respite foster parent shall comply with all foster home requirements except as otherwise provided in this Section.

B. An in-home respite foster parent applicant shall comply with R6-5-5802 and R6-5-5823 except the applicant is not required to provide the following:

1. Immunization records for each child in the applicant's household as required by R6-5-5802(B)(6) and R6-5-5823(5);
2. Documentation of sufficient income as required by R6-5-5823(2);
3. A statement explaining the child care arrangements the applicant would make for a foster child, or the applicant's own children, during the applicant's working hours as required by R-6-5802(B)(10);
4. A statement explaining how activities related to a business activity will not interfere with the care of a foster child as required by R6-5-5802(B)(11);
5. A description of the applicant's home and neighborhood as required by R6-5-5802(B)(16);
6. A statement authorizing the licensing agency or the Licensing Authority to arrange for DHS to conduct a health and safety inspection of the applicant's home as required by R6-5-5802(B)(23)(c).
7. Household members are not required to submit to fingerprinting or a criminal history check as required by R6-5-5802(C) and R6-5-5823(3).

C. The following rules do not apply to a person seeking licensure solely as an in-home respite foster parent:
1. R6-5-5827. Placement Agreements;
2. R6-5-5828. Participation in Case Planning, unless requested to do so;
3. R6-5-5830. Medical and Dental Care;
4. R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events, subsections (B)(3) and (4), unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules;
5. R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home, subsection (A), unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules, and subsection (B), except a fire or emergency requiring evacuation of the foster home;
6. R6-5-5836. Maintenance of a Foster Child's Records, except to document any behavioral incidents, medical care, provision of medication, and any other event or service required by the case plan or which may be requested by the regular foster parent while the in-home respite foster parent has responsibility for the foster child in care;
7. R6-5-5838. Foster Home: General Requirements;
8. R6-5-5839. Foster Home: General Safety Measures;
9. R6-5-5840. Exterior Environment; Play Area; Play Equipment
10. R6-5-5841. Swimming Pools, subsections (A) and (B);
11. R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements;
12. R6-5-5843. Bathrooms;
13. R6-5-5844. Kitchen;
14. R6-5-5845. Fire Safety and Prevention, subsections (A) and (B); and
15. R6-5-5846. Emergencies, Exits, and Evacuation, subsections (A), (C), and (D).

D. An in-home respite foster parent shall request and receive information and instruction from the regular foster home licensee on at least the following:
1. The behavior management policies and practices of the home as required by R5-5-5833 and specific instructions which apply to a child in respite care;
2. Household policies and practices for emergency situations;
3. Routine household management practices which will provide for continuity in operation of the foster home for the comfort and support of a foster child in care.

E. An in-home foster parent shall not permit any unlicensed person to accompany or assist the in-home foster parent while providing respite care.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

R6-5-5850. Special Provisions for a Professional Foster Home

A. A professional foster home shall comply with all foster home requirements except as otherwise provided in this Section.

B. A professional foster parent applicant shall provide to the licensing agency or the Licensing Authority documentation or demonstration of:
1. Verified, successful foster parenting experience; or
2. Verified experience working with or the ability to care for special care children.

C. A professional foster parent shall complete the following training:
1. At least 12 clock hours of pre-service training and six clock hours of ongoing training in addition to the requirements of R6-5-5825(A) and (B);
2. Training in cardiopulmonary resuscitation (CPR) and first aid; and
3. Pre-service training related to the type of care and services required by a child to be placed into the professional foster parent's care, which may include the following:
   a. Training in de-escalation;
   b. Training in physical restraint practices, as needed; and
   c. Training in medical and health care issues, procedures, and techniques including:
      i. The purpose, use, and administration of medications;
      ii. Medication interactions; and
      iii. Potential medication reactions.

D. Notwithstanding any other provisions of this Article, a professional foster home is subject to the licensing limitations in this subsection.
1. A professional foster home shall have no more than two special care foster children.
2. The licensing agency may recommend an exception to allow the professional foster parent to care for up to five special care foster children when the foster parent has demonstrated the ability to provide care for more than two special care children.
3. In deciding whether to recommend increased capacity as allowed by subsection (D)(2), the licensing agency shall assess:
   a. The professional foster parent's motivation for fostering more than two special care children;
   b. Any CPS reports involving the professional foster parent; and
   c. Whether the professional foster parent has demonstrated:
      i. Verified, successful professional foster parenting experience with two special care children;

ii. A minimum of one year of verified, successful work experience with special care children; or
iii. Verified specialized skills and training in the care of special care children.

4. The Licensing Authority shall evaluate the recommendation and determine whether to approve the exception.

E. Except when temporarily replaced by an approved alternative care provider, a professional foster parent shall serve as the foster child's primary caregiver and be available to provide direct physical and specialized professional services as required in the foster child's case plan.

F. A professional foster parent shall use best efforts to participate as a member of the service team as prescribed in R6-5-5828(B), through at least one of the following methods:
1. Personal attendance at team meetings,
2. Telephonic conference calls,
3. Provision of a written report on a foster child's progress and problems including any recommendations for service.

G. A professional foster parent shall maintain at least a weekly record of a special care child's progress and problems, unless more frequent documentation is required, in addition to maintaining the records required by R6-5-5836.

H. Within the license renewal application, a professional foster parent shall include evidence of current CPR and first aid certification.

Historical Note
Adopted effective January 10, 1997 (Supp. 97-1).

ARTICLE 59. GROUP FOSTER HOME LICENSING STANDARDS

R6-5-5901. Expired

Historical Note
Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

R6-5-5902. Expired

Historical Note
Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

R6-5-5903. Definitions

A. "Authorized representative." A designated employee of the Department or of the contract provided.

B. "Child." Any person under 18 years of age.

C. "Department." The Arizona State Department of Economic Security.

D. "Foster care." A social service which, for a planned period, provides substitute care for a child when its own family cannot care for it for a temporary or extended period of time. Foster care may be in a private family home, a group home or an institution.

E. "Foster care." A child placed in a foster home or a child welfare agency. (A.R.S. § 8-501(3)).

F. "Foster child." "A home maintained by an individual or individuals having the care and control of minor children other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals." (A.R.S. § 8-501(4))

G. "Group foster home." A licensed regular or special foster home suitable for placement of more than five minor children but not more than ten minor children." (A.R.S. § 8-501(5))
1. "Group family home." A licensed regular group foster home for six to ten minor children whose needs are not adequately met in their own family homes and who cannot tolerate close, intimate parent-child relationships.
2. "Group community home." A licensed special group foster home for six to ten minor children who require special care, including adjudicated delinquents, and those with physical, mental or emotional handicap problems. Caretakers of these homes are skilled in caring for such problems.
3. "Group receiving home." A licensed group foster home appropriate for the immediate placement of children when taken into custody or pending medical examination and court disposition, suitable for placement of more than five minor children but not more than ten minor children.

H. "License." Includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.

I. "Licensed medical practitioner." "Any physician or surgeon licensed under the laws of this state to practice medicine pursuant to Title 32, Chapters 13 and 17." (A.R.S. § 36-501(4))

J. "Licensing." Includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

K. "Parent or parents." "The natural or adoptive parent or parents of the child." (A.R.S. § 8-501(6))

Historical Note
Adopted effective January 18, 1977 (Supp. 77-1).

R6-5-5904. Responsibilities of the Department

A. The Department shall establish rules, regulations and standards for:
1. Recruiting, licensing, re-licensing, classification and supervision of group foster homes.

2. Uniform amounts of payment for all group foster homes according to type of license.
3. Form and content of investigations, reports and studies concerning licensing.
4. Denying, revoking or suspending foster home licenses.

B. The Department shall provide training, consultation and technical assistance to group foster parents.

C. The Department shall investigate and take action to prevent continued operation of group foster homes being conducted or maintained without a license.

D. The Department will ensure that standards represent current child welfare practices which are considered necessary to promote a safe environment for children, and which will contribute toward the normal growth and development of foster children, and which will encourage the development of meaningful relationships with peers, adults and the community.

E. The Department shall not be obligated to make referrals or payments to a licensed group foster home.

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1).

R6-5-5905. Expired

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

R6-5-5906. Licensing Requirements

A. Consultation. Individuals, associations, institutions or corporations considering the establishment of a group foster home shall consult the Social Services Bureau of the Department about such plans before a specific program is developed, before action is taken to establish such a home, and before an application is filed.

B. Application. Individuals, associations, institutions or corporations, whether operating for profit or without profit, which desire to conduct or manage a group foster home shall make written application to the department on the prescribed forms.

C. Fingerprints

1. Foster parents and members of the household, 18 years of age or older, must be fingerprinted and the fingerprints submitted to the Department for a criminal records check.
2. Where group foster care is provided by a firm, corporation, association or organization, all members of the staff having contact with the foster children must be fingerprinted and the fingerprints submitted to the Department for a criminal records check.
3. A license for a group foster home will not be issued, or will be revoked, if any member of the household, 18 years of age or older, or any staff member, has ever been convicted of a sex offense, or involved in child abuse, child neglect, trafficking in narcotics, a criminal offense pattern, or contributing to the delinquency of a minor.

D. Demonstration of health

1. The potential foster care applicant, or any staff member, prior to licensing shall furnish the Department, on the prescribed form, with a physical examination report.
2. Physical examinations must demonstrate that the person has good health and is free from any communicable disease.
3. A licensed medical practitioner must certify on the form prescribed by the Department that the health of the foster parents is adequate to undertake the tasks expected.
4. The foster parents, or group foster home Director, shall notify the Department when an individual residing or working in the group foster home contracts a disease or illness which may present a threat to the health of the foster child.
5. Prior to licensing, children of the foster care applicant shall have current immunizations as prescribed by the Arizona Department of Health Services.

E. References

1. Applicants for the original license only shall provide the Department with at least three references as to their character and their ability to provide foster care.
2. The references may not be relatives of any degree of blood or marriage.

F. Home study

1. A study will be made by an authorized representative of the Department to evaluate the potential and actual ability of the foster parents in this specific building and neighborhood to give care and protection to children placed in the home according to the standards prescribed in this Article.
2. To obtain this information, the authorized representative must make at least one home visit to inspect the house and yard and evaluate the neighborhood, interview all persons living in the home including children old enough to interview, and observe relationships.
3. In addition, the authorized representative shall interview the foster parents, the group home Director and staff to obtain information regarding the services to be provided.
4. The Department may request staff of other governmental agencies to make inspections or investigations to determine if the applicant meets standards of the Department. These will include, but not be limited to, inspections for fire, safety, and health.

G. Agreements

1. Prior to being licensed, group foster parents or the group foster home Director must sign the Foster Home Agreement form as prescribed by the Department.
2. Subsequent to being licensed, if the group foster home is going to be used by the Department, there must be a Contract Provider Agreement signed.

Department of Economic Security – Social Services

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1).

R6-5-5907. Denial, Suspension, or Revocation of a License

A. The Department shall deny, suspend, or revoke any license when:
1. The foster home is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes;
2. The physical or emotional needs of foster children are not met;
3. Needed medical care is not arranged, or when a foster child's medical or psychiatric plan of treatment is not followed; or
4. There is misrepresentation or the violation of public confidence.

B. When the applicant for the licensing or re-licensing of a foster home does not meet, or is in violation of, Department standards, the applicant shall be notified by certified mail, return receipt requested, that the application is being denied.
1. The written notice shall state the reason why the application is denied, with references to applicable statues, regulations and standards.
2. When a license has been denied, suspended or revoked, the Department shall notify the foster parents of the right to a fair hearing.
3. When a hearing is requested, the denial, suspension, or revocation of the license is not final until after the hearing officer issues a decision.
4. The Department shall conduct appeals as prescribed in 6 A.A.C. 5, Article 75.

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1). Amended effective June 4, 1998 (Supp. 98-2).

R6-5-5908. Re-licensing Requirements

A. Every license shall expire one year from the date of issuance and may be renewed annually on application of the group foster home.
1. License renewal is not automatic.
2. License renewal requires:
   a. A consultation;
   b. An application;
   c. Physical examinations;
   d. A home study;
   e. The foster home agreement; and
   f. The contract provider agreement.

B. An application for the renewal of a license for a foster home shall be made in the same manner as the original application. A licensee should reapply when:
1. The present license will expire within 30 to 60 days.
2. The marital status of the licensee has changed;
3. There is a change in the original program and/or purpose of the home.

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1).

R6-5-5909. Standards for Licensing and Operating Group Foster Homes

A. Requirements for family group home foster parents
1. Attitude and ability
   a. Applicants for licensing and licensed group foster parents shall:
      i. Have previous training or experience with the type of children for which the foster home is certified;
      ii. Be able to identify with the Department's programs and goals, work within its policies and follow the recommendations of the authorized representatives of the Department;
      iii. Participate in training designated by the Department;
      iv. Have a wholesome attitude toward, and understanding of child development, discipline, health, nutrition, sex education, and the various experiences which a child may have and with which a child may need assistance and guidance; and
      v. Be capable of accepting the child's relationship with his/her parents.
   b. Children under the age of 18 years, of applicants for licensing and licensed foster parents must demonstrate a willingness to share their parents and home with foster children.
2. Age
   a. Foster parent applicants must be over the age of 18 years and under the age of 65 years.
   b. Persons over the age of 65 years may be licensed if recommended by an authorized representative of the Department and if a licensed medical practitioner attests that the health of the foster parents is adequate to undertake the tasks expected.
3. Marital status
   a. The presence of both a foster father and a foster mother is considered desirable. However, this requirement may be waived at the discretion of the Department.
   b. If the foster parents consist of a husband and wife, they shall have been married to each other for at least 12 months prior to the original application for license.
   c. Single parents may apply for licensing if they can demonstrate the ability to care for children adequately.

d. A single parent whose marriage has been dissolved by divorce or death, or who has had a legal separation, must wait 12 months before applying for a license to provide foster care. This does not apply to group foster parents who are currently licensed.

4. Employment
   a. Foster parents will not be licensed for the care of children under six years of age if both parents work.
   b. Working parents who apply for licensing or re-licensing must demonstrate to the authorized representative of the Department the ability to give adequate care and supervision to foster children.

B. Requirements for community group home staff
1. The administrator of a community group home shall have:
   a. A bachelor's degree plus two years of verifiable experience in the field of residential child care, education or other allied profession and shall be responsible for the management of the business and program of the community group home; or
   b. A high school diploma and shall have had four years of verifiable work experience in the fields indicated above, including administrative responsibility.
2. Each child care staff member shall have prior successful experience in child care or related areas or have an academic background relating to this field.

C. Requirements for the organization of a community group home
1. Every community group foster home, whether it is operated on a profit or a nonprofit basis, shall be incorporated under the laws of the state of Arizona.
2. There shall be a board of directors composed of members of the community, none of whom are members of the staff of the community group foster home.
3. The board of directors shall be responsible for appointing an administrator to assume the full responsibility of directing the business and program of the community group foster home.

D. Financial resources
1. Family group home. Foster parents shall have sufficient income to meet the needs of the family unit without dependence upon the payments made in behalf of the foster children.
2. Community group home
   a. A community group home shall have a sound plan of financing to assure sufficient funds to enable it to carry out the planned program for children.
   b. The community group home shall operate on a budget which has been approved by its governing board before the beginning of the fiscal year. The current budget of a community group home shall reflect sufficiency of funds to pay the costs associated with the home's functions.

E. Supervision and care of foster children. The following requirements apply to both the family group home and the community group home.
1. General guidelines
   a. The group foster home shall provide care, training, guidance and controls.
   b. The group foster home shall see that each child attends school as required by law. Each child shall be given the opportunity to complete high school or vocational training in accordance with the youngster's aptitude.
   c. The group foster home shall at no time leave children overnight unless attended by a responsible adult.
   d. The group foster home shall never leave unattended children under 12 years of age or an older child who needs special care for physical, mental or emotional reasons.
   e. The group foster home shall not accept for care a foster child who has any evidence of a communicable disease or accept for care any foster child when there is evidence of communicable disease in the group foster home.
   f. The group foster home shall not release a foster child to anyone for care other than the agency from whom the child was received or a person specifically designated by the child placing agency.
   g. The group foster home shall provide training in good health practices, including proper habits in eating, bathing, personal grooming and hygiene suitable to the child's age and needs.
   h. The group foster home shall plan activities that stimulate and provide for social relationships, creative activities and hobbies.
   i. The group foster home shall give children opportunities to participate in neighborhood, school and other community groups appropriate to the age and needs of the youngster.
   j. The group foster home shall give children opportunity to invite friends to the foster home and to visit in the homes of friends.
2. Maintenance of appropriate family ties
   a. The group foster home, unless otherwise indicated by the authorized representative of the child placing agency, shall make every reasonable effort to maintain meaningful ties between the child and his/her family. This would include provision for letter writing between parent and child, planning with the placing agent for parental visits to the child, and home visits by the child when appropriate.
   b. The group foster home shall provide and encourage reasonable opportunities for the child to maintain contact with all family members and with other individuals important to the child's welfare, consistent with case planning.
   c. The group foster home shall not deny children opportunities to visit with the parent(s) or guardian unless such visits have been restricted by court action or when the representative of the child placing agency has advised that the visit would be detrimental to the welfare of the child.

3. Religious training. The group foster home shall permit children to attend the church of their choice and have religious training opportunities.
4. Discipline and controls
   a. Discipline shall be handled with kindness and understanding.
   b. Correction must be fair, reasonable and consistent, and must be related to the offense.
   c. Well-defined rules that set the limits of behavior shall be established.
   d. When appropriate, children shall participate in establishing the rules.
   e. No child within the group foster home shall be subjected to cruel, severe, unusual or corporal punishment inflicted in any manner upon the body.
   f. No youngster shall be subjected to verbal abuse or derogatory remarks about himself/herself or family.
   g. The child shall not be deprived of visits from significant others in the child's life as a form of punishment when the authorized representative of the child placing agency has identified the visitation as appropriate.
   h. Punishment connected with functions of living, such as sleeping or eating, shall not be used.
   i. Discipline should be administered in such a way as to help this child develop self-control, and to assume responsibility for behavior.
   j. Appropriate remedial action shall be taken when children in care commit delinquent acts.
5. Exploitation of children
   a. The group foster home shall assign tasks and work assignments which are appropriate to the age and abilities of the child and which do not interfere with school, health or necessary recreation.
   b. The group foster home shall not identify children by name or by clear description and must not allow them to be photographed in any publication or other printed or broadcast media. Only the Department may approve exceptions to this rule.
   c. The group foster home shall not permit children in care to commit illegal acts.
   d. The group foster home shall not provide or permit the use of alcohol or drugs unless prescribed by a licensed medical practitioner.
   e. The group foster home shall not use children for money making endeavors or for soliciting on behalf of the facility.
6. Clothing and personal items
   a. Each child shall have his/her own clothing and personal possessions as well as storage space for them.
   b. Clothing shall be of the proper size, of correct weight for climatic conditions and shall be kept clean and in good repair.
7. Health care of foster children
   a. The group foster home shall make arrangements for and/or with health care and treatment facilities to minimize and prevent health problems and illness, to give proper attention to those who are ill, and to correct treatable physical and emotional problems.
   b. The group foster home shall closely observe children for signs of illnesses such as skin rashes, inflamed eyes, running noses, coughs and elevated temperatures, and obtain prompt medical attention.
   c. The group foster home shall not ignore a child's complaint of pain or illness.
   d. The group foster home shall obtain the services of specialists to provide care, treatment and consultation when recommended by the licensed medical practitioner used by the group foster home.
   e. The group foster home shall not place any child in isolation unless recommended by a licensed medical practitioner.
8. Nutrition. Diets shall be well balanced and adequate to meet the nutritional needs of the children. When ordered by a licensed medical practitioner, special diets shall be provided. No dented or bloated canned foods shall be used. There should be a minimum of three meals per day with one being a cooked full-course meal. Only pasteurized milk shall be used. Appropriate snacks will be provided.

F. Number of children
1. The number of children in a group foster home shall not exceed the number for which it has been licensed by the Department.
2. A sufficient number of staff must be on duty at all times in order to assure proper care for all children. The minimum ration of group foster home child caring staff, not including clerical, housekeeping and maintenance staff, shall be as follows:
   a. For children from infancy through six years of age, no more than eight children to one staff member on duty at all times.
   b. For children from 7 to 18 years of age, no more than ten children to one staff member on duty at all times.
   c. A staff member shall be present in each building where children sleep during sleeping hours, and at least one staff member must be on duty in a family setting if children are present.
   d. Where there are pre-school, handicapped, bedridden, or other non-ambulatory children present, the ratio shall be no more than five children to one child care staff member for all hours, including sleeping hours.

G. One category of care
1. The group foster home shall not be used for categories of care other than group foster care for children. For example, no home shall offer, at the same time, full-time care and care for part of the day.
2. The group foster home shall not combine care of adults and children except in the care of an unmarried mother and her child, or in the case of persons under 21 years of age who voluntarily remain in foster care and who are currently enrolled in and regularly attending any high school.
3. The group foster home shall not house adult roomers and/or boarders; the only exception would be if the roomer or boarder has been with the family for a long period of time and is considered a member of the family. In this case, all the requirements for the family must also be met by the roomers and/or boarders.

4. Foster children reaching the age of 18 years may remain in the group foster home as roomers or boarders, if this plan is approved by the Department.

H. Records and reports

1. Children's records. The group foster home shall maintain a confidential record for each child in care. The information in the child's record shall be made available only to staff of the group foster home and to authorized representatives of the Department and/or the child placing agency. The record of each child shall contain basic identification, and historical, educational, social, medical and psychological information, along with service plans and progress reports.
2. Financial records
   a. The community group home must maintain complete financial records of all receipts, disbursements, assets and liabilities.
   b. The community group home, as requested by the Department, must provide budgetary information. The facility must provide for an annual audit of all accounts by an auditor who is not an employee of the facility or a member of its Board of Directors. The person or firm preparing the audit must be certified or registered with the Arizona State Board of Accountancy.
   c. The group foster home shall maintain a written record of expenditures for clothing and personal allowances for each child.
3. Reports
   a. The group foster home shall report immediately to the child placing agency whenever a child is injured, runs away, or when there is any other significant change in the child's situation.
   b. The group foster home shall report all new placements and discharges within five working days.
   c. The group foster home shall report to the Department any planned change of address, change in program, or other change which significantly affects the care provided. The Department shall be notified 30 days prior to any planned changes.
   d. Family group home foster parents shall report any change of marital status, and any new roomers or boards in the house.
   e. The community group home shall report to the Department any change in staff within five days of employment or discharge.

I. Requirements of home and equipment

1. Location. The group foster home must be in a district where schools and medical care are accessible, and where children can associate with other children and participate in community activities. The group foster home shall be on, or accessible to, a road passable 12 months of the year. The foster parent(s) or staff shall be able to provide private transportation or public transportation shall be near and available. The group foster home must comply with local zoning requirements.
2. Financial records
   a. The group foster home shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located. Health inspections will be requested and inspections or clearances may be requested from fire, building, and zoning officials when necessary to verify conformity.
   b. A mobile home may not be licensed as a group home.
   c. The house shall be in good repair and large enough to prevent crowding.
   d. Every habitable room shall be heated so that a 70 degree temperature can be maintained when measured at a height of 3 feet from the floor. Every habitable room shall have adequate cooling in those areas of the state with a warm desert climate. House and garden insecticides, medicines, and all corrosive materials shall be kept in locked storage out of the reach of the children. Such storage shall not be in or near kitchen or food storage areas.
3. Windows and doors
   a. Every sleeping room shall have at least one window and one door. The window must open to the outside. The window in every livable room shall be a minimum of 22 inches in width with 5 square feet in area to provide clear access to the outside without grills or other obstructions, and to provide adequate lighting and ventilation. The sill shall be a maximum of 48 inches from the floor.
   b. In sleeping rooms where there is no mechanical ventilation which draws a portion of its air from the outside, there must be one window to the outside of at least ten square feet, half of which can be opened.
4. Room dimensions and areas
   a. Rooms shall have a minimum ceiling height of 7 feet, 6 inches. Hallways, corridors, and bathrooms shall have ceiling height of at least 7 feet to the lowest projection from the ceiling.
   b. If any room has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the room except that no portion of the room where the ceiling height is less than 5 feet will be counted as available space.
   c. All rooms must contain 70 square feet minimum area except bathrooms and kitchens. No rooms may have any dimension less than 70 feet except kitchens and bathrooms.
5. Sleeping rooms
   a. General requirements. Each child shall have a bed equipped with springs, a clean, comfortable covered mattress, spread, a suitable pillow with case, two sheets, and suitable blankets for warmth. Sheets and pillow cases shall be cleaned at least weekly. Use of bedrooms should not be restricted to sleeping only.
   b. Each child shall have a place to store his clothing and personal belongings and have easy access to the possessions. Individual dressers or drawer space and closet space is essential for each child.
6. Space requirements. There shall be 50 square feet of floor space (excluding closet space) per child in sleeping rooms. The capacity of each sleeping room will be determined individually.
7. Sleeping arrangements
   a. A child shall not sleep in a bed with an adult.
   b. No child over three years of age shall share a bedroom with an adult.
   c. Children over five years of age shall not sleep in the same room with children of the opposite sex.

d. Every child shall have his own bed.
e. Children shall sleep within calling distance of an adult member of the family. No foster child shall sleep in a detached building, unfinished attic, basement, stairway, hall, or room commonly used for other than bedroom purposes. No caretaker's child or other child in the household shall be displaced and made to occupy such sleeping quarters because of a foster child.
f. Bunkbeds of more than two tiers shall not be used. Two-tier bunkbeds shall not be used, however, for children under eight. The beds must be constructed so as to offer comfort and safety and provide sufficient head room.

8. Bathing and toilet facilities
   a. General requirements
      i. Lavatories, bathrooms, and toilets shall be adjacent and easily accessible to sleeping rooms. Rooms shall be adequately ventilated to the outside air and shall not open directly onto any pantry, kitchen, serving-room, or dining room.
      ii. Tubs and/or showers shall have safety strips applied, rubber bath-mats, or other provisions made to prevent slipping.
      iii. Adequate provision shall be made for keeping individual toilet articles.
   b. Number of facilities. Each group foster home shall have at least two complete bathrooms that are accessible to the children. (A bathroom with only one exit door into the bedroom of the caretaker(s) will not be considered accessible to children.) There shall be at least one bathtub and/or shower, one toilet, and one waste basin for each six to ten children residing in the home.
9. Kitchen. Approval of the Arizona State Department of Health Services is required for all food services and equipment in accordance with the provisions of A.R.S. § 8-504.
10. Dining area
    a. The dining area shall be furnished with the necessary furniture to accommodate those living in the group foster home.
    b. Location of the dining area shall be convenient to the kitchen.
11. Living room. There shall be an adequately furnished living room or living area.
12. Medicine cabinets. Medicines shall be stored in a clean, locked cabinet that is designated for this use only. All medications which have been prescribed for past illnesses or for children discharged from the foster home shall be destroyed.
13. Laundry. Adequate provisions shall be made to care for the laundry.
14. Space and water heaters. Space and water heaters must be vented to the outside, adequately grounded, and installed to comply with building, plumbing, electric and fire codes.
15. Water supply. Where a municipal water system does not supply water to the home, the water must be tested once a year by the General Sanitation Section of Arizona State Department of Health Services.
16. Swimming and wading pools
    a. Swimming pools shall meet the requirements of the Arizona State Department of Health Services.
    b. The pool shall be made inaccessible to children under the age of six; they shall be supervised at all times.
    c. During the swimming season, the swimming pool shall be tested and logged daily for free chlorine and to determine the pH of the water. Water safety courses are required.
    d. Tests shall comply with the requirements of the Arizona State Department of Health Services.
17. Play area
    a. There shall be adequate space for both indoor and outdoor play.
    b. The premises, inside and out, shall be equipped and maintained in a manner which is not hazardous to children.
18. Fire protection
    a. All group foster homes shall have a written fire evacuation plan posted and should conduct fire drills at least once every two months.
    b. Portable fire extinguishers of a type approved for the intended use are strongly urged.
19. Telephone. There shall be telephone service in the group foster home.
20. Vehicle(s). The vehicle(s) for transporting children shall be in a safe operating condition and all drivers shall have a current driver's license.
21. Insurance
    a. The group foster home shall provide for insurance coverage for adequate protection against accidents.
    b. Insurance coverage must include liability insurance to cover acts of children or staff, and protection against damages to, or loss of, buildings and other valuable properties.
    c. There shall be liability insurance on all vehicles transporting children.

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1). Amended effective February 21, 1980 (Supp. 80-1).

R6-5-5910. Confidentiality

The rules and regulations of the Department for securing and using confidential information concerning the client will be followed. Refer to Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information."

Historical Note

Adopted effective January 18, 1977 (Supp. 77-1).

R6-5-5911. Expired

Historical Note
Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

R6-5-5912. Expired

Historical Note
Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

ARTICLE 60. COMPREHENSIVE MEDICAL/DENTAL PROGRAM FOR FOSTER CHILDREN

R6-5-6001. Objective
The goal of the Comprehensive Medical/Dental Program for Foster Children is to provide, in the most cost effective manner, full coverage for those medical and dental services which are necessary to the achievement and maintenance of an optimal level of physical and mental health for children in foster care.

Historical Note
Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2).

R6-5-6002. Authority
Article 60 is adopted pursuant to the power vested in the Director of the Department of Economic Security by A.R.S. §§ 8-511(A)(2), (A)(3), (B) and (C) and 8-512.

Historical Note
Adopted effective March 11, 1977 (Supp. 77-2).

R6-5-6003. Definitions

A. "Adjudicated child." A child adjudicated by the court as dependent, neglected or delinquent residing in a licensed foster family home or child welfare agency.

B. "Ambulatory care institution." A health care institution licensed by the Arizona Department of Health Services with inpatient beds providing limited hospital services on an outpatient basis including an outpatient surgical center and an outpatient treatment center.

C. "Ancillary services." Special services and items furnished to an institutional recipient, which are separately payable in addition to the daily room and board charge.

D. "Authorization." An approval given by the designated Departmental representative or representative of the fiscal intermediary to a specific medical/dental provider to render services or items to a specific recipient.

E. "Claim." The invoice submitted by the medical/dental provider for reimbursement for covered services.

F. "Comprehensive Medical/Dental Program for Foster Children." The name for the program authorized by legislation and regulated as shown herein by the Department.

G. "Covered services." As defined in R6-5-6005.

H. "Dentist." An individual licensed to practice dentistry and/or oral surgery by the appropriate regulatory board of the state of Arizona. The term shall include such individual only when practicing within the scope of the license.

I. "Department." The Department of Economic Security.

J. "Director." The Director of the Department of Economic Security.

K. "Emergency dental services."
1. Those services necessary to control bleeding, relieve pain, eliminate acute infections.
2. Operative procedures which are required to prevent pulpal death and the imminent loss of teeth.
3. Treatment of injuries to the teeth or supporting structures.
4. Palliative therapy for pericornitis associated with impacted teeth.
5. Reduction of maxillary and mandibular fractures.

L. "Emergency services." Those services required for alleviation of severe pain or for immediate diagnosis or treatment of an unforeseen medical condition which, if not immediately diagnosed and treated, would lead to rapid deterioration of the health status.

M. "Eye care services." Diagnostic eye examinations to detect the presence or absence of ocular abnormality or visual disability, treatment related thereto, and the dispensing of eye glasses or other optical devices, when necessary, to improve visual performance.

N. "Eye glasses." Frames with lenses prescribed by an ophthalmologist, other licensed medical practitioner or optometrist to aid or significantly improve visual performance.

O. "Foster care provided." A home or child-caring agency licensed by the state as a foster home, group home or child welfare agency, which provides care and maintenance for foster children.

P. "Foster child." A child adjudicated by the court as dependent, neglected or delinquent or on whom the parent(s) have signed the necessary paperwork for voluntary foster care and who are residing in a licensed foster home or child welfare agency.

Q. "Hearing aid." Any wearable instrument or device designed for or represented as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of such instrument or device, including earmolds.

R. "Hearing aid evaluation." The application and interpretation of a battery of tests by an otolaryngologist, otologist, other licensed medical practitioner or audiologist to determine if amplification may be advantageous to an individual's hearing and what parameters of amplification are required to obtain a satisfactory result.

S. "Identification card." A plastic card for each foster child issued by the Department to establish the identity of the child eligible for the covered services.

T. "Inpatient." A person who has been admitted to a hospital or skilled nursing facility for bed occupancy for purposes of receiving inpatient services. A person will be considered an inpatient when formally admitted as an inpatient, i.e., when admitted for a period of more than 12 hours or through the census hour.

U. "Inpatient hospital services." Those services and items furnished by the hospital for the care and treatment of inpatients under the direction of a physician or dentist.

V. "Inpatient hospital services." Those services and items furnished by the hospital for the care and treatment of inpatients under the direction of a physician or dentist.

W. "Legend drugs." Those drugs which, under federal or state law or regulations, may be dispensed only by prescription.

X. "Medical/dental provider." Any person, institution or entity which provides covered services to an eligible foster child recipient under the program.

Y. "Medical equipment." Durable items and appliances that can withstand repeated use, are designed primarily to serve a medical purpose and are not generally useful to a person in the absence of a condition, illness or injury.

Z. "Nursing services." Those services that are performed by or under the supervision of a registered nurse at the direction of a licensed practitioner.

AA. "Ophthalmologist." A licensed medical practitioner who specializes in the diagnosis and treatment of the eye and its related structures.

BB. "Optometrist." A person registered with the state medical board to practice optometry.

CC. "Orthodontic condition." A clinically obvious physical abnormality of tooth and/or jaw relationships.

DD. "Orthopedic devices." Supportive or corrective devices used for treatment of a musculoskeletal abnormality or injury.

EE. "Otolaryngologist." A licensed medical practitioner whose practice is limited to the specialty of conditions or disease of the ear, nose and throat and who qualifies as a specialist in those areas.

FF. "Otologist." A physician who limits his practice to the specialty of conditions and diseases of the ear and who qualifies as a specialist in this area.

GG. "Outpatient." Not an inpatient.

HH. "Palliative services." Those services required to reduce the severity or relieve the symptoms of a condition, illness or injury.

II. "Physical therapist." A person registered to practice physical therapy.

JJ. "Physical therapy services." Those services provided by or under the supervision of a physical therapist.

KK. "Physician." An individual licensed to practice medicine or medicine and surgery (including an osteopathic practitioner), a podiatrist or an optometrist. The term shall include such individuals who have been granted a license to practice by the appropriate regulatory board of the state of Arizona and shall include them only when they are practicing within the scope of such license. The term shall also include a Christian Science practitioner recognized by the Mother Church and listed as such in the "Christian Science Journal."

LL. "Prescription." An order to a provider for covered services issued, signed and transmitted by an individual authorized to prescribe such services.

MM. "Preventive services." Those health services designed to forestall a condition, illness or injury.

NN. "Prior authorization." This term shall have the definition given it by the terms and procedures of R6-5-6007.

OO. "Prosthesis." An artificial substitute for a missing body part including but not limited to an arm, leg, eye, tooth, etc.

PP. "Psychologist." An individual certified by the State Board of Psychologist Examiners.

QQ. "Radiological services." Professional and technical X-ray and radioisotope services ordered by a licensed medical practitioner or dentist for diagnosis, prevention, treatment or assessment of a medical condition. Radiological services includes portable X-ray, radioisotope, medical imaging and radiation oncology.

RR. "Rehabilitation services." Physical, occupational, speech and respiratory therapy, audiology services and other restorative services and items ordered by a physician to attain maximum reduction of physical or mental disability and restoration of the individual to an optimum functional level.

SS. "Routine physical examinations." Medical examinations performed without relationship to treatment or diagnosis of a specific condition, illness or injury. This includes physical examinations for employment.

TT. "Skilled nursing facility." A health care institution which is licensed by the Department of Health Services as a skilled nursing facility.

UU. "Speech therapist." A person who has been granted the Certificate of Clinical Competence in the American Speech and Hearing Association or who has completed the equivalent educational requirements and work experience required for such a certificate.

VV. "Therapeutic services." Those curative services required for treatment of a condition, illness or injury and includes acute, chronic and emergency care.

WW. "Treatment plan." That portion of the authorization process which requires that the attending physician and other professional allied health personnel involved in the care of a recipient establish and review periodically a plan of treatment and care for each recipient.

XX. "Fee schedule." Allowable amounts established by the Department for medical, dental, and psychological care for foster children.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2).

R6-5-6004. Eligibility

A. The Department shall pay or cause to be paid the cost of necessary covered services, up to the maximum allowed by the fee schedule, rendered to children who are:
1. Placed in a licensed foster home or licensed child welfare agency by:
   a. The Department of Economic Security; or
   b. The Department of Corrections; or
   c. The Juvenile Probation Office.
2. Placed in a licensed receiving foster care facility (shelter care).
3. Or for whom temporary custody has been awarded to the Department, and who are placed in a hospital for care and treatment.

B. Children born to an eligible foster child (as defined in subsection (A) of this Section) shall be eligible for payment of routine newborn care and treatment up to and including the third day of life. This period may be extended where the need is established by such persons as the Director shall designate.

C. Persons under the age of 21 who were placed in a foster family home or institution prior to the age of 18, and who voluntarily remain in such care and who are currently enrolled in and regularly attending any high school.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2). Amended effective May 25, 1979 (Supp. 79-3).

R6-5-6005. Definition of Covered Services

Comprehensive medical/dental services shall include but not be limited to the following covered services:
1. A complete preplacement medical examination prior to the initial foster placement in a regular or special foster home. Such examination shall include as a minimum:
   a. Vaccinations to prevent mumps, rubella, smallpox and polio if not previously provided to the foster child.
   b. Tests for anemia, coccidioidomycosis and tuberculosis.
   c. Urinalysis, blood count and hemoglobin tests.
   d. Standard medical procedures used for determining the recipient's general health, hearing and vision, including prescribing corrective devices when needed.
   e. Further evaluation and diagnosis as is medically necessary.
2. Periodic medical examinations, not less than once each year, subsequent to initial placement for a child placed in a setting other than his parents' home.
3. Inpatient care. Benefits shall be paid for necessary inpatient hospital or skilled nursing facility care, including diagnosis and treatment, for physical or mental illness, for injury or for pregnancy, and shall include items and services which are ordered pursuant thereto by a physician, dentist or psychologist and which are ordinarily furnished by the hospital or skilled nursing facility for care and treatment of inpatients. Included shall be:
   a. Bed and board, including dietary services and general nursing care, in a semi-private room (i.e., room with two or more beds) or a private room if medically necessary.
   b. Professional services furnished through or by the hospital, including the services of a physician, dentist or psychologist; physical therapy; rehabilitation services; and medical social services.
   c. Ancillary services as follows:
      i. Laboratory, therapeutic and diagnostic services including radiological services.
      ii. Use of operating room, recovery room emergency room and intensive care.
      iii. Drugs, blood, oxygen, medical supplies, equipment and appliances related to care and treatment in the hospital.
      iv. Prosthetic and orthopedic devices.
4. Inpatient professional care. To include surgery, assistance at surgery, administration of anesthesia, hospital visits and consultations, professional administration and interpretation of laboratory and radiological procedures and test results, and other necessary care and procedures and rendered by a physician, dentist or psychologist in accordance with all rules and regulations of the hospital.
5. Outpatient professional evaluation, care and treatment. To include preventive, palliative, diagnostic, therapeutic, rehabilitative, surgical, or other such items and services which are administered or provided on an outpatient basis for the necessary diagnosis or treatment of injury, pregnancy, physical or mental illness.
6. Laboratory and x-ray services ordered by a physician, dentist or psychologist for diagnosis and treatment.
7. Dental care provided by or under the direct supervision of a dentist. To include oral examinations, diagnostic radiography, oral prophylaxis, topical fluoride applications, restoration of permanent and primary teeth, pulp therapy, extraction when necessary, fixed space maintainers where needed, oral hygiene instruction, orthodontia and other service procedures necessary for relief of pain and infection.
8. Prescription and non-legend drugs prescribed by a physician or dentist.
9. Ambulance services.
10. Private duty nursing.
11. Injections, immunizations, allergy testing and treatment.
12. Physical therapy, speech therapy, respiratory therapy, radiation therapy, etc.
13. Electrocardiograms, electroencephalograms and other similar diagnostic procedures.
14. Medical equipment, corrective medical appliances and orthopedic devices or prostheses.

15. Services of an ambulatory care institution.
16. Eye care services and eyeglasses.
17. Hearing evaluations, hearing aid evaluations and hearing aids.

Historical Note
Adopted effective March 11, 1977 (Supp. 77-2).

R6-5-6006. Exceptions, Limitations and Exclusions
The Department shall not pay for:

1. The cost of any covered service which is not medically necessary for prevention, diagnosis or treatment of a condition, illness or injury.
2. That portion of the cost of any covered service which exceeds the charges set by the fee schedule. The medical/dental provided is hereby prohibited from rendering a bill for additional amounts to the Department, its representatives, any fiscal intermediary the Department may contract with to administer this program, the foster child, his guardian, his estate, the foster child's foster parents, his natural parents or any other party.
3. The cost of care and services payable through any federal, state, county or municipal program to which an eligible foster child may be entitled except for the cost of care and services in excess of any such program.
4. The cost of care and services payable through an insurance carrier which provides coverage for the eligible foster child except for the cost of care and services in excess of any such insurance benefits.
5. Psychiatric or psychological evaluations and treatment unless performed or ordered by a licensed medical practitioner or psychologist certified by the State Board of Psychologist Examiners.
6. Any expenses submitted for reimbursement after 180 days following provision or delivery or otherwise covered services.
7. Any service or item furnished primarily for cosmetic purposes rather than for the correction of defects resulting from a condition, illness or injury. In determining whether a service is furnished primarily for cosmetic purposes, consideration will be given to the eligible foster child's psychological welfare and future occupational opportunities. Orthodontic services are included in this category.
8. Non-legend drugs which are not prescribed by a physician or dentist.
9. Care and services rendered to an individual who is not an eligible foster child.
10. Any covered service for which no charge would have been rendered in the absence of this program.
11. Any admission, service, item, or otherwise covered service requiring prior authorization where such authorization has not been obtained or has been denied.
12. Services of naturopaths and chiropractors.
13. Psychological services or other diagnostic or treatment services for a foster child in a child welfare agency which provides such care as part of its contractual services which are already paid for by the Department, including services provided by the agency's staff.
14. Care and services rendered to a foster child under the Bureau of Indian Affairs foster care program.
15. Care and services rendered a foster child placed in Arizona by another state whether voluntarily or under jurisdiction of the court of another state.
16. Non-medical items such as, but not limited to, slippers, hair cuts, snack bar merchandise, shampoos and writing paper.
17. The following dental care services:
    a. Any care which requires prior authorization and for which prior authorization was not sought or was sought but was not granted, unless ordered by the Court.
    b. Oral hygiene instruction which exceeds $6.00 per fiscal year.
    c. Porcelain-fused-to-metal crowns.
    d. Acrylic veneered gold crowns whose position in the mouth is posterior to the second bicuspid.
    e. Full crowns except when teeth cannot be restored by a pin-reinforced restoration.
    f. Gold inlays.
    g. Temporary restorations, except to the extent they are considered part of and paid for as a part of the finished restoration.
    h. Building up any tooth, except to the extent it is considered part of and paid for as a part of the finished restoration.
    i. Building up a tooth beneath a crown.

Historical Note
Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2).

R6-5-6007. Prior Authorization

A. As hereafter more fully described, authorization is required before certain covered services are rendered in order for those services to be paid for under this Article and A.R.S. §§ 8-511 and 8-512.

B. Payment will not be made for any covered service which requires prior authorization and either
1. Was not submitted for such prior authorization or
2. Was submitted but such prior authorization was not granted.

C. Any medical/dental provider is hereby prohibited from rendering a bill for charges subject to prior authorization which are not granted prior authorization, such prohibition extending to charges rendered to the Department, its representatives, any fiscal intermediaries the Department may contract with to administer this program, the foster child, his guardian, his estate, the foster child's foster parents, his natural parents or any other party.

D. Prior authorization shall not be required for the following covered services as actually provided or proposed to be provided:
1. Services necessary to care for acute physical illness, chronic physical illness, acute injury or pregnancy insofar as treatment is consistent with the diagnosis.
2. Emergency services in all instances, including emergency dental services.
3. Complete preplacement examination as required by A.R.S. § 8-511(A)(2).
4. First- and second-year well-baby care not to exceed a total of $200 for both years.
5. Initial dental examination and treatment indicated thereby but not to exceed $50 per fiscal year.
6. Emergency inpatient psychiatric care not to exceed ten inpatient days.
7. Rental or purchase of medical equipment when accompanied by physician prescription where cost does not exceed or could reasonably be expected not to exceed $25 per fiscal year in the aggregate for all such costs in one fiscal year.
8. Prescription and non-legend drugs which are necessary to the foster child's medical care and appropriate to his treatment regimen.
9. Eyeglasses for which the cost does not exceed $60 per pair, including lenses and frames, or which are replacement lenses and/or frames obtained more than 12 months following the preceding pair.
10. Psychiatric or psychological diagnostic evaluation not to exceed $200.
11. Initial psychiatric or psychological interview not to exceed $50.

E. Prior authorization shall be required for the following covered services:
1. Psychiatric or psychological therapy, whether proposed on an individual or group.
2. Continuation of therapy shown in (1) above past ten outpatient sessions, and thereafter in accordance with appropriate judgment as to what constitutes necessary care as determined from the treatment plan and/or medical record.
3. Inpatient psychiatric care beyond ten consecutive inpatient days, and thereafter in accordance with appropriate judgment as to what constitutes necessary care as determined from the treatment plan and/or hospital record.
4. Elective (non-emergency) surgery and expenses associated with such surgery.
5. First- and second-year well-baby care which exceeds or is expected to exceed a total of $00 for both years.
6. Eyeglasses costing more than $60, including lenses and frames, or which are replacement lenses and/or frames obtained less than 12 months following the preceding pair.
7. The following specific types of dental care:
   a. Any service or combination of services which exceeds $50 in any fiscal year.
   b. Any treatment plan which proposes a full crown or crowns.
   c. Any treatment plan which involves replacement of any tooth or teeth, by either removable or fixed appliances.
   d. Any treatment plan which proposes a fixed bridge.
   e. Any treatment plan which proposes a partial denture.
   f. Any treatment plan which proposes treatment of a dentofacial abnormality (orthodontic services).
8. Rental or purchase of medical equipment (unless necessary due to a medical emergency) when accompanied by physician prescription.
9. Outpatient therapy services and treatment modalities such as, but not limited to, speech therapy, physical therapy, respiratory therapy, and radiation therapy.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2).

R6-5-6008. Coordination of Benefits

A. The Department shall determine the possible existence of any primary insurance coverage for all eligible foster children at the time the need for foster care is established. The possible existence of such coverage shall be redetermined at least every six months.

B. The Department shall request the court to include a statement in its court order requiring parent(s) or guardian of adjudicated children to cooperate with Department of Economic Security in coordinating benefits with any existing health insurance carrier and to maintain any health insurance coverage presently existing which covers the child(ren).

C. The Department shall advise the court when parent(s) or guardian of adjudicated children refuse to cooperate with Comprehensive Medical/Dental Program (CMDP) in providing and/or signing appropriate documents required in order to coordinate insurance benefits, or fail to maintain any existing insurance coverage for the child.

D. In voluntary placements, the parent(s) or guardian must cooperate with Comprehensive Medical/Dental Program (CMDP) in providing and/or signing appropriate documents required to coordinate health insurance benefits.

E. In the absence of health insurance coverage, the Department shall determine what additional resources are available to cover medical and dental costs.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2).

R6-5-6009. Identification Card

A. The Department shall issue, or cause to be issued, an identification card for each eligible foster child.

B. The caseworker shall apply for an identification card for the eligible foster child.

C. The Department shall immediately upon placement inform the foster care provider in writing that the identification card is not transferable and that the card is to be used only for medical/ dental covered services for the foster child whose name appears on the card only so long as said foster child shall remain eligible under this Program.

D. The foster care provider shall be given oral and written instructions regarding the use of the identification card when procuring medical and dental care for the eligible foster child.

E. When an eligible foster child is terminated from foster care, the foster care provider shall immediately return the identification card to the Department.

F. The foster care provider shall return the identification card to the Department seven days from the date an eligible foster child runs away from the foster care provider.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2).

R6-5-6010. Payment and Review of Claims

A. Claims for payment shall be submitted by medical/dental providers in the manner prescribed by the Department.

B. Claims for payment for covered expenses shall not be paid if an appointment is not kept and/or if covered services were not rendered or provided.

C. Claims for payment shall not be accepted or paid prior to the delivery of covered services.

D. Claims for covered services shall be accepted from medical/ dental providers both in and outside the state of Arizona.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2).

R6-5-6011. Abuse and Misuse of the Program

A. The Department shall establish a procedure to investigate any alleged abuse of the Comprehensive Medical/Dental Program. If abuse is substantiated, administrative or legal action shall be taken.

B. The Department shall monitor the activity of the Comprehensive Medical/Dental Program to ensure compliance with the program requirements.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2).

R6-5-6012. Consent for Treatment

A. For an eligible foster child adjudicated by the court, the Department shall secure a court order and, if possible, the consent of the parent or guardian for surgery, general anesthesia, blood transfusion, or pelvic examination of a child.

B. For a foster child in voluntary placement, consent of the parent or guardian shall be necessary only for medical treatment involving surgery, general anesthesia, blood transfusion, or pelvic examination of a child, except for emergency situations described in subsection (C).

C. In cases of emergency, in which a foster child is in need of immediate hospitalization, medical attention or surgery, and when the parents cannot readily be located, the foster care provider or caseworker may give consent pursuant to A.R.S. § 44-133 for hospital care, medical attention or surgery.

D. Persons under the age of 21 who were placed in a foster family home or institution prior to the age of 18, and who voluntarily remain in such care, and who are currently enrolled in and regularly attending any high school may give consent for their own treatment.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective May 25, 1979 (Supp. 79-3).

R6-5-6013. Administration of the Program

A. The Department shall have the ability to contract with any insurer, insurance plan, hospital service plan, or any health service plan authorized to do business in this state, or with any fiscal intermediary or with any combination of such plans or methods. Such contract will be entered into for purposes of administering this Comprehensive Medical/Dental Program for foster children in a manner consistent with its authorizing legislation and these regulations.

B. Such contract, if entered into by the Department, shall be specific as to the responsibilities of each party to the contract and shall provide for reasonable payment to the contractor for his administrative services as required by the contract.

C. The terms of such contract, if entered into by the Department, shall reflect these regulations. If the Department and the contractor, in the future, determine that certain additions, deletions, corrections or alterations in the contract are required so as to cause the administration of the program to be consistent with the authorizing legislation, these regulations and the intents thereof, such additions, deletions, corrections or alterations shall be made in the contract by mutual written consent, signed by authorized representatives of the Department and the contractor, without first having to alter these regulations.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-1).

R6-5-6014. Case Management

A. Determining financial need. Financial eligibility for the CMDP is limited to foster children who reside in licensed facilities.

B. Case management

1. Confidentiality. The rules and regulations of the Department regarding the disclosure and use of confidential information concerning the client, as set forth in A.A.C. Title 6, Chapter 5, Article 23, “Safeguarding of Records and Information” shall apply to all services provided under this Article.

2. Appeals. The rules and regulations of the Department set forth in A.A.C. Title 6, Chapter 5, Article 25, "Complaints and Appeals" shall apply to all services provided under this Article.
3. The rules and regulations of the Department set forth in A.A.C. Title 6, Chapter 5, Article 26, "Civil Rights" shall apply to all services provided under this Article.

C. Closing the service. Service shall be closed when the child is no longer in foster care.

Historical Note

Adopted effective March 11, 1977 (Supp. 77-2). Amended effective March 28, 1978 (Supp. 78-2).

R6-5-6015. Fee Schedule

A. The Comprehensive Medical and Dental Program shall pay providers in accordance with the established fee schedule unless otherwise specified by contract or required by this Article.

B. A current fee schedule shall be maintained in the central office of the CMDP for reference use during customary business hours. Relevant information or portions of the fee schedule shall be made available to service providers and other interested persons on request.

Historical Note

Adopted effective May 15, 1990 (Supp. 90-2).

EXHIBIT 1. REPEALED

Historical Note

Exhibit as filed is incomplete. Exhibit adopted effective March 28, 1978 (Supp. 78-2). Amended by adding Maximum Allowable Anesthesia Fee Schedule effective April 17, 1980 (Supp. 80-2). Amended Medicine - Psychiatric Services; Radiology - Urinary Tract; Dental - Restorative, Endodontics, and Fixed Prosthodontics effective September 17, 1980; Maximum Allowable Anesthesia Fee Schedule not included (Supp. 80-5). Repealed effective May 15, 1990 (Supp. 90-2).

Arizona Department of Economic Security

Five-Year-Review Report

Title 6, Chapter 5

Articles 24, 50, 55, 58, 59, 60

STATUTES

General Authority: **A.R.S. § 41-1954(A)(3)**

A.R.S. § 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for

child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

Specific Authority:

Article 24. Appeals and Hearings

A.R.S. § 46-804. Appeals

A decision denying, reducing or terminating child care assistance is subject to appeal pursuant to title 41, chapter 6, article 6 and title 41, chapter 14.

A.R.S. § 46-809. Rules

The department shall adopt rules it deems reasonable or necessary to implement child care services and to further the objectives of this article. Rules adopted by the department shall include:

1. Criteria for making child care assistance eligibility determinations.
2. Criteria for certifying child care home and in-home providers.
3. Criteria for operating child care resource and referral services and for suspending and terminating referrals to participating child care providers pursuant to section 41-1967.

Article 50. Child Care Resource and Referral System

A.R.S. § 41-1967. Child care resource and referral system; immunity

A. The department shall establish and maintain a statewide child care resource and referral system, including a child care home provider registry, through community-based organizations to:

1. Provide families with:

(a) Information on all types of child care.

(b) Referrals to child care providers and programs.

(c) Information about child care resources and services.

(d) Information about choosing child care.

(e) Information about registered child care home providers.

2. Assist child care providers and programs with:

(a) Information on training related to child care issues.

(b) Technical assistance that relates to initiating or providing child care services.

(c) Parent referrals.

(d) Becoming registered as a child care home provider.

3. Coordinate with the community to:

(a) Develop statistics of the demand for and supply of child care.

(b) Maintain ongoing relationships with all local groups interested in child care.

B. The child care resource and referral system shall:

1. Identify all available child care providers and programs through coordination with public and private agencies.

2. Collect in a uniform method provider information for the referral database that includes:

(a) The type of program.

(b) The hours of service.

(c) The ages of children served.

(d) Fees for service.

(e) The licensure, certification and registration status of providers.

(f) Other significant provider and program information.

3. Establish and maintain a referral process that responds to parental need for information. The child care resource and referral system shall make referrals to child care providers and programs that:

(a) Promote parental choice and meet the needs of families.

(b) Are included in the resource and referral database.

4. Collect in a uniform method family information for the referral database that includes the:

(a) Number of calls and contacts.

(b) Ages of children in need of care.

(c) Days and times of care requested.

(d) Type of care requested.

(e) Special needs and requests made by the family.

(f) Reason that the care is needed.

5. Provide outreach services that include:

(a) Efforts to reach parents and providers in local communities.

(b) Involvement in the local communities.

(c) Publication of services through all available media sources, agencies and other appropriate channels.

(d) Public awareness information to parents and providers about the child care home provider registry and the benefits of using the registry or becoming registered.

6. Provide technical assistance to existing and prospective child care providers and programs that include:

(a) Information on all aspects of initiating new child care services including child care regulations, zoning, program and budget development and assistance in finding information from other sources.

(b) Educational information and resources that assist existing child care providers and programs to better serve the children and parents in their community.

(c) Local coordination of existing child care and child related services.

7. Establish and maintain a child care home provider registry that includes:

(a) Child care home providers that are registered pursuant to section 41-1967.01.

(b) A complaint tracking system that contains written complaints concerning providers and written provider responses. The complaints and responses are available to the public.

(c) A system for notifying a provider that is excluded or removed from the registry that the provider may appeal directly to the entity making the determination resulting in the exclusion or removal.

(d) Information provided by registered providers relating to the services provided and child care environment.

C. The following child care providers are eligible to be considered for inclusion in the child care resource and referral database, unless barred by other provisions of law:

1. Child care providers licensed or certified by a government agency that is authorized by law to license, certify or approve child care providers.

2. Child care home providers that are registered pursuant to section 41-1967.01. These providers shall submit and amend when necessary sworn, written statements to the department or its designees, on forms approved by the department, attesting that the provider is not subject to exclusion or removal from the child care resource and referral database under any of the grounds specified in subsection E of this section.

D. Child care providers identified in subsection C, paragraph 1 of this section may be excluded or removed from the child care resource and referral database whenever the provider's license or certification is revoked, terminated or suspended, or when a child care facility is closed for cause.

E. Child care home providers identified in subsection C, paragraph 2 of this section may be excluded or removed from the child care home provider registry and the child care resource and referral database if:

1. The provider fails to obtain a fingerprint clearance card or the provider's fingerprint clearance card is revoked or suspended.

2. The provider has been denied a license to operate a facility for the care of children or had a license or certificate to operate a facility revoked or has been removed for cause from participation in the child and adult food program in this state or in any other state or jurisdiction.

3. The provider, the provider's employees or any person eighteen years of age or older who resides in the provider's child care facility has been convicted of or is awaiting trial on any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar criminal offenses in any other state or jurisdiction.

4. The provider, the provider's employees or any person who resides in the provider's child care facility has been the subject of an investigation where a report of child abuse or neglect has been substantiated by the department of child safety or a child safety services agency or a law enforcement agency in this state or in any other state or jurisdiction.

5. The provider fails to maintain current training and certification in first aid and infant and child cardiopulmonary resuscitation.

6. The provider fails to enclose a pool pursuant to section 36-1681, subsections A, B and C.

7. The provider fails to separately store firearms and ammunition under lock and key or combination lock.

F. This section and section 41-1967.01 do not create an affirmative obligation on the part of any state agency or any child care resource and referral agency to review, monitor or investigate child care providers and programs.

G. Neither this state nor its officers or employees, acting within the scope of their employment, are liable for any damage or injury caused by their conduct pursuant to this section or section 41-1967.01, except for gross negligence or conduct intended to cause injury.

H. Neither a child care resource and referral agency nor its officers and employees, acting within the scope of their employment, are liable for any damage or injury caused by their conduct pursuant to this section or section 41-1967.01, except for gross negligence or conduct intended to cause injury.

I. The department shall adopt rules that are consistent with the terms of this section.

A.R.S. § 41-1967.01. Child care home provider; registration; fingerprints; definition

A. A child care home provider who receives compensation to care for four or fewer children and who has not been certified by the department of economic security pursuant to section 46-807 or licensed or certified by the department of health services pursuant to section 36-883 or 36-897.01 shall register with the department of economic security if the child care home provider wishes to be listed with the child care resource and referral system.

B. Each applicant for registration shall submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. Child care providers shall have a valid fingerprint clearance card issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card by the date of registration with the department.

D. By the date of registration, child care providers shall certify on forms that are provided by the department and notarized whether:

1. They are awaiting trial on or have been convicted of or admitted committing any of the criminal offenses listed in section 41-1758.07, subsection B or C in this state or similar offenses in another state or jurisdiction.

2. They are parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have been denied a license to operate a child care facility for cause in this state or another state or had a license or certificate to operate a child care facility revoked.

E. The notarized forms are confidential.

F. Each applicant for registration shall not have been the subject of an investigation where a report of child abuse or neglect has been substantiated.

G. Each applicant shall maintain current training and certification in first aid and infant and child cardiopulmonary resuscitation.

H. The applicant shall enclose any pool on the applicant's premises pursuant to section 36-1681, subsections A, B and C.

I. The applicant shall separately store firearms and ammunition under lock and key or combination lock.

J. The department shall adopt rules to carry out this section.

K. The director shall charge a fee for processing the fingerprint information required pursuant to this section.

L. Any obligation or liability under this section is governed by the provisions of section 41-1967, subsections F, G and H.

M. For the purposes of this section, "child care provider" means a registered child care home provider pursuant to subsection A of this section.

A.R.S. § 8-802(4) through 46-802 (6) Child protective services worker; fingerprint clearance cards; powers and duties; alteration of files; violation; classification

The department shall establish and administer child care services. Child care services include:

1. Child care assistance to eligible families.

2. Certification of child care home and in-home providers who are not required to be licensed pursuant to title 36, chapter 7.1 for the purposes of caring for children eligible for child care assistance.

3. Establishment of rights and duties of providers and the department for the provision of child care assistance and services.

4. Consumer education to families and the public, including activities that help families make informed decisions about child care options.

5. Activities that improve the quality and availability of child care.

6. Consultation, technical assistance, training and resources to improve the provision and expand the access to child care services.

A.R.S. § 46-809(3). Rules

The department shall adopt rules it deems reasonable or necessary to implement child care services and to further the objectives of this article. Rules adopted by the department shall include:

1. Criteria for making child care assistance eligibility determinations.
2. Criteria for certifying child care home and in-home providers.
3. Criteria for operating child care resource and referral services and for suspending and terminating referrals to participating child care providers pursuant to section 41-1967.

A.R.S. § 8-451. Department; purpose

[Effective May 29, 2014, created the Department of Child Safety (DCS) to which the responsibilities and authority for the functions governed by A.A.C., Title 6, Chapter 5, Articles 55, 58, 59, and 60 were transferred]

A. The department of child safety is established.

B. The primary purpose of the department is to protect children. To achieve this purpose, the department shall do and focus equally on the following:

1. Investigate reports of abuse and neglect.
2. Assess, promote and support the safety of a child in a safe and stable family or other appropriate placement in response to allegations of abuse or neglect.
3. Work cooperatively with law enforcement regarding reports that include criminal conduct allegations.
4. Without compromising child safety, coordinate services to achieve and maintain permanency on behalf of the child, strengthen the family and provide prevention, intervention and treatment services pursuant to this chapter.

ARIZONA STATE BOARD OF DENTAL EXAMINERS (F-16-0906)
Title 4, Chapter 11, Article 1, Definitions; Article 2, Licensure by Credential; Article 4, Fees

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-2**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: October 14, 2016

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS (F-16-0906)**
Title 4, Chapter 11, Article 1, Definitions; Article 2, Licensure by Credential; Article 4, Fees

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This five-year-review report from the Arizona State Board of Dental Examiners (Board) covers ten rules in A.A.C. Title 4, Chapter 11, Articles 1, 2, and 4. Article 1 provides definitions, and was last amended in January 2014. Article 2 relates to the various licenses by credential issued by the Board, and was last amended in April 2016. Article 4 relates to fees, and was last amended in April 2005.

Proposed Action

The Board indicates that it intends to address all of the issues identified in the report when it becomes necessary to amend the rules for substantive reasons. With respect to Article 4, a Notice of Proposed Rulemaking was published on August 8, 2016.[i] The Board intends to complete that rulemaking by June 2017.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Board has certified its compliance with A.R.S. § 41-1091.

[i] See 22 A.A.R. 2307, available at http://apps.azsos.gov/public_services/register/2016/36/04_proposed.pdf.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Board indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Board has received no written criticisms of these rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Board cites to both general and specific authority for the rules. Most notably, as general authority, the Board cites to A.R.S. § 32-1207(A)(1), which requires, in relevant part, the Board to "[a]dopt rules not inconsistent with this chapter for the regulation of its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities…."

5. **Has the agency analyzed the rules' consistency with statutes and other rules?**

Yes. The Board indicates that the rules are consistent with statutes and other rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Board indicates that the rules are generally clear, concise, and understandable, with the following exceptions:

- In Section 101, definitions are provided for "nonsurgical periodontal treatment", "patient of record", "periodontal examination and assessment", and "public member" that are no longer used elsewhere in the rules.
- Sections 201, 202, and 203 contain duplicative information and should be combined.
- Sections 402 and 406 have incorrect internal cross references due to statutory changes.
- Section 405 is titled as "Other Fees" though the Board believes that the charges listed do not constitute fees under A.R.S. § 41-1001(9).
- Section 406 should clarify that the fee for anesthesia and sedation permits is per licensee, per location.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. No federal laws directly correspond to the rules.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Yes. Licenses, as well as certifications by credential, are issued under Sections 201-204.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Yes. The Board indicates that the licenses and certifications 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.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Board indicates that, in its 2011 five-year-review report, it planned to amend Sections 204, 405, and 406. Section 204 was amended in April 2016, and Sections 405 and 406 have yet to be amended.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, the Board indicates that it intends to amend the rules in Article 4 by June 2017. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-2**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: October 14, 2016

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS (F-16-0906)**
Title 4, Chapter 11, Article 1, Definitions; Article 2, Licensure by Credential; Article 4, Fees

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report. The rules establish the requirements for examination and application to quality for dental licensure and the required fees that permit licensing of anesthesia and sedation, operation of a business entity, and renewal of a retired or disabled dentist or dental hygienist. As of August 2016, the Board licensed 4,463 dentists; 4,288 dental hygienists; 12 denturists; 14 dental consultants; and 337 registered business entities.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Board has determined that the rules impose the least burden and costs. The cost to comply with these rules is minimal and necessary to protect public health and safety.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA STATE BOARD OF DENTAL EXAMINERS

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July 14, 2016

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GRRC

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

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

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the State Board of Dental Examiners submits for your approval a report on a review of the referenced rules. The Board reviewed all referenced rules.

As required under A.R.S. § 41-1056(A), the Board certifies it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact me at (602) 542-4493. Thank you for your consideration.

Sincerely,

Elaine Hugunin
Executive Director

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.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

(Authority: A.R.S. § 32-1203 et seq.)

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

ARTICLE 2. LICENSURE BY CREDENTIAL

Section

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R4-11-202. Dental Licensure by Credential; Application
R4-11-203. Dental Hygienist Licensure by Credential; Application
R4-11-204. Dental Assistant Radiography Certification by Credential
R4-11-205. Application for Dental Assistant Radiography Certification by Credential

ARTICLE 4. FEES

Section

R4-11-401. Retired or Disabled Licensure Fees
R4-11-402. Business Entity Fees
R4-11-405. Other Fees
R4-11-406. Fees for Anesthesia and Sedation Permits

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

"Application" means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a recognized continuing dental education program.

"Deep sedation" is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;
Course title;
Number of credit hours;
Name of speaker; and
Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;
Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
Articles other than food intended to affect the structure of any function of the human body; or
Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N2O/O2) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only drug" does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

(Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or

2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S.

Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;

2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;

3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1)

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall

Comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;

2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;

3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with one of the subsections in) R4-11-201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under the applicable subsection in R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or

2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,

2. File a copy of a contract or employment verification statement with the Board, and

3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant's eligibility, and
2. A letter of endorsement that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Fees

A. Dentist. Retired or disabled licensure renewal: $15.00.

B. Dental Hygienist. Retired or disabled licensure renewal: $15.00.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-402. Business Entity Fees

A. Under A.R.S. § 32-1213(B)(3), the fee for a Business Entity registration is $100 per year, per location.

B. The civil penalty fee for failure to notify the Board of a change in either business entity name, address, telephone number, location of any office, or licensee responsible for dental services within 30 days after the change is $50. The civil penalty fee increases to $100 if a business entity fails to notify the Board of the change within 60 days.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Other Fees

A. Duplicate license: $25.00.

B. Duplicate certificate: $25.00.

C. License verification:
1. For licensee: $25.00.
2. For non-licensee: $5.00.

D. Copy of tape recording: $10.00.

E. Photocopies (per page): $0.25.

F. Mailing lists:
1. Dentists:
   a. In-state - paper or labels: $150.00.
   b. All licensees - paper or labels: $175.00.
   c. Computer disk: $100.00
2. Dental hygienists:
   a. In-state - paper or labels: $150.00.
   b. All licensees - paper or labels: $175.00.
   c. Computer disk: $100.00.
3. Denturists: All certificate holders - paper or labels: $5.00.

G. Board meeting agendas and minutes (mailed directly to consumer):
1. Agendas and minutes (annual fee): $75.00.
2. Agendas only (annual fee): $25.00.
3. Minutes only (annual fee): $50.00.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-406. Fees for Anesthesia and Sedation Permits

A. Under A.R.S. § 32-1207(D), the fee for a Section 1301 permit to administer general anesthesia and semi-conscious sedation or a Section 1302 or Section 1303 permit to administer conscious or oral conscious sedation is $300 per location.

B. Upon successful completion of the initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, or 1303 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every third year.

C. The renewal fee for each Section 1301, 1302, or 1303 permit is $300 per location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3).

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
2. "Board" means the state board of dental examiners.
3. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
4. "Dental assistant" means any person who acts as an assistant to a dentist or a dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
5. "Dental hygienist" means any person licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
6. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
7. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
8. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related non-fluoroscopic diagnostic imaging modalities.
9. "Dentistry", "dentist" and "dental" means the general practice of dentistry and all specialties or restricted practices of dentistry.
10. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.
11. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
(b) Imposition of restrictions on the scope of practice.
(c) Imposition of peer review and professional education requirements.
(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

12. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:
(a) Charges for services not rendered.
(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.
(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.
(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.
(e) Any statement that is material to the claim and that the licensee knows is false or misleading.
(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.
(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.
13. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
14. "Licensed" means licensed pursuant to this chapter.
15. "Place of practice" means each physical location at which a person licensed pursuant to this chapter performs services subject to this chapter.
16. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.
17. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.
18. "Recognized dental school" means a dental school accredited by the American dental association commission on dental accreditation.
19. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.
20. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

21. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentional betrayal of a professional confidence or intentional violation of a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.
2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.
4. Gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Refusal, revocation or suspension of a license or any other disciplinary action taken against a dentist by, or the voluntary surrender of a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.
14. Any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. The following advertising practices:
(a) The publication or circulation, directly or indirectly, of any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
(b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, denturist or dental hygienist is or may be:
(a) Professionally incompetent.
(b) Engaging in unprofessional conduct.
(c) Impaired by drugs or alcohol.
(d) Mentally or physically unable to safely engage in the activities of a dentist, denturist or dental hygienist pursuant to this chapter.
29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

32-1202. Scope of practice; practice of dentistry
For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues, including the removal of stains, discolorations and concretions.

32-1203. State board of dental examiners; qualifications of members; terms
A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
B. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
C. A board member shall not serve more than two consecutive terms.
D. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office
The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff
A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.
B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.
C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.
D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board
Members of the board are entitled to receive compensation in the amount of two hundred fifty dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules not inconsistent with this chapter for the regulation of its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to section 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, or dental hygienist in consultation with a dentist, may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that shall remain available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools and dental hygiene schools in order to be classified as recognized dental schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to those it determines are eligible for licensure pursuant to this chapter.
8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.
9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.
10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.
11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.
12. Collect and disburse monies.
13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.
14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.
B. The board may:
1. Sue and be sued.
2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within its jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.
3. Adopt rules:
(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.
(b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.
(c) Prescribing requirements for obtaining licenses for disabled or retired licensees, including the triennial license renewal fee.
4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as it deems necessary.
5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.
6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.
C. The executive director or the executive director's designee may:
1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.
2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.
3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.
5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.
6. Refer cases to the board for a formal interview.
7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.
E. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to assure compliance.
F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.
G. This section does not prohibit the board from conducting its authorized duties in a public meeting.
H. For the purposes of this section, "record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty
In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence
A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report
A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:
1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.
7. Any other matters that the board wishes to include in the report or that the governor requires.
B. On request of the governor the board shall submit a supplemental report.

32-1211. Limitation of expenditures
The board shall not make expenditures exceeding ninety per cent of the total revenue of the board, and no part of the expenses, charges or expenditures of the dental board shall become a charge against any fund of the state.

32-1212. Dental board fund
A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.
B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.
C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions
A. A business entity may not offer dental services pursuant to this chapter unless:
1. The entity is registered with the board pursuant to this section.
2. The services are conducted by a licensee pursuant to this chapter.
B. The business entity must file a registration application on a form provided by the board. The application must include:
1. A description of the entity's services offered to the public.
2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
3. The names and addresses of the officers and directors of the business entity.
4. A registration fee prescribed by the board in rule.
C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.
2. In the officers or directors of the business entity.
3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.
F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:
1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
2. Disposing of unclaimed dental records.
3. The timely response to requests by patients for copies of their records.
G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.
H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:
1. Refuse to issue a registration.
2. Suspend or revoke a registration.
3. Impose a civil penalty of not more than two thousand dollars for each violation.
4. Enter a decree of censure.
5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.
6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.
I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.
J. This section does not apply to:
1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.
2. Any of the following entities licensed under title 20:
(a) A service corporation.
(b) An insurer authorized to transact disability insurance.
(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
(d) A health care services organization that does not provide directly for dental services.
3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29, chapter 4, article 11.
4. A facility regulated by the federal government or a state, district or territory of the United States.
5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year from the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
1. Owned by a dentist who is licensed pursuant to this chapter.
2. Regulated by the federal government or a state, district or territory of the United States.
L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:
1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.
2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.
M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.
N. No individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year from the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty per cent.

32-1231. Persons not required to be licensed
This chapter does not prohibit:
1. A dentist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's or dental hygienist's official capacity, within the scope of that person's authority, on persons enlisted in, directly connected with or under the immediate control of some branch of service of the United States.
2. An intern or student of dentistry or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental hygiene school or hospital under supervision of a dentist.
3. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

4. A clinician not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.
5. The state director of dental public health from performing the director's administrative duties as prescribed by law.
6. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.
7. A dentist or dental hygienist who is not practicing on the public at large from practicing in a recognized dental school or a recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card
A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.
B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:
1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements
An applicant for licensure shall have passed all of the following:
1. The written national dental board examinations.
2. The western regional examining board examination within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia, but is not currently licensed to practice dentistry in Arizona.
2. Is of good moral character.
3. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
4. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Meets the applicable requirements of section 32-1232.
7. Meets the requirements of section 32-1233, paragraphs 1 and 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.
8. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section shall not be deemed to require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license; application for previously denied license

A. On written application the board may issue a new license or certificate to a dentist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant

demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:
1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.
2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.
4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.
B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.
C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.
D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.
E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.
F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled licensees; penalties
A. Except as provided in section 32-4301, a license expires on June 30 of every third year. On or before June 30 of every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than six hundred fifty dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a licensee in disabled or retired status.
B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a

written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30.
C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.
D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.
E. Each licensee must provide to the board in writing both of the following:
1. A primary mailing address.
2. The address for each place of practice.
F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days of opening the additional place or places of practice. The board shall impose a penalty of fifty dollars for failure to notify the board.
G. A licensee who is fully retired and a licensee who is permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.
H. A licensee applying for retired or disabled status shall:
1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.
2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.
3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.
I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit
A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:
1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses

the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.
2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.
3. Has been actively engaged in one or more of the following for three years immediately preceding the application:
(a) The practice of dentistry.
(b) An approved dental residency training program.
(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.
4. Is competent and proficient to practice dentistry.
5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit
A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit
A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:
1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:
(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.
(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.
(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee
A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency and either:
1. The other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

(a) A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.
(b) An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.
2. The applicant has acquired a certificate or other evidence of successful completion of a board approved examination not more than five years before submitting an application for licensure pursuant to this chapter.
B. The applicant shall pay a licensure by credential fee of two thousand dollars.

32-1241. Training permits; qualified military health professionals
A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.
B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:
1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.
2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.
3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.
4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.
C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.
D. The qualified military health professional may not practice outside of the professional's scope of practice.
E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional

must submit a written statement from the United States department of defense asking the board for continuation of the training permit.
F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

32-1261. Practicing without license; classification
Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:
1. Practices dentistry or any branch of dentistry as described in section 32-1202.
2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.
3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee
A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.
B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.
C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.
D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.
E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.
F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.
G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.
H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person licensed under this chapter for any of the following reasons:
1. Unprofessional conduct, as defined in section 32-1201.01.
2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.
3. Physical or mental incompetence to practice pursuant to this chapter.
4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.
5. Dental incompetence, as defined in section 32-1201.
B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.
C. The board may take disciplinary action against a business entity registered pursuant to this chapter for unethical conduct.
D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:
1. Failing to report in writing to the board any evidence that a dentist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, denturist or dental hygienist.
2. Falsely reporting to the board that a dentist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, denturist or dental hygienist.
3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.
4. Knowingly filing with the board any application, renewal or other document that contains false information.
5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.
6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:
(a) The board or its employees or agents.
(b) An authorized federal or state official.
7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.
8. Failing to provide patient records pursuant to section 32-1264.
9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
10. Engaging in repeated irregularities in billing.
11. Engaging in the following advertising practices:

(a) The publication or circulation, directly or indirectly, of any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.
(b) Advertising in any manner that tends to deceive or defraud the public.
12. Failing to comply with a board subpoena in a timely manner.
13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.
14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.
15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification
A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:
1. Revocation of license to practice.
2. Suspension of license to practice.
3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.
4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.
5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
6. Imposition of a requirement for restitution of fees to the aggrieved party.
7. Imposition of restrictions on the scope of practice.
8. Imposition of peer review and professional education requirements.
9. Imposition of community service.
B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.
D. Notwithstanding section 32-3214, subsection B, beginning September 1, 2015, all disciplinary and nondisciplinary actions or orders issued by the board against a licensee or certificate holder shall be posted to that licensee or certificate holder's profile on the board's website.
E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the board acts to modify any dentist's prescription writing privileges, it shall immediately notify the state board of pharmacy of the modification.
G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.
H. A licensee or certificate holder shall respond in writing to the board within twenty days after notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions
A. The board on its motion, or the executive director if delegated by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on a complaint if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter occurred more than six years before the complaint is received by the board. The six-year time limitation does not apply to medical malpractice settlements or judgments. At the request of the complainant, the board shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.
B. The board or its designees shall conduct necessary investigations, including interviews between representatives of the board and the licensee with respect to any information obtained by or filed with the board under subsection A of this section. The results of the investigation conducted by a designee shall be forwarded to the board for its review.
C. If, based on the information it receives under subsection A of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of the respondent's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.
D. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board.
E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is insufficient to merit disciplinary action against the licensee, the board may take any of the following actions:
1. Dismiss the complaint.
2. Issue a nondisciplinary letter of concern to the licensee.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
4. Assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars if the complaint involves a licensee's failure to respond to a board subpoena.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is sufficient to merit disciplinary action against the licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.
G. If, after completing a formal interview, the board finds that the information provided under subsection A of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:
1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4 Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.
H. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.
I. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.
J. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.
K. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.
L. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.
M. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:
1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

N. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.
O. If a licensee currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:
1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.
2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.
P. A licensee who files a complaint pursuant to subsection O of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.
Q. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection O of this section.
R. For the purposes of this section:
1. "License" includes a certificate issued pursuant to this chapter.
2. "Licensee" means a dentist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Executive director; complaints; termination; review
A. If delegated by the board, the executive director, with the concurrence of the board's investigative staff, may terminate a complaint if the investigative staff's review indicates the complaint is without merit and that termination is appropriate.
B. The executive director may not terminate a complaint if a court has entered a medical malpractice judgment against a person licensed under this chapter.
C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director terminated pursuant to subsection A since the preceding board meeting.
D. A person who is aggrieved by an action taken by the executive director pursuant to subsection A may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1264. Maintenance of records
A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnosis, evaluation and treatment of each patient of record. A licensee or certificate holder shall maintain records

stored or produced electronically in retrievable paper form. These records shall include:
1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.
B. Records are available for review and for treatment purposes to the dentist, dental hygienist or denturist providing care.
C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board as part of an investigation process.
D. Within fifteen business days of a patient's written request, that patient's dentist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.
E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:
1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.
2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter
Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations
The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification
A person is guilty of a class 5 felony who:
1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.
2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.
4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof
A. A person is guilty of a class 2 misdemeanor who:
1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.
2. Fails to obey a summons or other order regularly and properly issued by the board.
3. Violates any provision of this chapter for which the penalty is not specifically prescribed.
B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief
A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.
B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification
A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:
1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.
B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information
A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.
B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

32-1281. Practicing as dental hygienist; supervision requirements; definitions
A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.
B. A licensed dental hygienist may perform the following:
1. Prophylaxis.
2. Scaling.
3. Closed subgingival curettage.
4. Root planing.
5. Administering local anesthetics and nitrous oxide.
6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.
7. Periodontal screening or assessment.
8. Recording of clinical findings.
9. Compiling case histories.
10. Exposing and processing dental radiographs.
11. All functions authorized and deemed appropriate for dental assistants.
12. Those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.
C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:
1. Apply preventive and therapeutic agents, used in relation to dental hygiene procedures, to the hard and soft tissues.
2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on the use of the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.
D. Except as provided in subsections E and G of this section, a dental hygienist shall practice under the general supervision of a dentist licensed pursuant to this chapter.
E. Dental hygienists shall practice under the direct supervision of a dentist licensed pursuant to this chapter when performing the following procedures and after completing a course of study recognized by the board:
1. Administering local anesthetics. A dental hygienist may administer local anesthetics to a patient of record under general supervision if all of the following are true:
(a) The patient is at least eighteen years of age.
(b) The patient has been examined by a dentist licensed pursuant to this chapter within the previous twelve months.
(c) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.
(d) The supervising dentist who performed the examination has approved the patient for the administration of local anesthetics by a dental hygienist under general supervision and documented this approval in the patient's record.
2. Administering nitrous oxide analgesia.
F. A dental hygienist may perform dental hygiene procedures in the following settings:
1. On a patient of record of a dentist within that dentist's office.
2. Except as prescribed in section 32-1289, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.
G. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.
H. For the purposes of this article:
1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment.
2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.
3. "General supervision" means that the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.
4. "Screening" means the determination of an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement
A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues
The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application
A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall be of good moral character, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of one hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.
C. The board may deny an application for licensure or an application for license renewal if the applicant:
1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements
An applicant for licensure shall have passed all of the following:
1. The national dental hygiene board examination.
2. A clinical examination that is completed within five years preceding filing the application and that is either of the following:
(a) The western regional examining board examination.

(b) An examination administered by another state or testing agency that is substantially equivalent to the requirements of this state, as determined by the board. For the purposes of this subdivision, a clinical examination administered by another state or testing agency is deemed to meet the requirements of this subdivision if the clinical examination satisfies the requirements of section 32-1292.01, subsection A, paragraph 1.
3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning
Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled licensees
A. Except as provided in section 32-4301, a license expires on June 30 of every third year. On or before June 30 of every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than three hundred twenty-five dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired or disabled hygienist.
B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30 of the expiration year.
C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent registrations shall be conducted pursuant to this section.
D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-

year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.
E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.
F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who is permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification
It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school
A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.
B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition
A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship for the delivery of dental hygiene services.
B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section for the delivery of dental hygiene services in an affiliated practice relationship:
1. Hold an active license pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Meet one of the following:
(a) Have held an active license as a dental hygienist for at least five years and be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.
(b) Hold a bachelor's degree in dental hygiene, have held an active license for at least three years and be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years preceding the affiliated practice relationship.
C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and shall include at least the following:
1. An identification of the affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

2. An identification of the services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.
D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:
1. Patients who have been assessed by the dental hygienist shall be directed to the affiliated dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated dentist may make any necessary referrals to other dentists.
2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.
3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months of the initial treatment by the dental hygienist.
4. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.
5. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.
E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:
1. A health care organization or facility.
2. A long-term care facility.
3. A public health agency or institution.
4. A public or private school authority.
5. A government-sponsored program.
6. A private nonprofit or charitable organization.
7. A social service organization or program.
F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting not listed in subsection E of this section.
G. Each dentist in an affiliated practice relationship shall:
1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated dental hygienist during the business hours of the affiliated practice dental hygienist.
2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the dental hygienist in each affiliated practice setting in which the dental hygienist performs dental hygiene services under the affiliated practice relationship.
3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.
4. Not permit the provision of dental hygiene services by more than three affiliated practice dental hygienists at any one time.

H. Each affiliated dental hygienist, when practicing under an affiliated practice relationship:
1. May perform only those duties within the terms of the affiliated practice relationship.
2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated dentist.
3. Is responsible and liable for all services rendered by the dental hygienist under the affiliated practice relationship.
I. The dental hygienist and the affiliated dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental hygienist and the affiliated dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the contract termination date.
J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may perform all dental hygiene procedures authorized by this chapter except for any diagnostic procedures that are required to be performed by a dentist. Procedures identified in section 32-1281, subsection B, paragraphs 4 and 5 are subject to the conditions prescribed in section 32-1281, subsection E, paragraph 1.
K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:
1. Additional continuing education requirements that must be satisfied by a dental hygienist.
2. Additional standards and conditions that may apply to affiliated practice relationships.
3. Compliance with the dental practice act and rules adopted by the board.
L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure
After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties
A. A dental assistant may expose radiographs for dental diagnostic purposes under the general supervision of a dentist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.
B. A dental assistant may polish the natural and restored surfaces of the teeth under the general supervision of a dentist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions on successful completion of a board-approved expanded function dental assistant training program completed at an institution accredited by the commission on dental accreditation of the American dental association and on successful completion of an examination in dental assistant expanded functions that is approved by the board.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.
3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.
D. The board may deny an application for a restricted permit if the applicant:
1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.
3. Knowingly made a false statement in the application.
4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.
F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee
A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency and either:
1. The other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:
(a) A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.
(b) An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.
2. The applicant has acquired a certificate or other evidence of successful completion of a board-approved examination not more than five years before submitting an application for licensure pursuant to this chapter.
B. The applicant shall pay a licensure by credential fee of one thousand dollars.

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.
B. A person is deemed to be practicing denture technology who:
1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.
2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.
C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.
D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association
A. A denturist may practice only in the office of a licensed dentist, denominated as such.
B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.
C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.
D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.
E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.
G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties
A. In addition to other powers and duties prescribed by this chapter, the board shall:
1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.
2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.
3. Investigate charges of misconduct on the part of certified denturists.
4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.
B. The board may:
1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.
2. Hire consultants to assist the board in the performance of its duties.
C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant
A. To be eligible for certification to practice denture technology an applicant shall:
1. Be of good moral character.
2. Hold a high school diploma or its equivalent.
3. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.
4. Pass a board approved examination.
B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension
A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.
B. The board may deny an application for certification or for certification renewal if the applicant:
1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.
2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.
4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination
An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees
The board shall establish and collect fees, not to exceed the following amounts:
1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues
The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties
A. Except as provided in section 32-4301, a certification expires on June 30 of every third year. On or before June 30 of every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than three hundred dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a disabled or retired status.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires on August 30 of the expiration year.
C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent certifications shall be conducted pursuant to this section.
D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.
E. Each certificate holder must provide to the board in writing both of the following:
1. A primary mailing address.
2. The address for each place of practice.
F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days of opening an additional place of practice.
G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a fifty dollar penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure
A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.
B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting

pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.
C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction
A. An injunction shall issue to enjoin the practice of denture technology by any of the following:
1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.
3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.
B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.
C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification
A person is guilty of a class 2 misdemeanor who:
1. Not licensed as a dentist, practices denture technology without certification as provided by this article.
2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.
3. Fails to obey a summons or other order regularly and properly issued by the board.
4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

32-1298. Dispensing of drugs and devices; conditions; definition
A. A dentist may dispense drugs and devices kept by the dentist if:
1. All drugs are dispensed in packages labeled with the following information:
(a) The dispensing dentist's name, address and telephone number.
(b) The date the drug is dispensed.
(c) The patient's name.
(d) The name and strength of the drug, directions for its use and any cautionary statements.
2. The dispensing dentist enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.
B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.
C. Prior to dispensing a drug pursuant to this section the patient shall be given a written prescription on which appears the following statement in bold type:
"This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."
D. A dentist shall dispense for profit only to his own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. In this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.
E. This section shall be enforced by the board which shall establish rules regarding labeling, record keeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to assure compliance with this section and applicable rules.
F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement
A. The board may establish a confidential program for the treatment and rehabilitation of dentists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.
B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:
1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Periodic reports to the board regarding each dentist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.
D. A dentist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.
E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:
1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

32-1299.21. Definitions
In this article, unless the context otherwise requires:
1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions
A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.
B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:
1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the

board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.
9. Maintain a written or electronic record detailing each location where services are provided, including:
(a) The street address of the service location.
(b) The dates of each session.
(c) The number of patients served.
(d) The types of dental services provided and the quantity of each service provided.
10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.
11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.
B. A mobile dental facility or portable dental unit must:
1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.
2. Have ready access to an adequate supply of potable water.
C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients
A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.
B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.
C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:
1. Pertinent contact information as required by this section.
2. The name of the dentist or dental hygienist, or both, who provided services.
3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.
4. If necessary, referral information to another dentist as required by this article.
D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

F-3

ARIZONA STATE BOARD OF NURSING (F-16-1001)
Title 4, Chapter 19, Article 4, Regulation; Article 6, Rules of Practice and Procedure; Article 7, Public Participation Procedures

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-3**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: October 14, 2016

SUBJECT: **ARIZONA STATE BOARD OF NURSING (F-16-1001)**
Title 4, Chapter 19, Article 4, Regulation; Article 6, Rules of Practice and Procedure; Article 7, Public Participation Procedures

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This five-year-review report from the Arizona State Board of Nursing (Board) covers 15 rules in A.A.C. Title 4, Chapter 19, Articles 4, 6, and 7. Article 4 was last amended in July 2012, and provides standards related to scope of practice and other matters related to the Board's regulation of the profession. Article 6 relates to rules of practice and procedure, and was last amended in June 2003. Article 7 relates to public participation in rulemaking, and was last amended in July 2013.

Proposed Action

The Board indicates that it intends to change incorrect statutory references in Sections 401, 402, and 403 through a Notice of Recodification.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

   Yes. The Board has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

   Yes. The Board indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Board has received no written criticisms of these rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Board cites to both general and specific authority for the rules. As general authority, the Board cites to A.R.S. § 32-1606(A)(1), which allows the Board to "[a]dopt and revise rules necessary to carry into effect this chapter [Title 32, Chapter 15, Nursing]."

5. **Has the agency analyzed the rules' consistency with statutes and other rules?**

Yes. The Board indicates that the rules are consistent with statutes and other rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Board indicates that the rules are generally clear, concise, and understandable, with the exception of the incorrect statutory references in Sections 401, 402, and 403.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. The Board indicates that the rules are consistent with, and not more stringent than, the federal Uniform Controlled Substance Act. See 21 U.S.C. § 801 *et seq.*

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

Yes. The Board's rules require issuance of regulatory permits, licenses or agency authorizations.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

The Board indicates that that the licenses**,** certifications, authorizations, and approvals it issues are for "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." <u>See</u> A.R.S. § 41-1001(11).

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

Yes. The Board indicates that, consistent with the action proposed in its 2011 five-year-review report, Section 702 was amended in July 2013.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, the Board indicates that it intends to change incorrect statutory references in Sections 401, 402, and 403 through a Notice of Recodification. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-3**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : October 14, 2016

SUBJECT: **ARIZONA STATE BOARD OF NURSING (F-16-1001)**
Title 4, Chapter 19, Article 4, Regulation; Article 6, Rules of Practice and Procedure; Article 7, Public Participation Procedures

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report.

Updates were made to Article 4, covering regulation, to clarify language and reflect statutory renumbering. The rules are consistent with federal and state law. The Board indicates that there has been no measurable economic impact to the Board or regulated public as a result of these rules.

Updates were made to Article 6 which covers the rules of practice and procedure. All the rules were updated in 2003, and in 2011, the Board allowed 9 rules to expire. The EIS projected no direct economic impacts to the public as a result of Article 6, and minimal costs to the Board. There were 231 hearing or settlement conferences concluded in 2015.

Article 7 covers public participation procedures. There were no direct economic impacts projected and minimal expected impact for the Board itself; since there has been no measurable economic impact to the Board or regulated public as a result of these rules.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Board indicates that all rules included in Articles 4, 6, and 7 impose the least burden and costs to persons regulated by these rules including compliance costs necessary to achieve the underlying regulatory objective.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Doug Ducey
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
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www.azbn.gov

July 25, 2016

RECEIVED
JUL 26 2016
GRRC

Governor's Regulatory Review Council
100 N 15th AV STE 402
Phoenix, AZ 85007

Dear Council:

Enclosed is the 5-year-review of the Arizona State Board of Nursing for Title 4, Chapter 19 Articles 4, 6 and 7. This agency certifies that it is compliant with A.R.S. § 41-1091. Please contact Pamela Randolph at 4747 N. 7th St., Phoenix, AZ, 85014, (602) 771-7803 or prandolph@azbn.gov with any questions or concerns.

Sincerely;

Joey Ridenour

Joey Ridenour, RN, MS, FAAN
Executive Director

Enclosures:
Agency overview
5 year rule review
Copy of rules being reviewed
Last EIS statement of rules being reviewed
Copy of Authorizing Statutes

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 Licensed Nursing Assistants (LNA's).
- Maintain a Registry the 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 in 2015. 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 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 Journal semi-annually
- 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 and Education Committee meetings.
- 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.
- 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.
- 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
- 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 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.

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 2009 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.

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. § 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. <u>Proposed Course of Action</u>

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.

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ARTICLE 4. REGULATION

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

A. A licensed practical nurse shall engage in practical nursing as defined in A.R.S. § 32-1601 only under the supervision of a registered nurse or licensed physician.

B. A LPN's nursing practice is limited to those activities for which the LPN has been prepared through basic practical nursing education in accordance with A.R.S. § 32-1637(1) and those additional skills that are obtained through subsequent nursing education and within the scope of practice of a LPN as determined by the Board.

C. A LPN shall:
   1. Practice within the legal boundaries of practical nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C.19;
   2. Demonstrate honesty and integrity;
   3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and licensed practical nursing standards;
   4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of practical nursing practice.
   5. Maintain competence through ongoing learning and application of knowledge in practical nursing practice.
   6. Protect confidential information unless obligated by law to disclose the information;
   7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(22) and further specified in R4-19-403 and R4-19-814, to the Board;
   8. Respect a client's rights, concerns, decisions, and dignity;
   9. Maintain professional boundaries; and
   10. Respect a client's property and the property of others.

D. In participating in the nursing process and implementing client care across the lifespan, a LPN shall:
   1. Contribute to the assessment of the health status of clients by:
      a. Recognizing client characteristics that may affect the client's health status;
      b. Gathering and recording assessment data;
      c. Demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in client condition in an ongoing manner to the supervising registered nurse or physician;
   2. Contribute to the development and modification of the plan of care by:
      a. Planning episodic nursing care for a client whose condition is stable or predictable;
      b. Assisting the registered nurse or supervising physician in identification of client needs and goals; and
      c. Determining priorities of care together with the supervising registered nurse or physician;
   3. Implement aspects of a client's care consistent with the LPN scope of practice in a timely and accurate manner including:
      a. Following nurse and physician orders and seeking clarification of orders when needed;
      b. Administering treatments, medications, and procedures;
      c. Attending to client and family concerns or requests;
      d. Providing health information to clients as directed by the supervising RN or physician or according to an established educational plan;
      e. Promoting a safe client environment;
      f. Communicating relevant and timely client information with other health team members regarding:
         i. Client status and progress,
         ii. Client response or lack of response to therapies,
         iii. Significant changes in client condition, and
         iv. Client needs and special requests, and
      g. Documenting the nursing care the LPN provided;
   4. Contribute to evaluation of the plan of care by:
      a. Gathering, observing, recording, and communicating client responses to nursing interventions; and
      b. Modifying the plan of care in collaboration with a registered nurse based on an analysis of client responses.

E. A LPN assigns and delegates nursing activities. The LPN shall:
   1. Assign nursing care within the LPN scope of practice to other LPNs;
   2. Delegate nursing tasks to unlicensed assistive personnel (UAPs). In maintaining accountability for the delegation, the LPN shall ensure that the:
      a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
      b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
      c. Results of the task are reasonably predictable;
      d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
      e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
      f. LPN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
      g. LPN provides supervision and feedback to the UAP; and

h. LPN observes and communicates the outcomes of the delegated task.

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

A. A registered nurse (RN) shall perform only those nursing activities for which the RN has been prepared through basic registered nursing education and those additional skills which are obtained through subsequent nursing education and within the scope of practice of an RN as determined by the Board.

B. A RN shall:
   1. Practice within the legal boundaries of registered nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C. 19;
   2. Demonstrate honesty and integrity;
   3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and registered nursing standards;
   4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of registered nursing practice;
   5. Maintain competence through ongoing learning and application of knowledge in registered nursing practice;
   6. Protect confidential information unless obligated by law to disclose the information;
   7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(22) and further specified in R4-19-403 and R4-19-814, to the Board;
   8. Respect a client's rights, concerns, decisions, and dignity;
   9. Maintain professional boundaries;
   10. Respect a client's property and the property of others; and
   11. Advocate on behalf of a client to promote the client's best interest.

C. In utilizing the nursing process to plan and implement nursing care for clients across the life-span, a RN shall:
   1. Conduct a nursing assessment of a client in which the nurse:
      a. Recognizes client characteristics that may affect the client's health status;
      b. Gathers or reviews comprehensive subjective and objective data and detects changes or missing information;
      c. Applies nursing knowledge in the integration of the biological, psychological, and social aspects of the client's condition; and
      d. Demonstrates attentiveness by providing ongoing client surveillance and monitoring;
   2. Use critical thinking and nursing judgment to analyze client assessment data to:
      a. Make independent nursing decisions and formulate nursing diagnoses; and
      b. Determine the clinical implications of client signs, symptoms, and changes, as either expected, unexpected, or emergent situations;
   3. Based on assessment and analysis of client data, plan strategies of nursing care and nursing interventions in which the nurse;
      a. Identifies client needs and goals;
      b. Formulates strategies to meet identified client needs and goals;
      c. Modifies defined strategies to be consistent with the client's overall health care plan; and
      d. Prioritizes strategies based on client needs and goals;
   4. Provide nursing care within the RN scope of practice in which the nurse:
      a. Administers prescribed aspects of care including treatments, therapies, and medications;
      b. Clarifies health care provider orders when needed;
      c. Implements independent nursing activities consistent with the RN scope of practice;
      d. Institutes preventive measures to protect client, others, and self;
      e. Intervenes on behalf of a client when problems are identified;
      f. Promotes a safe client environment;
      g. Attends to client concerns or requests;
      h. Communicates client information to health team members including:
         i. Client concerns and special needs;
         ii. Client status and progress;
         iii. Client response or lack of response to interventions; and
         iv. Significant changes in client condition; and
      i. Documents the nursing care the RN has provided;
   5. Evaluate the impact of nursing care including the:
      a. Client's response to interventions;
      b. Need for alternative interventions;
      c. Need to communicate and consult with other health team members; and
      d. Need to revise the plan of care;
   6. Provide comprehensive nursing and health care education in which the RN:
      a. Assesses and analyzes educational needs of learners;
      b. Plans educational programs based on learning needs and teaching-learning principles;
      c. Ensures implementation of an educational plan either directly or by delegating selected aspects of the education to other qualified persons; and
      d. Evaluates the education to meet the identified goals;

D. A RN assigns and delegates nursing activities. The RN shall:
   1. Assign nursing care within the RN scope of practice to other RNs;
   2. Assign nursing care to a LPN within the LPN scope of practice based on the RN's assessment of the client and the LPN's ability;
   3. Supervise, monitor, and evaluate the care assigned to a LPN; and
   4. Delegate nursing tasks to UAPs. In maintaining accountability for the delegation, an RN shall ensure that the:
      a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
      b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
      c. Results of the task are reasonably predictable;
      d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
      e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
      f. RN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
      g. RN provides supervision and feedback to the UAP; and
      h. RN observes and communicates the outcomes of the delegated task.

R4-19-403. Unprofessional Conduct

For purposes of A.R.S. § 32-1601(22)(d), any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public includes one or more of the following:
   1. A pattern of failure to maintain minimum standards of acceptable and prevailing nursing practice;
   2. Intentionally or negligently causing physical or emotional injury;
   3. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any family member of a patient or resident;
   4. Engaging in sexual conduct with a patient, resident, or any family member of a patient or resident who does not have a pre-existing relationship with the nurse, or any conduct in the work place that a reasonable person would interpret as sexual;
   5. Abandoning or neglecting a patient who requires immediate nursing care without making reasonable arrangement for continuation of care;
   6. Removing a patient's life support system without appropriate medical or legal authorization;
   7. Failing to maintain for a patient record that accurately reflects the nursing assessment, care, treatment, and other nursing services provided to the patient;
   8. Falsifying or making a materially incorrect, inconsistent, or unintelligible entry in any record:
      a. Regarding a patient, health care facility, school, institution, or other work place location; or
      b. Pertaining to obtaining, possessing, or administering any controlled substance as defined in the federal Uniform Controlled Substances Act, 21 U.S.C. 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27;
   9. Failing to take appropriate action to safeguard a patient's welfare or follow policies and procedures of the nurse's employer designed to safeguard the patient;
   10. Failing to take action in a health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice, or to report the incompetent health care practice to employment or licensing authorities;
   11. Failing to report to the Board a licensed nurse whose work history includes conduct, or a pattern of conduct, that leads to or may lead to an adverse patient outcome;
   12. Assuming patient care responsibilities that the nurse lacks the education to perform, for which the nurse has failed to maintain nursing competence, or that are outside the scope of practice of the nurse;
   13. Failing to supervise a person to whom nursing functions are delegated;
   14. Delegating services that require nursing judgment to an unauthorized person;
   15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, employer, co-worker, or member of the public.
   16. Removing, without authorization, a narcotic, drug, controlled substance, supply, equipment, or medical record from any health care facility, school, institution, or other work place location;
   17. A pattern of using or being under the influence of alcohol, drugs, or a similar substance to the extent that judgment may be impaired and nursing practice detrimentally affected, or while on duty in any health care facility, school, institution, or other work location;
   18. Obtaining, possessing, administering, or using any narcotic, controlled substance, or illegal drug in violation of any federal or state criminal law, or in violation of the policy of any health care facility, school, institution, or other work location at which the nurse practices;
   19. Providing or administering any controlled substance or prescription-only drug for other than accepted therapeutic or research purposes;

20. Engaging in fraud, misrepresentation, or deceit in taking a licensing examination or on an initial or renewal application for a license or certificate;
21. Impersonating a nurse licensed or certified under this Chapter;
22. Permitting or allowing another person to use the nurse's license for any purpose;
23. Advertising the practice of nursing with untruthful or misleading statements;
24. Practicing nursing without a current license or while the license is suspended;
25. Failing to:
    a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. § 32-1664, or
    b. Respond to a subpoena issued by the Board;
26. Making a written false or inaccurate statement to the Board or the Board's designee in the course of an investigation;
27. Making a false or misleading statement on a nursing or health care related employment or credential application concerning previous employment, employment experience, education, or credentials;
28. If a licensee or applicant is charged with a felony or a misdemeanor involving conduct that may affect patient safety, failing to notify the Board in writing, as required under A.R.S. § 32-3208, within 10 days of being charged. The licensee or applicant shall include the following in the notification:
    a. Name, address, telephone number, social security number, and license number, if applicable;
    b. Date of the charge; and
    c. Nature of the offense;
29. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The nurse or applicant shall include the following in the notification:
    a. Name, address, telephone number, social security number, and license number, if applicable;
    b. Date of the conviction; and
    c. Nature of the offense;
30. For a registered nurse granted prescribing privileges, any act prohibited under R4-19-511(D); or
31. Practicing in any other manner that gives the Board reasonable cause to believe the health of a patient or the public may be harmed.

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

A. The Board may restore a license to a nurse whose license has been suspended after the period of suspension if the licensee provides written evidence that all requirements or conditions prescribed or ordered in the consent agreement or Board order for suspension have been met to the satisfaction of the Board. The Board may place conditions or limitations on the restored license. The license of a nurse who fails to provide such evidence of fulfilling the requirements or conditions prescribed by the Board shall remain on suspended status until such submission and acceptance by the Board.

B. A person whose nursing license is denied, revoked, or voluntarily surrendered under A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license:
    1. Five years from the date of denial or revocation, or
    2. In accordance with the terms of a voluntary surrender agreement.

C. A person who applies for issuance or re-issuance of a license under the conditions of subsection (B) is subject to the following terms and conditions:
    1. The person shall submit a written application for issuance or re-issuance of the license that contains substantial evidence that the basis for surrendering, denying, or revoking the license has been removed and that the issuance or re-issuance of the license will not be a threat to public health or safety.
    2. Safe practice.
        a. Under A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice nursing.
        b. Under A.R.S. 32-1664(K) the Board may issue subpoenas and compel the attendance of witnesses and the production of records and documentary evidence relevant to the person's ability to safely practice nursing.
    3. After receipt of the application, the information required under subsection (C)(2), and the completion of an investigation, the Board shall place the application on the agenda of a regularly scheduled Board meeting.
    4. After consideration of the application and any information required under subsection (C)(2),the Board may:
        a. Grant the license with or without conditions or limitations;
        b. If other licensure requirements have been met, grant, with or without conditions, a temporary license for the sole purpose of allowing the applicant to successfully complete an approved nurse refresher course; or
        c. Deny the license if the Board determines that licensure might be harmful or dangerous to the health of a patient or the public.
    5. If the Board orders a refresher course described in subsection (C)(4)(b) the Board shall consider the applicant's performance in the approved refresher course and any other evidence, if available, of the applicant's safety to practice, and either deny the license under subsection (C)(4)(c) or grant the license with or without conditions or limitations.
    6. An applicant who is denied issuance or re-issuance of a license shall have 30 days from the date of issuance of the notice of denial from the Board to file a written request for hearing with the Board. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

R4-19-405. Board-ordered Evaluations

A. Under A.R.S. § 32-1664(F), the Board may order a licensee or CNA certificate-holder to undergo an evaluation by an independent qualified evaluator for the purposes of determining the licensee's or certificate holder's safety and competence to practice. Evaluations may be in the areas of:
   1. Nursing knowledge or skills or both;
   2. Mental functioning, including but not limited to neuropsychological evaluation, and other cognition evaluations;
   3. Medical status including but not limited to medical review of drug screen results, chronic pain evaluation, physical examination, and biological testing;
   4. Psychiatric or psychological status including but not limited to substance abuse evaluation, boundary or sexual misconduct evaluations, and psychological testing; or
   5. Other similar evaluations that the Board determines are necessary to evaluate a licensee or certificate holder's ability to safely practice.

B. Before making the decision to order the evaluation, the Board shall review the allegations and investigative findings.

C. The Board retains the discretion to use an evaluator based on the evaluator's licensure history, the Board's past experience with the evaluator, and the quality of the evaluation provided. Before conducting a Board-ordered evaluation, a potential evaluator shall submit documentation that the evaluator:
   1. Possesses expertise and educational credentials in the area that the Board has ordered an evaluation;
   2. Holds a license or certificate in good standing with a licensing or certifying board located in the United States and discloses any past licensure disciplinary actions and criminal history;
   3. Will provide equipment and environmental conditions necessary to conduct a valid evaluation;
   4. Has no current or past treatment, collegial, or social relationship with the licensee or certificate holder, any family member of the licensee or certificate holder, or the licensee's or certificate holder's legal counsel;
   5. Will not enter into a treatment relationship with the licensee or certificate holder unless the relationship is unavoidable due to geographical location or the specific expertise of the evaluator; and
   6. Agrees to keep information provided by the Board under subsection (D) confidential as evidenced by a signed confidentiality agreement provided by the Board.

D. Upon receipt of the evaluator's signed confidentiality agreement, the Board may provide confidential investigative information and documents to the evaluator for the purpose of disclosing the reason for the evaluation, the focus of the evaluation, and the conduct causing the Board to order the evaluation including:
   1. The complaint and all information that has been received during the investigation of the complaint. Documents may include but are not limited to employment records, medical records, arrest records, conviction and sentencing records, excluding FBI fingerprint results, drug screen results, pharmacy profiles, witness statements, past licensure history, and a summary of information obtained during investigative interviews; and
   2. The specific questions for which the Board is seeking answers; and

E. The evaluator shall provide the following information to the Board:
   1. A professional report that is objective, thorough, timely, accurate, and defensible;
   2. Evaluation findings including diagnosis if appropriate and assessment of ability to practice safely;
   3. Recommendations for further evaluation, treatment, and remediation; and
   4. Suggestions for assuring safe practice and compliance with treatment and remediation recommendations, if any.

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

R4-19-601 Expired

R4-19-602. Letter of Concern

A letter of concern issued by the Board is not an appealable agency action as defined in A.R.S. § 41-1092.

R4-19-603. Representation

Any person subject to a hearing may participate in the hearing and may be represented by legal counsel. The Board shall not pay for the person's legal counsel.

R4-19-604. Notice of Hearing; Response

A. The Board, in consultation with the Office of Administrative Hearings, as necessary shall prepare and serve a written notice of hearing on all parties under A.R.S. § 41-1092.05.

B. In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:
   1. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
   2. The name, mailing address, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;
   3. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
   4. The names and mailing addresses of persons to whom notice is being given, including the Attorney General representing the state at the hearing; and
   5. Any other matters relevant to the proceedings.

C. The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:
   1. The party's name, address, and telephone number;

2. Whether the party has legal representation and, if so, the name and address of the attorney;
3. A response to the allegations contained in the notice of hearing; and
4. Any other matters relevant to the proceedings.

R4-19-605. Expired

R4-19-606. Expired

R4-19-607. Recommended Decision

The Administrative Law Judge who conducts the hearing shall make a recommended decision under A.R.S. § 41-1092.08. The Board shall immediately transmit a copy of the recommended decision to each party. Each party may file a memorandum of objections for consideration at the next Board meeting that contains the reasons why the recommended decision is in error or requires correction, and includes appropriate citations to the record, statutes, or rules in support of each objection.

R4-19-608. Rehearing or Review of Decision

A. A party may file a motion for rehearing or review of a decision under A.R.S. §§ 41-1092.09 and 32-1665.
B. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the moving party's rights:
   1. Irregularity in the administrative proceedings of the Board or the administrative law judge, or any order, or abuse of discretion, which deprived the moving party of a fair hearing;
   2. Misconduct of the Board, the administrative law judge, or the prevailing party;
   3. Accident or surprise that could not have been prevented by ordinary prudence;
   4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
   5. Excessive or insufficient penalties;
   6. Error in the admission or exclusion of evidence or other errors of law occurring during the pendency of the proceeding or at the administrative hearing; or
   7. The decision is not justified by the evidence or is contrary to law.
C. Upon the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (B). An order granting a rehearing shall specify with particularity the grounds for the order. Any rehearing shall cover only those specified matters.
D. Within the time limits of A.R.S. § 41-1092.09, the Board may order a rehearing or review on its own initiative for any of the reasons in subsection (B). The Board shall specify the grounds for the rehearing or review in the order.
E. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days of such service, serve opposing affidavits.

R4-19-609. Effectiveness of Orders

A. Except as provided in subsection (B), a decision is final upon expiration of the time for filing a request for rehearing or review or upon denial of such a request, whichever is later. If the Board grants a rehearing or review, the decision is stayed until another order is issued.
B. If it finds that the public health, safety, or welfare imperatively requires emergency action, the Board may proceed under A.R.S. § 41-1092.11(B), ordering summary suspension of a license while other proceedings are pending. If the Board orders a summary suspension, a party shall exhaust the party's administrative remedies by filing a motion for rehearing or review under A.R.S. § 41-1092.09(B) before seeking judicial review of the decision.

R4-19-610. Expired

R4-19-611. Expired

R4-19-612. Renumbered

R4-19-613. Expired

R4-19-614. Renumbered

R4-19-615. Renumbered

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

R4-19-701. Expired

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

A person may petition the Board, requesting the making of a final rule, or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, or objecting to a rule under A.R.S. § 41-1056.01, by filing a petition which contains the following:

1. The name, current address, and telephone number of the person submitting the petition.
2. For the making of a new rule, the specific language of the proposed rule.
3. For amendment of a current rule, the Arizona Administrative Code (A.A.C.) Section number, the Section heading, and the specific language of the current rule, with any language to be deleted stricken through but legible, and any new language underlined.
4. For repeal of a current rule, the A.A.C. Section number and Section heading proposed for repeal.
5. The reasons the rule should be made, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information including:

a. Any statistical data or other justification, with clear references to attached exhibits;
b. An identification of any person or segment of the public that would be affected and how they would be affected; and
c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or written comments offered by the public.

6. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the Board.
7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence of any of the following grounds:
   a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule.
   b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
   c. The Board did not select the alternative that 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.
8. The signature of the person submitting the petition.

R4-19-703. Oral Proceedings

A. The Board shall schedule an oral proceeding on all rulemakings and publish the notice as prescribed in A.R.S. § 41-1023. A Board member, the executive director, or a Board staff member shall serve as presiding officer at an oral proceeding.
B. The Board shall record all oral proceedings either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.
C. The presiding officer shall conduct an oral proceeding according to A.R.S. § 41-1023; and
   1. Request each person in attendance register;
   2. Obtain the following information from any person who intends to speak:
      a. Name and whether the person represents another;
      b. Position with regard to the proposed rule; and
      c. Approximate length of time needed to speak;
   3. Open the proceeding by identifying the subject matter of the rules under consideration and the purpose of the proceeding;
   4. Present the agenda;
   5. Ensure that a Board representative explains the background and general content of the proposed rules;
   6. Limit comments to a reasonable period, and prevent undue repetition of comments;
   7. Announce the address for written public comments and the date and time for the close of record; and
   8. Close the proceeding if there are no persons in attendance within 15 minutes after the posted meeting time.

R4-19-704. Petition for Altered Effective Date

A. A person wishing to alter the effective date of a rule shall file a written petition that contains:
   1. The name, current address, and telephone number of the person submitting the petition;
   2. Identification of the proposed rule;
   3. If the person is petitioning for an immediate effective date, a demonstration that the immediate date is necessary for one or more of the reasons in A.R.S. § 41-1032(A);
   4. If the person is petitioning for a later effective date, more than 60 days after filing of the rule, a demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
   5. The signature of the person submitting the petition.
B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

R4-19-705. Written Criticism of an Existing Rule

A. Any person may file with the Board a written criticism of an existing rule that contains:
   1. The rule addressed, and
   2. The reason the existing rule is inadequate, unduly burdensome, unreasonable, or improper.
B. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

R4-19-706. Renumbered

STATUTES

32-1606. Powers and duties of board

A. The board may:

1. Adopt and revise rules necessary to carry into effect the provisions of this chapter.

2. Publish advisory opinions regarding registered and practical nursing practice and nursing education.

3. Issue limited licenses or certificates if it determines that an applicant or licensee cannot function safely in a specific setting or within the full scope of practice.

4. Refer criminal violations of this chapter to the appropriate law enforcement agency.

5. Establish a confidential program for the monitoring of licensees who are chemically dependent and who enroll in rehabilitation programs that meet the criteria established by the board. The board may take further action if the licensee refuses to enter into a stipulated agreement or fails to comply with its terms. In order to protect the public health and safety, the confidentiality requirements of this paragraph do not apply if the licensee does not comply with the stipulated agreement.

6. On the applicant's or regulated party's request, establish a payment schedule with the applicant or regulated party.

7. Provide education regarding board functions.

8. Collect or assist in the collection of workforce data.

9. Adopt rules for conducting pilot programs consistent with public safety for innovative applications in nursing practice, education and regulation.

10. Grant retirement status on request to retired nurses who are or were licensed under this chapter, who have no open complaint or investigation pending against them and who are not subject to discipline.

11. Accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of the fiscal year.

B. The board shall:

1. Approve regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board.

2. By rule, establish approval and reapproval processes for nursing and nursing assistant training programs that meet the requirements of this chapter and board rules.

3. Prepare and maintain a list of approved nursing programs for the preparation of registered and practical nurses whose graduates are eligible for licensing under this chapter as registered nurses or as practical nurses if they satisfy the other requirements of this chapter and board rules.

4. Examine qualified registered and practical nurse applicants.

5. License and renew the licenses of qualified registered and practical nurse applicants who are not qualified to be licensed by the executive director.

6. Adopt a seal, which the executive director shall keep.

7. Keep a record of all proceedings.

8. For proper cause, deny or rescind approval of a regulated training or educational program for failure to comply with this chapter or the rules of the board.

9. Adopt rules for the approval of credential evaluation services that evaluate the qualifications of applicants who graduated from an international nursing program.

10. Determine and administer appropriate disciplinary action against all regulated parties who are found guilty of violating this chapter or rules adopted by the board.

11. Perform functions necessary to carry out the requirements of the nursing assistant training and competency evaluation program as set forth in the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). These functions shall include:

(a) Testing and certification of nursing assistants.

(b) Maintaining a list of board approved training programs.

(c) Recertifying nursing assistants.

(d) Maintaining a registry of all certified nursing assistants.

(e) Assessing fees.

12. Adopt rules establishing those acts that may be performed by a registered nurse practitioner in collaboration with a licensed physician, except that the board does not have authority to decide scope of practice relating to abortion as defined in section 36-2151.

13. Adopt rules establishing educational requirements for the certification of school nurses.

14. Publish copies of board rules and distribute these copies on request.

15. Require each applicant for initial licensure or certification to submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

16. Require each applicant for initial nursing assistant certification to submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

17. Revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions five or more years before the date of filing an application pursuant to this chapter.

18. Establish standards for approving and reapproving nurse practitioner and clinical nurse specialist programs and provide for surveys of nurse practitioner and clinical nurse specialist programs as it deems necessary.

19. Provide the licensing authorities of health care institutions, facilities and homes any information the board receives regarding practices that place a patient's health at risk.

20. Limit the multistate licensure privilege of any person who holds or applies for a license in this state pursuant to section 32-1668.

21. Adopt rules to establish competency standards for obtaining and maintaining a license.

22. Adopt rules for the qualification and certification of clinical nurse specialists.

23. Adopt rules for approval and reapproval of refresher courses for nurses who are not currently practicing.

24. Maintain a list of approved medication assistant training programs.

25. Test and certify medication assistants.

26. Maintain a registry and disciplinary record of medication assistants who are certified pursuant to this chapter.

C. The board may conduct an investigation on receipt of information that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter. Following the investigation, the board may take disciplinary action pursuant to this chapter.

D. The board may limit, revoke or suspend the privilege of a nurse to practice in this state granted pursuant to section 32-1668.

E. Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license or a certificate.

F. The president or a member of the board designated by the president may administer oaths in transacting the business of the board.

32-1664. Investigation; hearing; notice

A. In connection with an investigation, the board or its duly authorized agents or employees may obtain any documents, reports, records, papers, books and materials, including hospital records, medical staff records and medical staff review committee records, or any other physical evidence that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter:

1. By entering the premises, at any reasonable time, and inspecting and copying materials in the possession of a regulated party that relate to nursing competence, unprofessional conduct or mental or physical ability of a licensee to safely practice nursing.

2. By issuing a subpoena under the board's seal to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence. Within five days after a person is served with a subpoena that person may petition the board to revoke, limit or modify the subpoena. The board shall do so if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required.

3. By submitting a written request for the information.

4. In the case of an applicant's or a regulated party's personal medical records, as defined in section 12-2291, by any means permitted by this section if the board either:

(a) Obtains from the applicant or regulated party, or the health care decision maker of the applicant or regulated party, a written authorization that satisfies the requirements of title 12, chapter 13, article 7.1.

(b) Reasonably believes that the records relate to information already in the board's possession regarding the competence, unprofessional conduct or mental or physical ability of the applicant or regulated party as it pertains to safe practice. If the board adopts a substantive policy statement pursuant to section 41-1091, it may authorize the executive director, or a designee in the absence of the executive director, to make the determination of reasonable belief.

B. A regulated party and a health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the licensee, certificate holder, health care institution or individual may have that appears to show that a regulated party or applicant is, was or may be a threat to the public health or safety.

C. The board retains jurisdiction to proceed with an investigation or a disciplinary proceeding against a regulated party whose license or certificate expired not more than five years before the board initiates the investigation.

D. Any regulated party, health care institution or other person that reports or provides information to the board in good faith is not subject to civil liability. If requested the board shall not disclose the name of the reporter unless the information is essential to proceedings conducted pursuant to this section.

E. Any regulated party or person who is subject to an investigation may obtain representation by counsel.

F. On determination of reasonable cause the board, or if delegated by the board the executive director, may require a licensee, certificate holder or applicant to undergo at the expense of the licensee, certificate holder or applicant any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the person's competence or ability to practice safely. These examinations may include bodily fluid testing and other examinations known to detect the presence of alcohol or drugs. If the executive director orders the licensee, applicant or certificate holder to undertake an examination, assessment or evaluation pursuant to this subsection, and the licensee, certificate holder or applicant fails to affirm to the board in writing within fifteen days after receipt of the notice of the order that the licensee, certificate holder or applicant intends to comply with the order, the executive director shall refer the matter to the board to permit the board to determine whether to issue an order pursuant to this subsection. At each regular meeting of the board the executive director shall report to the board data concerning orders issued by the executive director pursuant to this subsection since the last regular meeting of the board and any other data requested by the board.

G. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the regulated party or applicant, it may take either of the following actions:

1. Dismiss if in the opinion of the board the information is without merit.

2. File a letter of concern if in the opinion of the board there is insufficient evidence to support disciplinary action against the regulated party or applicant but sufficient evidence for the board to notify the regulated party or applicant of its concern.

H. Except as provided pursuant to section 32-1663, subsection F and subsection I of this section, if the investigation in the opinion of the board reveals reasonable grounds to support the charge, the regulated party is entitled to an administrative hearing pursuant to title 41, chapter 6, article 10. If notice of the hearing is served by certified mail, service is complete on the date the notice is placed in the mail.

I. A regulated party shall respond in writing to the board within thirty days after notice of the hearing is served as prescribed in subsection H of this section. The board may consider a regulated party's failure to respond within this time as an admission by default to the allegations stated in the complaint. The board may then take disciplinary actions allowed by this chapter without conducting a hearing.

J. An administrative law judge or a panel of board members may conduct hearings pursuant to this section.

K. In any matters pending before it, the board may issue subpoenas under its seal to compel the attendance of witnesses.

L. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family might be identified or information received and records kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public and are not subject to discovery in civil or criminal proceedings.

M. Hospital records, medical staff records, medical staff review committee records, testimony concerning these records and proceedings related to the creation of these records shall not be available to the public. They shall be kept confidential by the board and shall be subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall use these records and testimony during the course of investigations and proceedings pursuant to this chapter.

N. If the regulated party is found to have committed an act of unprofessional conduct or to have violated this chapter or a rule adopted pursuant to this chapter, the board may take disciplinary action.

O. The board may subsequently issue a denied license or certificate and may reissue a revoked or voluntarily surrendered license or certificate.

P. On application by the board to any superior court judge, a person who without just cause fails to comply with a subpoena issued pursuant to this section may be ordered by the judge to comply with the subpoena and punished by the court for failing to comply. Subpoenas shall be served by regular or certified mail or in the manner required by the Arizona rules of civil procedure.

Q. The board may share investigative information that is confidential under subsections L and M of this section with other state, federal and international health care agencies and with state, federal and international law enforcement authorities if the recipient is subject to confidentiality requirements similar to those established by this section. A disclosure made by the board pursuant to this subsection is not a waiver of the confidentiality requirements established by this section.

32-1665. Rehearing; judicial review

A. Any person aggrieved by an order of the board denying approval or certificate and any regulated party who is aggrieved by a disciplinary order of the board may file a motion for rehearing or review pursuant to title 41, chapter 6, article 10.

B. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

41-1023. Public participation; written statements; oral proceedings

A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.

B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.

C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.

D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.

E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.

F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1032. Effective date of rules

A. A rule filed pursuant to section 41-1031 becomes effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the secretary of state and the time and date are affixed as provided in section 41-1031, unless the rule making agency includes in the preamble information that demonstrates that the rule needs to be effective immediately on filing in the office of the secretary of state and the time and date are affixed as provided in section 41-1031. A rule may only be effective immediately for any of the following reasons:

1. To preserve the public peace, health or safety.

2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.

3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.

4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.

5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

B. Notwithstanding subsection A of this section, a rule making agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.

C. This section does not affect the validity of an existing rule until the new or amended rule that is filed with the secretary of state is effective pursuant to this section.

41-1033. Petition for a rule or review of a practice or policy

A. Any person, in a manner and form prescribed by the agency, may petition an agency requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rule making proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A of this section. The appeal shall be limited to whether an existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

C. If the council receives information indicating that an existing agency practice or substantive policy statement may constitute a rule and at least four council members request the chairperson that the matter be heard in a public meeting:

1. Within ninety days of receipt of the fourth council member request, the council shall determine if the agency practice or substantive policy statement constitutes a rule.

2. Within ten days of receipt of the fourth council member request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Within thirty days of receiving notice from the council, the agency shall submit a statement that addresses whether the existing agency practice or substantive policy statement constitutes a rule.

D. For the purposes of subsection C of this section, the council meeting shall not be held until the expiration of the agency response period prescribed in subsection C, paragraph 3 of this subsection.

E. An agency practice or substantive policy statement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or statement constitutes a rule, the practice or statement shall be considered void.

F. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification

that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:
1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. 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.
8. If applicable, that the agency completed the previous five-year review process.
9. A determination 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.
10. 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.
11. 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.
B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.
C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.
D. The council may review rules outside of the five-year review process if requested by at least four council members.
E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:
1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making

a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.
F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:
1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.
G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.
H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.
I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.
J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:
1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.
3. Notify the agency that the rules have expired and are no longer enforceable.
K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.
L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.
M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.
N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

41-1056.01. Impact statements; appeals
A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on any of the following grounds:
1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.
2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
3. The agency did not select the alternative that 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.
B. The burden of proof is on the petitioner to show that any of the provisions set forth in subsection A of this section are met.

C. Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rule making or to amend or repeal the rule. The agency shall initiate any such rule making within forty-five days after publication of its final decision.
D. Any person who is or may be affected by the agency's final decision on whether to initiate a rule making pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.
E. The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.
F. If the appeal is placed on the council's agenda, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.
G. The council shall require an agency to promptly initiate a rule making or to amend or repeal the rule or the rule package, as prescribed by section 41-1024, subsection E, objected to in the petition if the council finds that any of the provisions set forth in subsection A of this section are met.
H. This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.

41-1092. Definitions

In this article, unless the context otherwise requires:
1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards or rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
(a) The Arizona state board of accountancy.
(b) The state board of appraisal.
(c) The board of barbers.
(d) The board of behavioral health examiners.
(e) The Arizona state boxing and mixed martial arts commission.
(f) The state board of chiropractic examiners.
(g) The board of cosmetology.

(h) The state board of dental examiners.
(i) The state board of funeral directors and embalmers.
(j) The Arizona game and fish commission.
(k) The board of homeopathic and integrated medicine examiners.
(l) The Arizona medical board.
(m) The naturopathic physicians medical board.
(n) The state board of nursing.
(o) The board of examiners of nursing care institution administrators and adult care home managers.
(p) The board of occupational therapy examiners.
(q) The state board of dispensing opticians.
(r) The state board of optometry.
(s) The Arizona board of osteopathic examiners in medicine and surgery.
(t) The Arizona peace officer standards and training board.
(u) The Arizona state board of pharmacy.
(v) The board of physical therapy examiners.
(w) The state board of podiatry examiners.
(x) The state board for private postsecondary education.
(y) The state board of psychologist examiners.
(z) The board of respiratory care examiners.
(aa) The office of pest management.
(bb) The state board of technical registration.
(cc) The Arizona state veterinary medical examining board.
(dd) The acupuncture board of examiners.
(ee) The Arizona regulatory board of physician assistants.
(ff) The board of athletic training.
(gg) The board of massage therapy.

ARIZONA STATE BOARD OF ATHLETIC TRAINING (F-16-1002)
Title 4, Chapter 49, Article 1, General Provisions; Article 4, Athletic Training Practice

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: November 1, 2016
AGENDA ITEM:

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Shama Thathi, Staff Attorney

DATE : October 14, 2016

SUBJECT: **ARIZONA BOARD OF ATHLETIC TRAINING (F-16-1002)**
Title 4, Chapter 49, Article 1, General Provisions; Article 2, Licensure; Article 3, Hearings; Article 4, Athletic Training Practice

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Board of Athletic Training (Board) is to "promote the safe and professional practice of athletic training." Laws 2010, Ch. 14, § 3.

This five-year review report covers 19 rules in A.A.C. Title 4, Chapter 49, Articles 1, 2, 3, and 4, which pertain to the licensing of athletic trainers.

Article Contents

Article 1 contains four rules related to general provisions, addressing definitions, fees, Board operations, and service by the Board.

Article 2 contains eight rules related to licensure of athletic trainers, addressing qualifications for licensure, original license application, renewal of license, reinstatement, license application review, license display, temporary licenses, and continuing education.

Article 3 contains two rules related to hearings, addressing hearing procedures and rehearing or review of decision.

Article 4 contains five rules related to athletic training practice, addressing scope of practice, direct supervision of athletic training students, standards of practice, code of ethics, and direction of a licensed physician.

Year that Each Rule was Last Amended or Newly Made

March 7, 2001:	R4-49-104, R4-49-206, R4-49-301, R4-49-402
November 25, 2002:	R4-49-405
April 6, 2013:	R4-49-101, R4-49-102, R4-49-103, R4-49-201, R4-49-202, R4-49-203, R4-49-204, R4-49-205, R4-49-207, R4-49-208, R4-49-302, R4-49-401, R4-49-403, R4-49-404

Proposed Action

The Board plans to amend R4-49-204, R4-49-403, and R4-49-404 to address issues identified in the report. Subject to the approval for the moratorium, the Board intends to submit a rulemaking to the Council by June 2017.

Summary of Reasons for the Proposed Action

The Board indicates that the rules need to be amended to improve effectiveness, and to make the rules more clear, concise, and understandable.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

The Board has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Board indicates that the rules are effective in achieving their objectives with one exception. The current rule, R4-49-204, requires the former licensee to attest, in writing, that the licensee has not practiced athletic training in Arizona during the time the license was expired. The Board plans to add a requirement that the former licensee's employer must also provide a similar statement. The Board indicates that it has had problems in the past with former licensees providing statements that they had not practiced with an expired license when, in fact, they had. The supplementary requirement would provide an additional layer of protection from unlicensed athletic trainers providing services.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Board indicates that it did not receive any written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. As general authority, the Board cites to A.R.S. §32-4103(A)(7), under which the Board shall "[a]dopt and revise rules to enforce [A.R.S. Title 32, Chapter 41, Athletic Trainers]."

The Board also cites specific authority relating to continuing education and temporary licenses. See A.R.S. §§ 32-4103(D)(1) and 32-4127(D), respectively. The Board's fees are authorized under A.R.S. § 32-4126.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Board indicates that the rules are consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board indicates that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Board indicates that the rules are clear, concise, and understandable with a few exceptions. R4-49-403 should be amended to update the publication date of the Board of Certification Standards of Professional Practice. In addition, the Board plans to amend R4-49-404 to update the publication date of the National Athletic Trainers' Association (NATA) Code of Ethics, define NATA, and change the address for the NATA.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. The Board indicates that there is no corresponding federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Yes. The rules relate to licensure of athletic trainers.

b. <u>It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?</u>

Yes. The Board indicates that it is in compliance with the general permit requirements of A.R.S. § 41-1037. The license or temporary license issued to athletic trainer falls within the definition of "general permit" in A.R.S. § 41-1001.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

Yes. In the previous five-year-review report approved by Council in October 2011, the Board planned to amend five rules and add two rules. The Board indicates that it completed the proposed course of action in March 2013.

11. <u>Has the agency included a proposed course of action?</u>

Yes. As mentioned above, the Board plans to amend three rules and submit a rulemaking to the Council by June 2017.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-4**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE : October 14, 2016

SUBJECT: **ARIZONA BOARD OF ATHLETIC TRAINING (F-16-1002)**
Title 4, Chapter 49, Article 1, General Provisions; Article 2, Licensure; Article 3, Hearings; Article 4, Athletic Training Practice

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 1 through 4 rules contained in the five-year-review report.

The rules in Articles 1 through 4 establish 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 athletic trainers.

When the Board of Athletic Training's last five-year review was conducted in 2011, the Board licensed 582 athletic trainers. In 2016, 649 athletic trainers were licensed by the Board; an increase of 11.5% from 2011 to 2016. Additionally, the Board's budget for fiscal year 2016 was $118,900. This represents a 2.4% increase over FY 2011 budget levels of $116,100.

<u>2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Board has determined that the rules in Articles 1 through 4 impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety. No additional costs have been incurred as a result of these rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA BOARD OF ATHLETIC TRAINING
4205 N. 7th Avenue, Suite 305
Phoenix, Arizona 85013
(602) 589-8353
www.at.az.gov

July 29, 2016

Ms. Nicole A. Ong, Chairwoman
Governor's Regulatory Review Council
100 North Fifteenth Avenue, Suite 402
Phoenix, AZ 85007

Re: Five-Year-Review Report Title 4, Chapter 49, Articles 1 through 4

Dear Ms. Ong:

In compliance with A.R.S. § 41-1056, the Arizona Board of Athletic Training submits a report of its five-year review of Title 4, Chapter 49, Articles 1 through 4 of the Arizona Administrative Code.

The Arizona Board of Athletic Training is in compliance with A.R.S. § 41-1091. A binder containing a directory summarizing all currently applicable rules and substantive policy statements, a complete copy of rules, and substantive policy statements is available for public inspection in the Board office at all times.

No rules have been omitted from review with the intention of letting them expire.

If you have any questions regarding this five-year report or you need more information prior to the Council meeting when the report will be considered, please contact Karen Whiteford, Executive Director, at (602)589-8353. I will be present at the Council meeting to answer any questions that the Council members may have about this five-year review report.

Best Regards,

Karen Whiteford

Karen Whiteford
Executive Director

Enclosures

Arizona Board of Athletic Training
Five-Year-Review Report
Title 4, Chapter 49, 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 athletic trainers. These rules were adopted in 2001 and include R4-49-101 through R2-49-405, inclusive.

The Board conducted a five-year review of these rules that was approved by GRRC Council on October 4, 2011. The five-year review approved by Council during that time concluded that six rules must be amended and two new rule sections must be added to reflect changes required for laws (HB 2142 and SB 1326) passed in 2010. Additionally, the five-year review approved by GRRC Council in 2011 identified several rules that were to be amended as a result of the 2006 five-year review, but were not amended due to a rulemaking moratorium.

The rules affected are R4-49-101, R4-49-102, R4-49-103, R4-49-201, R4-49-202, R4-49-203, R4-49-204, R4-49-205, R4-49-302, R4-49-401, R4-49-403, and R4-49-404. The additional rules required were R4-49-207 Temporary License and R4-40-208 Continuing Education.

The Board was granted an exemption to the rulemaking moratorium in October 2011 to allow changes to and additions of the rules noted above. The Notice of Final Rulemaking was published March 1, 2013.

1. Authorization of rules by existing statutes:

A.R.S. §32-4103 (A)(7) – Provides general authority for the rules
A.R.S. §32-4103(B) – Provides specific authority for the rules
A.R.S. §32-4103(C) – Provides specific authority for the rules
A.R.S. §32-4103(D)(1) – Provides specific authority for the rules
A.R.S. §32-4126 – Provides specific authority to charge fees
A.R.S. §32-4127(D) – Provides specific authority for the rules

2. Objective of the rules:

The objective of the rules is to establish the Board's policies and procedures for regulating the Athletic Training (AT) 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 athletic trainers.

ARTICLE 1. GENERAL PROVISIONS

R4-49-101 Definitions
R4-49-101 informs the protected and the regulated public of the definitions used throughout the rules.

R4-49-102 Fees
R4-49-102 establishes fees for AT licenses and the form of acceptable payment.

R4-49-103 Board Operations
R4-49-103 informs the protected and the regulated public of the Board's administrative processes.

R4-49-104 Service by the Board
R4-49-104 informs the protected and the regulated public of the Board's process for service of official Board decisions, orders, subpoenas and notices.

ARTICLE 2. LICENSURE

R4-49-201 Qualifications for Licensure
R4-49-201 informs the protected and the regulated public of the necessary information in applying for a license.

R4-49-202 Original License Application
R4-49-202 informs the protected and the regulated public of what information must be supplied to the Board when applying for an initial license.

R4-49-203 Renewal of License
R4-49-302 informs the protected and the regulated public of what information must be supplied to the Board when applying for a renewal license.

R4-49-204 Expired License: Reinstatement
R4-49-204 informs the protected and the regulated public when a license has expired and explains the process for reinstatement.

R4-49-205 License Application Review
R4-49-205 informs the protected and the regulated public of the steps involved and time frames required to process a license.

R4-49-206 License Display
R4-49-206 informs the protected and the regulated public of the requirements for display of license in a conspicuous place.

R4-49-207 Temporary Licenses
R4-49-207 informs the protected and the regulated public of the requirements for obtaining a temporary license.

R4-49-208 Continuing Education
R4-49-208 informs the protected and the continuing education requirements for license renewal.

ARTICLE 3. HEARINGS

R4-49-301 Hearing Procedures
R4-49-301 informs the protected and the regulated public of the authorities by which the Board will conduct hearings.

R4-49-302 Rehearing or Review of Decision

R4-49-302 informs the protected and the regulated public of the process of requesting a rehearing of a Board decision.

ARTICLE 4. ATHLETIC TRAINING PRACTICE

R4-49-401 Scope of Practice
R4-49-401 informs the protected and the regulated public that the Board has adopted the National Athletic Trainers' Association competencies contained in the Athletic Training Educational Competencies (5th Edition), published in 2011, as the Scope of Practice for athletic trainers licensed in Arizona and where to obtain the publication.

R4-49-402 Direct Supervision of Athletic Training Students
R4-49-402 informs the protected and the regulated public of the number of athletic training students a licensed athletic trainer may supervise and that the licensed athletic trainer is responsible for any treatment provided by a student.

R4-49-403 Standards of Practice
R4-49-403 informs the protected and the regulated public that the Board has adopted the Board of Certification Standards of Professional Practice, dated January 1, 2006, as the standards of practice for athletic trainers licensed in Arizona and where to obtain the publication.

R4-49-404 Code of Ethics
R4-49-404 informs the protected and the regulated public that the Board has adopted the NATA Code of Ethics, dated September 28, 2005, for athletic trainers licensed in Arizona and where to obtain the publication.

R4-49-405 Direction of a Licensed Physician
R4-49-405 informs the protected and the regulated public of who is defined as a licensed physician and that a licensee must have treatment guidelines approved by a licensed physician.

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

The rules in Article 1, General Provisions, effectively achieve their objectives. The rules in Article 2, Licensure, effectively achieve their objectives. The rules in Article 3, Hearings, effectively achieve their objectives. The rules in Article 4, Athletic Training Practice, effectively achieve their 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, Article 10. To the extent necessary, the Arizona Board of Athletic Training'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 Athletic Training rules must be consistent.

The rules in Articles 1 through 4 are consistent with Arizona Revised Statutes Title 32-Professions and Occupations, A.R.S Title 32, Chapter 41 Articles 1-3.

5. Status of enforcement of the rules:

The Arizona Board of Athletic Training enforces all the following rules as they are written: R4-49-101, R4-49-102, R4-49-103, R4-49-104, R4-49-201, R4-49-202, R4-49-203, R4-49-204, R4-49-205, R4-49-206, R4-49-207, R4-49-208, R4-49-301, R4-49-302, R4-49-401, R4-49-402, R4-49-403, R4-49-404, and R4-493-405.

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 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 Board's current EIS was adopted in 2012, as part of the process of amending and adding rules identified in the 2011 Five-Year Review. The economic impact of the rules has not differed from that projected in 2012.

The Board will be amending its rules to include the updated publication date of the Board of Certification Standards of Professional Practice. The proposed rule amendments are necessary to bring the rules in alignment with the Board of Certification's more detailed Standards of Professional Practice which are scheduled to become effective September 1, 2016. The amended rule affects the Board, a licensee, business that employs athletic trainers, provider of continuing education, and consumers of a licensee's services.

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

In 2011, when the Board's last five-year review was conducted, the Board licensed 582 athletic trainers. Currently, 649 athletic trainers are licensed by the Board or an 11.5% increase from 2011 to 2016. Additionally, the Board's budget for fiscal year 2011 was $116,100 compared to the Board's current budget of $118,900 or a 2.4% increase over 2011.

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 2011 five-year review that the Board would amend six rules and add two new rule sections to reflect changes required for laws (HB 2142 and SB 1326) passed in 2010. Additionally, the five-year review approved by GRRC Council in 2011 identified several rules that were to be amended as a result of the 2006 five-year rule review, but were not amended due to a rulemaking moratorium. The Board was granted an exemption to the rulemaking moratorium in October 2011 to allow changes and additions to the rules identified in the 2006 and 2013 five-year rule reviews. The Notice of Final Rulemaking was published March 1, 2013.

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 the rules impose the least burden and costs to the community regulated by the rules. The Board has made 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. 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:

The Board believes that the rules in Articles 1 through 4 are not more stringent than corresponding federal law.

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

The Board believes that the rules in Articles 1 through 4 that were amended after July 29, 2010, are in compliance with A.R.S. § 41-1037.

13. Course of Action:

a. The Board plans to amend one of its rules to update the publication date of the Board of Certification Standards of Professional Practice. These changes to the Standards include, but are not limited to, the addition of the following items:
   - 1.6 Does not engage in intimate or sexual activity with a patient and/or the parent/guardian of a minor patient
   - 1.7 Informs the patient and or parent/guardian of a minor patient of any risks involved in the treatment plant
   - 1.7.1 Does not make unsupported claims about the safety or efficacy of treatment
   - 3.4 Provides athletic training services only when there is a reasonable expectation that an individual will benefit from such services
   - 3.5.1 Provides only those services for which they are prepared and permitted to perform by applicable local, state and/or federal rules, requirements, regulations and/or laws related to the practice of athletic training
   - 3.6 Does not guarantee the results of any athletic training service

   Specifically, the Board plans to amend the following rule:

   R4-49-403 Standards of Practice – A licensee shall comply with the standards of professional practice contained in Board of Certification Standards of Professional Practice,

dated January 1, 2006 and published by the Board of Certification, Inc., 1415 Harney Street, Suite 200, Omaha, Nebraska 68102, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

b. The Board plants to amend one of its rules to update the publication date of the NATA Code of Ethics, define that NATA is the National Athletic Trainers' Association, and change the address for the NATA. The changes to the Code of Ethics include, but are not limited to the following:
   - Item 1.3 adds verbiage which prohibits the NATA member from releasing confidential information using social media.
   - Items 2.1 and 3.4 add a requirement for the NATA member to comply with state practice acts
   - Item 2.4 requires the NATA member to cooperate in ethics investigations by the NATA, state professional licensing/regulatory boards, etc.

   Specifically, the Board plans to amend the following rule:

   R4-49-404. Code of Ethics – A licensee shall work within the code of ethics for athletic trainers as stated in A.R.S. § 32-4153(10) and the NATA Code of Ethics, dated September 28, 2005 and published by the National Athletic Trainers' Association, 2952 Stemmons Freeway #200, Dallas, TX 75247, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

c. The Board plants to add an item to a rule which would require an applicant applying for reinstatement to provide a statement from his/her employer as to whether the applicant has practiced or will practice on an expired license.

   Specifically, the Board plans to add item B.5. to R4-49-204 – Expired License: Reinstatement

   R4-49-204. Expired License: Reinstatement
   A. A license expires if it is not renewed on or before the renewal date.
   B. An expired license may be reinstated within three years of expiration of the license if:
      1. The former licensee has: a. Current certification from the BOC as an athletic trainer, or b. Proof of continuing education to meet the requirements for the time not licensed;
      2. A renewal application is submitted under R4-49-203;
      3. The license reinstatement fee and renewal fee are paid under R4-49-102; and
      4. The former licensee attests, in writing, that the licensee has not practiced athletic training in Arizona during the time the license was expired.
      5. **The former licensee's employer attests, in writing, on letterhead, that the licensee has not practiced athletic training in Arizona during the time the license was expired.**

The Board will continue to work with the public to ensure that these rules not only meet the objectives of the Department, but also consider the needs of licensees who require licenses to carry out the practice of athletic training. The Board will continue to review these rules while closely monitoring both state and federal legislation. Subject to the rulemaking moratorium, the Board plans to amend the rules by June 2017.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 49. BOARD OF ATHLETIC TRAINING

Editor's Note: 4 A.A.C. 49 was adopted to enforce Arizona Revised Statutes, Title 32, Chapter 41. The rules in this Chapter were adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-49-101 through R4-49-104, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

Section
R4-49-101. Definitions
R4-49-102. Fees
R4-49-103. Board Operations
R4-49-104. Service by the Board

ARTICLE 2. LICENSURE

Article 2, consisting of Sections R4-49-201 through R4-49-206, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

Section
R4-49-201. Qualifications for Licensure
R4-49-202. Original License Application
R4-49-203. Renewal of License
R4-49-204. Expired License: Reinstatement
R4-49-205. License Application Review
R4-49-206. License Display
R4-49-207. Temporary Licenses
R4-49-208. Continuing Education

ARTICLE 3. HEARINGS

Article 3, consisting of Sections R4-49-301 through R4-49-302, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

Section
R4-49-301. Hearing Procedures
R4-49-302. Rehearing or Review of Decision

ARTICLE 4. ATHLETIC TRAINING PRACTICE

Article 4, consisting of Sections R4-49-401 through R4-49-404, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

Section
R4-49-401. Scope of Practice
R4-49-402. Direct Supervision of Athletic Training Students
R4-49-403. Standards of Practice
R4-49-404. Code of Ethics
R4-49-405. Direction of a Licensed Physician

ARTICLE 1. GENERAL PROVISIONS

R4-49-101. Definitions

In addition to the definitions at A.R.S. § 32-4101, in this Chapter:

1. "Accredited educational institution" means an educational institution accredited by the CAATE or its predecessors.
2. "Active pursuit of athletic training certification" means:
   a. Current enrollment in an educational program to fulfill academic requirements for athletic training certification; or
   b. Current participation in fieldwork experience to fulfill the fieldwork experience requirements for athletic training certification.
3. "Applicant" means an individual requesting an original license, a temporary license, a renewal license, or a reinstated license from the Board.
4. "Application packet" means the forms and documents the Board requires an applicant to submit or to be submitted on an applicant's behalf.
5. "Approved national athletic training certifying agency" means the BOC.

6. "Approved provider" means an educational provider approved by the BOC.
7. "Athlete" means:
   a. A person participating in, or preparing for, a competitive team or individual sport; or
   b. A member of a professional athletic team.
8. "Athletic training certification" means current athletic trainer certification provided by the BOC.
9. "BOC" means the Board of Certification, Inc.
10. "CAATE" means the Commission on Accreditation of Athletic Training Education.
11. "Completed application" means an application packet that is correctly completed and includes the verified signature of the applicant, applicable fees, and all required documentation.
12. "Confidential record" means:
    a. Minutes of executive sessions except as provided in A.R.S. § 38-431.03(B);
    b. A record classified as confidential by another law, rule, or regulation applicable to the Board;
    c. College or university grades, medical or mental health information, and professional references of an applicant except that the applicant who is the subject of the information may view or copy the record;
    d. An applicant's driver license number, Social Security number, home address, home phone number, personal e-mail address, place of birth, and birth date;
    e. A record for which the Board determines that public disclosure will have a significant adverse effect on the Board's ability to perform its duties or will otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the record no longer exists, the Board shall make the record available for public inspection and copying; and
    f. Information regarding a complaint under investigation except as provided in A.R.S. § 41-1010.
13. "Contact hour" means an actual clock hour spent in direct participation in a structured education format as a learner. One CEU is equivalent to one contact hour.
14. "Continuing education" means a structured learning process required of a licensee to maintain licensure that includes study in the areas of athletic training practice through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in athletic training.
15. "Continuing education unit" or "CEU" means one contact hour of participation in a continuing education course.
16. "Day" means a calendar day.
17. In addition to A.R.S. § 32-4101(7),"Direct supervision" means:
    a. The athletic trainer can intervene on behalf of the patient, and
    b. The athletic trainer reviews the performance of the athletic training student every grading period.
18. "Facility of practice" means the principal location of an agency or organization where an athletic trainer provides athletic training services but excludes areas used predominantly for athletic sport or competition.
19. "Good moral character" means the applicant has not taken any action that is grounds for disciplinary action against a licensee under A.R.S.§ 32-4153.
20. "Good standing" means that an athletic trainer in this state or any other jurisdiction:
    a. Has a current license;
    b. Is not presently subject to any disciplinary action, consent order, or settlement agreement; and
    c. Has no disciplinary action, consent order, or settlement agreement pending before any licensure Board or court.
21. "Licensee" means a person licensed in Arizona as an athletic trainer.
22. "National examination" means the national athletic training certification examination provided by the BOC.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-102. Fees

A. An applicant shall pay the following:
1. Application for original license: $300;
2. Renewal of license: $175;
3. Reinstatement of a license: $200. This is in addition to the renewal license fee;
4. Duplicate license: $25.

B. The Board shall charge 25¢ per page for copies of records, documents, letters, minutes, applications, and files or appropriate charges prescribed in A.R.S. § 39-121.03(A).

C. All fees are nonrefundable except as provided in A.R.S. § 41-1077.

D. An applicant shall pay original license fees and returned or insufficient fund replacement checks in cash or by cashier's check, money order, or credit card.

E. An applicant shall pay renewal, reinstatement, and duplicate license fees in cash or by cashier's check, money order, personal check, or credit card.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-103. Board Operations

A. The Board shall meet annually in January. The Board shall hold additional meetings as required by A.R.S. § 32-4103(A)(8) and as necessary to conduct the Board's business. Meetings may be convened by the Chair, a majority vote of the Board members, or upon written request to the Chair from at least two Board members.

B. All Board records shall be open to public inspection and copying, except confidential records. Records may be inspected at the Board Office Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays or other days in which the office is required to be closed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-104. Service by the Board

The Board shall serve any Board decision, order, or subpoena by personal service or by mailing a copy by certified mail, return receipt requested. Service by certified mail shall be made to the last address of record filed with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is by certified mail, service is complete upon mailing.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 2. LICENSURE

R4-49-201. Qualifications for Licensure

To qualify for an athletic trainer license a person shall:

1. Meet the requirements in A.R.S. § 32-4122,
2. Complete an athletic training education program, accredited by CAATE or its predecessors
, and
3. Pass the national examination.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-202. Original License Application

A. An applicant for an athletic trainer license shall submit an original application that includes the following information:

1. Applicant's full name;
2. Applicant's name as it will appear on the license;
3. Other names used;
4. Social Security number;
5. Residence address and telephone number;
6. Date of birth;
7. Applicant's national athletic training certificate number and date of certification;
8. Post-secondary educational institutions attended;
9. Professional experience, field work, or both within the last five years;
10. Employer's name, address, and telephone number;
11. Current or previous athletic training or other professional license or certification numbers from other states and foreign countries and the status of each license or certification;
12. Current and previous arrest, criminal conviction, and disciplinary actions from any licensing agency or court;
13. E-mail address, if available;
14. Statement of citizenship or alien status and submittal of documents showing the individual's presence in the United States is authorized under federal law;
15. Signature and date with an attestation regarding the truthfulness of the information provided.

B. An applicant shall submit or cause to be submitted on the applicant's behalf the following:

1. Application fee,
2. Written verification from the BOC of athletic training certification or a passing score on the national examination as required by R4-49-201,
3. Official academic transcripts from institutions listed on the application,
4. Two letters attesting to the applicant's good moral character from health care providers licensed pursuant to A.R.S § 32-4101 et seq. and
5. A readable fingerprint card and associated fee for submission to the Department of Public Safety or current fingerprint clearance card issued by the Department of Public Safety.

C. An original license shall expire one year from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

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R4-49-203. Renewal of License

A. To renew a license, a licensee shall submit a renewal application and a renewal fee.

B. A licensee shall sign the renewal application and include the following:
1. Applicant's full name;
2. Applicant's name as it will appear on the renewal license;
3. Residence address and telephone number;
4. Current Arizona Board of Athletic Training license number;
5. Arrest, criminal conviction, and disciplinary actions from any licensing agency or court since last license renewal;
6. Social Security number;
7. Employer's name, address, and telephone number;
8. Attestation of compliance with the continuing education requirements listed in R4-49-208;
9. A readable fingerprint card and associated fee for submission to the Department of Public Safety or a current fingerprint clearance card issued by the Department of Public Safety if the previous submission is at least five years old or the Department of Public Safety clearance card will expire within the term of the renewed license;
10. Statement of lawful presence in the United States or submittal of required documents showing lawful presence; and
11. Signature and date with an attestation regarding the truthfulness of the information provided.

C. A licensee shall submit the renewal application and fees to the Board office at least 14 days prior to the expiration date of the current license.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-204. Expired License: Reinstatement

A. A license expires if it is not renewed on or before the renewal date.

B. An expired license may be reinstated within three years of expiration of the license if:
1. The former licensee has:
   a. Current certification from the BOC as an athletic trainer, or
   b. Proof of continuing education to meet the requirements for the time not licensed;
2. A renewal application is submitted under R4-49-203;
3. The license reinstatement fee and renewal fee are paid under R4-49-102; and
4. The former licensee attests, in writing, that the licensee has not practiced athletic training in Arizona during the time the license was expired.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-205. License Application Review

A. For an original license, renewal license, or reinstated license as an athletic trainer the time-frames required by A.R.S. § 41-1072 et seq. are:
1. Overall time-frame: 120 days
2. Administrative completeness review time-frame: 60 days
3. Substantive review time-frame: 60 days

B. An administratively complete application for licensure consists of all the information and documents listed in:
1. R4-49-202 for an original athletic training license,
2. R4-49-203 for renewal of an athletic training license, and
3. R4-49-204 for reinstatement of an athletic training license.

C. The administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Board receives an application.
1. If the application is not administratively complete when received, the Board shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
2. The applicant shall submit to the Board the missing documents and information within 120 days from the date of the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
3. If the applicant fails to provide the missing documents and information within the 120 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be licensed shall apply again under R4-49-202, R4-49-203, or R4-49-204.
4. When the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.

D. The substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information but the Board may make supplemental requests for additional information by written agreement with the applicant.

2. The applicant shall submit to the Board the additional information identified in the request for additional information within 60 days from the date of the request for additional information. The time-frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
3. Unless an applicant requests that the Board deny a license within the 60-day period in subsection (D)(2), the Board shall close the file of an applicant who fails to submit the additional information within the 60 days provided. An applicant whose file is closed and who wants to be licensed shall apply again under R4-49-202, R4-49-203, or R4-49-204.
4. When the substantive review is complete, the Board shall inform the applicant in writing of its decision to grant or deny a license to the applicant.
   a. The Board shall deny a license if it determines that the applicant does not meet all substantive criteria for licensure required by statute and rule.
   b. The Board shall grant a license if it determines that the applicant meets all substantive criteria for licensure required by statute and rule.
   c. If the Board denies a license, the applicant may, within 30 days of service of the notice of denial, make a written request for a hearing to review the Board's decision. The hearing shall be conducted under A.R.S. Title 41, Chapter 6, Article 10.
   d. In a hearing conducted on a denial of a license, the applicant has the burden of proof.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-206. License Display

A licensee shall display the licensee's current license issued by the Board in a conspicuous place in each facility of practice. A licensee may use a photocopy of the license to satisfy this requirement.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

R4-49-207. Temporary Licenses

A. Subject to subsection (B), the executive director may issue a temporary license to an applicant for a license if the applicant meets the requirements of A.R.S. § 32-4127.

B. The executive director shall not issue a temporary license without prior Board approval if one or more of the following apply:
1. The applicant is the subject of a pending complaint before the Board or any other state health care regulatory entity.
2. The applicant has had a license or certificate to practice a health care profession suspended or revoked by another state health care regulatory entity.
3. The applicant has a criminal history or history of disciplinary action by a state health care regulatory entity.
4. The applicant has previously been denied an application for an athletic training license.

C. A temporary licensee is subject to disciplinary action by the Board pursuant to A.R.S. § 32-4153.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-208. Continuing Education

A. As a prerequisite to renewal, a licensee shall complete at least 15 CEUs in the area of athletic training since the issuance of the previous license.

B. A licensee shall:
1. Maintain continuing education records that:
   a. Verify the continuing education activities the licensee completed during the preceding two years, and
   b. Consists of each statement of credit or certificate issued by an approved provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the licensee completed during the renewal on the renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

C. Licensees may provide proof of continued BOC certification to meet the CEU requirements of this Section.

D. All licensees shall complete a course approved by the Board on the athletic training statutes and this Chapter within one year of obtaining an original license or license renewal. This course need only be taken one time.

E. In addition to the CEU requirements above, all licensees shall maintain current certification in cardiopulmonary resuscitation from a provider that is approved by the Board.

F. Upon written request to the Board 30 days prior to the license renewal date, the Board may waive a licensee's continuing education requirement in the case of extreme hardship including, but not limited to, mental or physical illness, disability, absence from the United States, service in the United States Armed Forces or other extraordinary circumstances as determined by the Board.

G. The Board may audit a licensee's continuing education records and suspend or revoke, according to A.R.S. §§ 32-4155 and 32-4156, the license of a licensee who fails to comply with continuing education completion, recording, or reporting requirements of this Section.

H. A licensee who is aggrieved by a decision of the Board concerning continuing education units may request an administrative hearing before the Board.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

ARTICLE 3. HEARINGS

R4-49-301. Hearing Procedures

The Board shall conduct all hearings held under A.R.S. § 32-4154 et seq. in accordance with A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

R4-49-302. Rehearing or Review of Decision

A. Any party in a contested case or appealable agency action before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon personal service or five days after the date the decision is mailed by certified mail to the party's last known address of record. The party shall attach a supporting memorandum specifying the grounds for the motion.

B. A party is required to file a motion with the Board for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the proceedings;
7. Evidence that the Board's decision was a result of passion or prejudice; or
8. Findings of fact or decision that was not justified by the evidence or was contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

G. Not later than 10 days after the date of a decision the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

ARTICLE 4. ATHLETIC TRAINING PRACTICE

R4-49-401. Scope of Practice

A licensee shall work within the scope of practice for athletic trainers stated in the definition of "athletic training" at A.R.S. § 32-4101(4) and the competencies contained in the Athletic Training Educational Competencies (5th Edition), published in 2011 by the National Athletic Trainers' Association, Inc., 2952 Stemmons Freeway #200, Dallas, TX 75247, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-402. Direct Supervision of Athletic Training Students

A. A licensee may provide direct supervision to an athletic training student who is actively pursuing athletic training certification.

B. A licensee shall not provide direct supervision to more than eight athletic training students at one time.

C. A licensee is responsible for any treatment related to athletic training performed by an athletic training student who is under the licensee's direct supervision.

D. Only a licensed athletic trainer is allowed to prepare an initial treatment plan, initiate or re-evaluate a treatment plan, or authorize in writing a change to a treatment plan.

Board of Athletic Training

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

R4-49-403. Standards of Practice

A licensee shall comply with the standards of professional practice contained in Board of Certification Standards of Professional Practice, dated January 1, 2006 and published by the Board of Certification, Inc., 1415 Harney Street, Suite 200, Omaha, Nebraska 68102, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-404. Code of Ethics

A licensee shall work within the code of ethics for athletic trainers as stated in A.R.S. § 32-4153(10) and the NATA Code of Ethics, dated September 28, 2005 and published by the National Athletic Trainers' Association, 2952 Stemmons Freeway #200, Dallas, TX 75247, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-405. Direction of a Licensed Physician

A licensee shall render service or treatment under the direction of a physician licensed under A.R.S. Title 32, Chapter 13 or 17, as follows:

1. The licensee shall have standard, written protocols for common athletic training activities approved by the physician.
2. The licensee shall have post-injury treatment guidelines that comply with A.R.S. § 32-4103(B) approved by the physician.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4389, effective November 25, 2002 (Supp. 02-3).

Arizona Revised Statutes

Chapter 41 ATHLETIC TRAINERS

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Article 1 General Provisions

32-4101. Definitions

In this chapter, unless the context otherwise requires:

1. "Athletic illness" means an illness that arises from, or a manifestation of an illness that occurs as a result of, a person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities.

2. "Athletic injury" means an injury sustained by a person as a result of that person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, or any injury sustained by a person that is of the type that occurs during participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, regardless of the circumstances under which the injury was sustained.

3. "Athletic trainer" means a person who is licensed pursuant to this chapter.

4. "Athletic training" includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board:

(a) The prevention, recognition, examination, evaluation, rehabilitation and management of athletic injuries.

(b) The prevention, evaluation, immediate care and monitoring of athletic illnesses.

(c) The referral of a person receiving athletic training services to appropriate health care professionals, as necessary.

(d) The use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries.

(e) The planning, administration, evaluation, and modification of methods for prevention and risk management of athletic injuries and athletic illnesses.

(f) Education and counseling related to all aspects of the practice of athletic training.

(g) The use of topical pharmacological agents in conjunction with the administration of therapeutic modalities and pursuant to a prescription issued pursuant to the laws of this state and for which an athletic trainer has received appropriate education and training.

5. "Athletic training student" means a student who is currently enrolled in an athletic training education program that is accredited by an accrediting agency recognized by the board.

6. "Board" means the board of athletic training.

7. "Direct supervision" means that the supervising athletic trainer is present in the facility or on the campus where athletic training students are performing services, is immediately available to assist the person being supervised in the services being performed and maintains continued involvement in appropriate aspects of the services being performed.

8. "Direction of a licensed physician" means direction as prescribed by the board by rule pursuant to section 32-4103.

9. "Licensed physician" means a person who is licensed pursuant to chapter 13 or 17 of this title.

10. "Restricted license" means a license on which the board places restrictions or conditions, or both, as to the scope of practice, place of practice, supervision of practice, duration of license status or type or condition of a person to whom the licensee may provide services.

32-4102. Board; membership; duties; immunity

A. The board of athletic training is established consisting of the following members appointed by the governor:

1. Three athletic trainers who are residents of this state, possess an unrestricted license to practice athletic training in this state and have been practicing in this state for at least five years immediately preceding their appointment. The governor may make these appointments from a list of names submitted by a statewide athletic training association or any other group or person. The initial three appointees are not required to be licensed pursuant to this chapter at the time of selection but shall meet all of the qualifications for licensure as prescribed by this chapter.

2. Two public members who are residents of this state and who are not affiliated with and do not have any financial interest in any health care profession but who have an interest in consumer rights.

B. Board members serve staggered five year terms that begin and end on the third Monday in January. Board members shall not serve for more than two successive five year terms or for more than ten consecutive years.

C. If requested by the board, the governor may remove a board member for misconduct, incompetence or neglect of duty.

D. Board members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2 to cover necessary expenses for attending each board meeting or for representing the board in an official board approved activity.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the person's action is warranted by law is not subject to civil liability.

32-4103. Board; powers and duties; direction of athletic trainers; continuing education requirements; civil immunity

A. The board shall administer and enforce this chapter and shall:

1. Evaluate the qualifications of applicants for licensure.

2. Designate the national examination that it requires applicants to pass.

3. Issue licenses to persons who meet the requirements of this chapter.

4. Establish requirements pertaining to the ratio between supervising athletic trainers and athletic training students.

5. Regulate the practice of athletic training by interpreting and enforcing this chapter.

6. Establish requirements for assessing the continuing competence of licensees.

7. Adopt and revise rules to enforce this chapter.

8. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

9. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.

10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

11. Maintain a current list of all licensees. This list shall include the licensee's name, current business and residential addresses, telephone numbers and license number.

12. Enter into contracts for services necessary to enforce this chapter.

13. Publish, at least annually, final disciplinary actions taken against a licensee.

14. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules.

15. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.

B. The board shall adopt rules to prescribe the direction of athletic trainers by a licensed physician, including recommendations, guidelines and instructions as to standard protocols to be followed in the general, day-to-day activities in which athletic trainers engage. These rules shall require that post athletic injury or athletic illness treatment direction be provided by the person's treating physician or, if applicable, by the team physician for the institution or organization that employs the athletic trainer. If appropriate, athletic trainers may also seek direction as to the treatment of an athletic injury or athletic illness from any health care provider who is involved in that person's treatment and who is not licensed pursuant to this chapter but who is licensed pursuant to this title.

C. The board shall adopt rules to prescribe the appropriate education and training for services that are proper to be performed by an athletic trainer.

D. The board may:

1. Adopt rules to prescribe continuing education requirements for licensure renewal, including a rule to allow the board to waive continuing education requirements for reasons of extreme hardship.

2. Appoint advisory committees to assist it in the performance of its duties. An advisory committee member appointed pursuant to this paragraph is not eligible to receive compensation but is eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

3. Report any violations of this chapter or rules adopted pursuant to this chapter to a county attorney, the attorney general, a federal agency or a state or national organization, as appropriate.

E. A physician who, without compensation, provides direction to an athletic trainer that consists of recommendations, guidelines and instructions as to standard protocols to be followed in the general day-to-day activities in which athletic trainers engage is not subject to civil liability for providing that direction if the physician is not guilty of gross negligence or intentional misconduct in providing that direction.

32-4104. Executive director; personnel

A. The executive director of the board of occupational therapy examiners shall also serve as the executive director of the board of athletic training. Both boards shall jointly select the executive director.
B. The board of athletic training shall select staff to serve its board or shall direct the executive director to select these staff members.

32-4105. Athletic training fund

A. The athletic training fund is established. The board shall administer the fund. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source that come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the athletic training fund.

B. Monies deposited in the athletic training fund are subject to section 35-143.01.

Article 2 Licensure

32-4121. Persons and activities not required to be licensed

This chapter does not apply to:

1. A health care professional who is licensed pursuant to this title and who practices within the scope of that person's license if that person does not claim to be an athletic trainer or a provider of athletic training services.

2. A person who is pursuing a course of study leading to a degree as an athletic trainer in a professional education program approved by the board if that person is satisfying supervised clinical education requirements related to the person's athletic training education while under the direct supervision of a licensed athletic trainer.

3. An athletic trainer who is practicing in the United States armed services, United States public health service or United States veterans administration pursuant to federal regulations for state licensure of health care providers.

4. An athletic trainer who resides and is employed in another jurisdiction and who possesses the required licensure, certification or registration necessary to practice athletic training under the laws of the jurisdiction in which the athletic trainer is employed if that person is performing athletic training in this state in connection with teaching or participating in an educational seminar or is providing athletic training services in this state to persons of a bona fide professional, intercollegiate, interscholastic or amateur sports organization by which the athletic trainer is employed, for not more than one hundred twenty days in any twelve month period.

32-4122. Qualifications for licensure

An applicant for a license as an athletic trainer shall:

1. Be of good moral character. To determine if a person is of good moral character, the board may consider if the person has been convicted of a felony or a misdemeanor involving moral turpitude.

2. Have successfully completed the application process.

3. Possess a minimum of a baccalaureate degree from an accredited institution with coursework and supervised clinical experience as required and approved by the board.

4. Have passed a national examination approved by the board within one year before the date of application or currently possess certification as an athletic trainer from a nationally recognized board of certification.

5. Pay the application fee prescribed in section 32-4126.

32-4123. Application; statement of deficiencies; hearing

A. An applicant for licensure shall file a completed application as required by the board. The applicant shall include application and examination fees as prescribed in section 32-4126.

B. The board may return an application with a statement of deficiencies. On request of an applicant who disagrees with the statement, the board shall hold a hearing pursuant to title 41, chapter 6.

32-4124. License renewal; changes of name or address

A. Except as provided in section 32-4301, a license issued pursuant to this chapter is subject to renewal each year and expires unless renewed.

B. The executive director shall send a renewal application to each licensee at least sixty days before expiration of the license.

C. Each licensee is responsible for reporting to the board a name change and changes in business and home addresses within thirty days after any change.

32-4125. Reinstatement of license

A. The board may reinstate a lapsed license on payment of a renewal fee and a reinstatement fee and proof that the applicant has met all requirements for continuing competency established by the board.

B. If a person's license has lapsed for more than three consecutive years, that person shall reapply for a license and pay all applicable fees. The person shall also demonstrate to the board's satisfaction competency in the practice of athletic training or shall serve an internship under a restricted license or take remedial courses as determined by the board, or both, at the board's discretion. The board may also require the applicant to take an examination.

32-4126. Fees

A. The board shall establish and collect nonrefundable fees that do not exceed the following:

1. For an application for an original license, three hundred fifty dollars.

2. For a certificate of renewal of a license, two hundred fifty dollars.

3. For an application for reinstatement of a license, three hundred fifty dollars.

4. For each duplicate license, fifty dollars.

5. For copying records, documents, letters, minutes, applications and files, twenty-five cents a page.

B. The board shall charge additional fees for services not required to be provided by this chapter but that the board determines are necessary and appropriate to carry out this chapter. The fees shall not exceed the actual cost of providing these services.

32-4127. Temporary licenses

A. The executive director may issue a temporary license to a person who meets all of the following requirements:

1. Submits a completed application.

2. Submits the application fee for licensure pursuant to this chapter.

3. Submits proof satisfactory to the board of current certification by a nationally recognized board of certification.

4. Submits a readable fingerprint card pursuant to section 32-4128.

B. A temporary license:

1. Is valid for not more than ninety days.

2. Shall not be renewed.

3. Is void on the issuance or denial of an original license.

C. The board may revoke a temporary license for a violation of this chapter. The board shall hold a hearing at the request of a person whose temporary license is revoked by the board.

D. The board may adopt rules to carry out this section.

32-4128. Fingerprinting

A. An applicant for original licensure, license renewal, license reinstatement or temporary licensure pursuant to this chapter who has not previously done so must submit a full set of fingerprints to the board at the applicant's or licensee's expense for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. If the applicant or licensee has an unexpired clearance card issued by the department of public safety, the applicant or licensee may submit a copy of that document instead of submitting fingerprints.

C. Each applicant for license renewal or reinstatement shall submit a new set of fingerprints every five years after the initial fingerprint submission required in subsection A of this section.

D. On expiration of the clearance card issued by the department of public safety, an applicant must submit either a copy of the applicant's new clearance card or a set of fingerprints.

E. If the board does not have any evidence or reasonable suspicion that the applicant has a criminal history and the applicant otherwise satisfies the requirements of section 32-4122, the board may issue a license or a temporary license before it receives the results of a criminal records check.

F. The board shall suspend the license or temporary license of a person who submits an unreadable set of fingerprints and who does not submit a new readable set of fingerprints within twenty days after the board notifies the person of that fact.

G. This section does not affect the board's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license or a temporary license.

Article 3 Regulation

32-4151. Lawful practice

A. An athletic trainer shall refer a person with an athletic injury or athletic illness to one or more appropriate health care practitioners if the athletic trainer has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice of athletic training or if athletic training is contraindicated.

B. An athletic trainer shall adhere to the recognized standards and ethics of the athletic training profession and as further established by rule.

C. This chapter does not authorize an athletic trainer to practice any other profession regulated under this title and does not expand the scope of practice of any health care provider who is not licensed pursuant to this chapter but who is licensed pursuant to this title.

D. This chapter does not authorize an athletic trainer to treat an athletic illness at any time other than during a person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities.

32-4152. Use of titles; restrictions; violation; classification

A. An athletic trainer shall use the letters "AT" or the title "athletic trainer", or both, in connection with the athletic trainer's name or place of business to denote licensure under this chapter.

B. A person or business entity or its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business the words "athletic training" or "athletic trainer", the letters "AT/L", "L/AT", "ATC/L", "L/ATC", "A.T.", "AT", "L.A.T." or "A.T.L." or any other words, abbreviations or insignia indicating or implying directly or indirectly that athletic training is provided or supplied unless the services are provided by an athletic trainer licensed pursuant to this chapter. A person or entity that violates this subsection is guilty of a class 1 misdemeanor.

32-4153. Grounds for disciplinary action

The following are grounds for disciplinary action:

1. Practicing athletic training in violation of this chapter or rules adopted pursuant to this chapter.

2. Practicing or offering to practice beyond the scope of the practice of athletic training.
3. Obtaining or attempting to obtain a license by fraud or misrepresentation.

4. Engaging in the performance of substandard care by an athletic trainer due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the person cared for is established.

5. Failing to provide direct supervision in accordance with this chapter and rules adopted pursuant to this chapter.

6. Committing any felony or a misdemeanor involving moral turpitude. A conviction by a court of competent jurisdiction is conclusive evidence of the commission of the crime.

7. Practicing as an athletic trainer if the licensee's physical or mental abilities are impaired by the use of alcohol or any other substance that interferes with the ability to safely practice athletic training.

8. Having had a license or certificate revoked or suspended or any other disciplinary action taken or an application for licensure or certification refused, revoked or suspended by the proper authorities of another state, territory or country.

9. Engaging in sexual misconduct. For the purpose of this paragraph, "sexual misconduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a provider relationship exists.

(b) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a person treated by the athletic trainer.

(c) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to treatment under current practice standards.

10. Failing to adhere to the recognized standards and ethics of the athletic training profession.

11. Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter.

12. Charging unreasonable or fraudulent fees for services performed or not performed.

13. Having been adjudged mentally incompetent by a court of competent jurisdiction.

14. Aiding or abetting a person who is not licensed in this state and who directly or indirectly performs activities requiring a license.

15. Failing to report to the board any act or omission of a licensee or applicant or any other person who violates this chapter.

16. Interfering with an investigation or disciplinary proceeding by wilful misrepresentation of facts or by the use of threats or harassment against any person to prevent that person from providing evidence in a disciplinary proceeding or any legal action.

17. Failing to maintain confidentiality without prior written consent of the individual treated or unless otherwise required by law.

18. Failing to maintain adequate records regarding treatment. For the purposes of this paragraph, "adequate records" means legible records that contain at a minimum a determination of the nature of the injury and the referral and treatment required, the treatment plan, the treatment record, a final summary on conclusion of treatment and sufficient information to identify the person treated.

19. Promoting an unnecessary device, treatment or service for the financial gain of the athletic trainer or of a third party.

20. Providing unwarranted treatment or treatment beyond the point of reasonable benefit.

21. Providing athletic training services that are in any way linked to the financial gain of a referral source.

22. Violating this chapter, board rules or a written order of the board.

32-4154. Investigative powers; emergency action; hearing officers

A. To enforce this chapter the board may:

1. Receive complaints filed against licensees and conduct a timely investigation.

2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of this chapter.

3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.

4. Take emergency action ordering the summary suspension of a license or the restriction of the licensee's practice pending proceedings by the board.

5. Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and an order that shall be reviewed and voted on by the board.

6. Require a licensee to be examined to determine the licensee's mental, physical or professional competence.

B. If the board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit direct action against the licensee, it may take either of the following actions:

1. Dismiss the complaint if the board believes the information or complaint is without merit.

2. Forward a confidential advisory letter to the licensee.

C. The board shall notify a licensee of a complaint and the nature of the complaint within ninety days after receiving the complaint.

D. Any person may submit a complaint regarding any licensee or other person potentially in violation of this chapter.

E. The board shall keep confidential all information relating to the receipt and investigation of complaints filed against licensees and others until the information becomes public record or as required by law.

32-4155. Informal interviews; hearings

A. The board may request an informal interview with a licensee or any nonlicensed person in order to further its investigation or to resolve a complaint.

B. If at an informal interview the board finds a violation of this chapter has occurred that constitutes grounds for disciplinary action, it may take any disciplinary actions prescribed in section 32-4156, paragraph 1, 2 or 3.

C. If the results of an informal interview indicate that suspension or revocation of a license or the imposition of a civil penalty may be in order, the board shall notify the subject of the investigation of the time and place for a hearing pursuant to subsection D of this section.

D. In lieu of or in addition to an informal interview as provided in subsection A of this section, the board may serve on a licensee a summons and complaint setting forth the grounds for disciplinary action and notice of a hearing to be held before the board at least thirty days after the date of the notice. The notice shall state the time and place of the hearing.

E. A person appearing before the board may be represented by counsel.
F. The hearing officer shall administer oaths to all witnesses, shall keep a record of all oral testimony submitted at the hearing and shall keep the original or a copy of all other evidence submitted. The hearing officer may waive the rules of evidence.

G. A motion for rehearing or review of the board's decision in a disciplinary action shall be filed within fifteen days after service of notice of the decision. The board shall conduct a rehearing or review pursuant to board rules.

H. The service of a summons and complaint and the service of a subpoena shall be as provided for service in civil cases.

I. If a person disobeys a subpoena, the board may petition the superior court for an order requiring appearance or the production of documents.

32-4156. Disciplinary actions; penalties

On proof that a licensee has violated any grounds prescribed in section 32-4153, the board may take the following disciplinary actions singly or in combination:

1. Issue a decree of censure.

2. Prescribe a licensee's scope of practice, place of practice or supervision of practice, the duration of a license or the type or condition of persons cared for by a licensee. The board may require a licensee to report regularly to the board on matters related to the grounds for the restricted license.

3. Suspend a license for a period prescribed by the board.

4. Revoke a license.

5. Refuse to issue or renew a license.

6. Impose a civil penalty of at least two hundred fifty dollars but not more than ten thousand dollars for each violation of this chapter. In addition the board may assess and collect the reasonable costs incurred in a disciplinary hearing when action is taken against a person's license.

7. Accept the voluntary surrender of a license.

32-4157. Unlawful practice; classification; civil penalties; injunctive relief

A. It is unlawful for any person to practice or in any manner to claim to practice athletic training unless that person is licensed pursuant to this chapter. A person who engages in an activity requiring a license pursuant to this chapter or who uses any word, title or representation in violation of section 32-4152 that implies that the person is licensed to engage in the practice of athletic training is guilty of a class 1 misdemeanor.

B. The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of athletic training. If an investigation indicates that a person may be practicing athletic training unlawfully, the board shall inform the person of the alleged violation. The board may refer the matter for prosecution regardless of whether the person ceases the unlawful practice of athletic training.

C. The board, through the appropriate county attorney or the office of the attorney general, may apply for injunctive relief in any court of competent jurisdiction or enjoin any person from committing any act in violation of this chapter. Injunctive proceedings are in addition to all penalties and other remedies prescribed in this chapter.

D. A person who aids or requires another person to directly or indirectly violate this chapter or board rules, who permits a license to be used by another person or who acts with the intent to violate this chapter or board rules is subject to a civil penalty of not more than one thousand dollars for each violation and not more than five thousand dollars for each subsequent violation. The board shall hold a hearing before it imposes this penalty.

E. All monies the board collects from civil penalties pursuant to this chapter shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-4158. Reporting violations; immunity

A. A person, licensee, corporation, educational institution, athletic organization or health care facility and state or local governmental agencies shall report to the board any conviction, determination or finding that a licensee has committed an act that constitutes grounds for disciplinary action pursuant to section 32-4153.

B. A person is immune from civil liability, whether direct or derivative, for providing information in good faith to the board pursuant to subsection A of this section.

C. The board shall not disclose the identity of a person who provides information unless this information is essential to proceedings conducted pursuant to sections 32-4154 and 32-4155 or unless required by a court.

32-4159. Substance abuse recovery program

In lieu of a disciplinary proceeding prescribed by this article, the board may permit a licensee to actively participate in a board approved substance abuse recovery program if:

1. The board has evidence that the licensee is an impaired professional.

2. The licensee has not been convicted of a felony relating to a controlled substance in any court of law.

3. The licensee enters into a written agreement with the board for a restricted license and complies with all of the terms of the agreement, including making satisfactory progress in the program and adhering to any limitation on the licensee's practice imposed by the board to protect the public. If a licensee does not enter into such an agreement the board shall immediately begin an investigation and disciplinary proceeding.

4. As part of the agreement established between the licensee and the board, the licensee signs a waiver allowing the substance abuse program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

32-4160. Public, confidential and privileged information; exception; display of license

A. The public has the right of access to the following information:

1. A list that includes each licensee's place of practice, license number, date of license expiration, status of license and whether the licensee has been subject to a complaint or disciplinary action by the board.

2. A list of official actions taken by the board.

B. The home addresses and home telephone numbers of licensees are not public records and shall be kept confidential by the board.

C. Information pertaining to the relationship between the licensee and a person treated by the licensee is confidential and shall not be communicated to a third party who is not involved in that person's care without that person's prior written consent. If the person is a minor, the person's parent or guardian must also give written consent to these communications.

D. The licensee shall divulge to the board information it requires in connection with any investigation, public hearing or proceeding.

E. The privilege described in subsection C does not extend to cases in which the licensee has a duty to report information as required by law.

F. Each licensee shall display a copy of the licensee's license or current renewal verification in a location accessible to public view at the licensee's place of practice.

32-4161. Judicial review

Board decisions are subject to judicial review pursuant to title 12, chapter 7, article 6.

ARIZONA STATE BOARD OF RESPIRATORY CARE EXAMINERS (F-16-1003)
Title 4, Chapter 45, All Articles

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-5**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Shama Thathi, Staff Attorney

DATE : October 14, 2016

SUBJECT: **ARIZONA BOARD OF RESPIRATORY CARE EXAMINERS (F-16-1003)**
Title 4, Chapter 45, Article 1, General Provisions; Article 2, Licensure; Article 3, Hearings

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Board of Respiratory Care Examiners (Board) "regulate[s] the practice of respiratory care for the public health, safety and welfare." Laws 2007, Ch. 107, § 3.

This five-year-review report covers 24 rules in A.A.C. Title 4, Chapter 45. Article 1 contains five rules addressing general provisions, such as definitions and fees. Article 2 contains 17 rules addressing licensing of respiratory care. Lastly, Article 3 contains two rules addressing hearing procedures and review of decision. The rules, as written, have become effective at various times between 2006 and 2016.

Proposed Action

The Board plans to amend most of the rules to comply with SB 1300[1] by October 2016 and November 2016. Among various other amendments, SB 1300 allows the Board to establish a confidential monitoring program, adds a timeframe for disciplinary actions, allows the Board to require a licensee to undergo medical examinations, requires the Board to consider modifying continuing education requirements, and removes the examination fee. In addition, the bill exempts the Board from rulemaking requirements of A.R.S. Title 41, Chapter 6 for one year to implement this act. The Board received approval, from the Governor's Office, for exempt rulemaking to implement SB 1300 on August 29, 2016.

[1] An executive summary, prepared by the Board, of SB1300 is attached as an addendum to the report.

The Board indicates that it intends to address the other issues identified throughout the report by July 2017.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Board certified that it is in compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Board indicates that the rules can be made more effective in the following ways:

- R4-45-101: The definitions should be amended to conform to current policy and practice and comply with SB 1300.
- R4-45-102: The Board intends to increase the fee for biennial renewal of license from $120 to $150. The Board voted to increase the fee to address unfunded mandates and increase appropriation for New Licensing and Enforcement Database, Employee Compensation Plan, fourth FTE and a contract rule writer position.
- R4-45-104: The requirement mandating notarization and certification of documents for a name change should be removed.
- R4-45-214: The Board plans to amend and add additional standards of professional conduct, after conducting a comparison to other health related boards in Arizona.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Board has provided a summary of all the public comments, as well as the Board's responses, for the rulemaking in August 2016. The summary and responses can be found on pages 2-3 of the report.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. As for general authority, the Board shall "[a]dopt rules necessary to administer this chapter [A.R.S. Title 32, Chapter 35, Respiratory Care]." See A.R.S. § 32-3504(A)(2). The Board also cites to applicable specific authority throughout the report.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Board indicates that the rules are consistent with other rules and statutes with the exception of R4-45-208, R4-45-209, and R4-45-210. These rules relate to continuing education and they should be amended to comply with SB 1300.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board indicates that the rules are enforced as written to the extent that they are not inconsistent with statutes or other rules.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Board indicates that the rules are generally clear, concise, and understandable with the following exceptions:

- R4-45-101: The rule should be amended to clarify the definition of "Approved continuing education."
- R4-45-204: The Board plans to clarify the licensure requirements for individuals who receive training outside the United States.
- R4-45-207: The rule should be amended for clarity and conciseness, as well as to eliminate the reinstatement language.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. The Board indicates that no federal law is applicable to the subject of these rules.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Yes. The Board indicates that it issues general permits.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Yes. The Board is in compliance with the general permit requirements of A.R.S. § 41-1037 because permits are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Board did not propose a course of action in the previous five-year-review report, approved by the Council in June 2011.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. As noted above, the Board anticipates rule amendments by October 2016, November 2016, and July 2017. This analyst recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: November 1, 2016 **AGENDA ITEM: F-5**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : October 14, 2016

SUBJECT: **ARIZONA BOARD OF RESPIRATORY CARE EXAMINERS (F-16-1003)**
Title 4, Chapter 45, Article 1, General Provisions; Article 2, Licensure; Article 3, Hearings

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the rules contained in the five-year-review report.

The rules in Chapter 45 address the Board's authority to reinstate a revoked license or amend conditions of probation. The Board also specifies that disobeying the Board or court's orders is unprofessional conduct and could constitute a danger to health, welfare or safety of the patient or the public.

According to the Board, they have currently licensed 3,631 respiratory care practitioners. In the last year, six former licensees applied to have their revoked licenses reinstated; seven licensees applied to have terms of probation modified. The Board revoked five licenses last year; twenty-five respiratory care practitioners currently work under a prohibition order.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

According to the Board, all costs that result from this rulemaking are assumed voluntarily by individuals who believe the benefits outweigh the costs. The Board also states that they are unable to consider less intrusive or less costly alternative methods and still fulfill its obligation to protect public health and safety.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

State of Arizona
Board of Respiratory Care Examiners
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Jack Confer
Executive Director

July 29, 2016

Nicole A. Ong, Chairwoman
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Five-Year Rule Review

The Arizona Board of Respiratory Care Examiners ("Board") respectfully submits its' Five-Year Rule Review. In addition, the Board certifies compliance with A.R.S. § 41-1091. (The Agency does not currently have any substantive policy statements)

We wish to express our gratitude for the extension granted for this submittal.

If you have any questions please feel free to contact me at (602) 542-5990 or by email at john@rb.az.gov.

Thank you and Respectfully,

Jack Confer
Executive Director

Attachments: Five-Year Rule Review
Electronic Copy

Copy: File

ARIZONA BOARD OF RESPIRATORY CARE EXAMINERS

FIVE YEAR REVIEW REPORT

ARIZONA ADMINISTRATIVE CODE, TITLE 4, CHAPTER 45.

JULY 2016

Pursuant to A.A.C. R1-6-301 (B):

1. General statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   A.R.S. § 32-3504(A)(2).

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

   These rules are generally effective.

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;

   These rules are consistent with and do not conflict with any known federal or state regulations. Statutes and rules used in determining consistency include A.R.S. Title 32 and A.A.C. Title 4.

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

   These rules are enforced as written and the Board is not aware of any significant problems with the enforcement of these rules.

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

   Overall these rules are clear, concise and understandable. The rules are logically organized and easily understood. The Board does plan to amend many of these rules to update language.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, 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 or administrative proceedings;

The Board has these the following comments which were reviewed by the Council prior to our last rule promulgation:

Comment: Experienced therapists are and will be forced out of the field.

Response: The grandfather provision of these rules allows experienced RCP's to continue practicing while holding a CRT credential. The Board does not have jurisdiction over the employment practices of health care institutions that may require a RRT credential as a term of employment.

Comment: There is no difference between a CRT and RRT. Eventually the CRT will go away.

Response: The NBRC determines the difference in testing to obtain these credentials. The Board has determined that beginning January 1, 2017, any new applicant will be required to obtain the RRT credential as its minimum level of competency. Eventually, as RCPs retire from the industry, the number of CRTs will diminish and eventually disappear.

Comment: I am against a third party credential, a college degree should be all that is required for licensure.

Response: The Board disagrees and has established the minimum level of competency to obtain a license to practice the respiratory care profession in this state beginning January 1, 2017 is at the RRT examination and credential level.

Comment: Under the proposed rules, a "grandfathered" CRT who was unable to maintain his/her credential with the NBRC would subsequently loose his/her license and livelihood.

Response: This is not true for CRTs or RRTs; the Board only requires the credential as its current and future minimum level of competency. The Board does not require continued maintenance of that credential issued by the NBRC.

Comment: Requiring the RRT credential as a condition of licensure would force individuals to become members and pay fees for organization, which they might not otherwise do.

Response: The Board is not forcing any current licensees that hold the CRT to obtain the RRT credential. The NBRC no longer provides a stand-alone CRFT examination, so the fiscal impact to a new graduate or applicant is the same.

Comment: Let the market place take care of the market, no new law.

Response: The legislature has identified this industry as requiring regulation and oversight. The Board does not believe that regulation will change in the immediate future and does not concur with this response.

Comment: The rules are an attempt to interfere with the legal practice of respiratory therapy by credentialed respiratory practitioners.

Response: The Board will continue to protect the public's health, safety, and welfare by licensing only those individuals that meet the licensing requirements. The Board is providing a grandfather provision that will allow CRTs to continue practicing.

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 has not experienced little or no identifiable economic, small business or consumer impact since the implementation of these rules in 2008.

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;

   The Board has not received any analysis.

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

    None identified from previous Five Year Rule review (March 2011)

11. A determination after analysis that the probable benefits of the rule within this state outweigh 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 has determined that the benefits of licensing and regulating the practice of respiratory care for the health, safety and welfare of Arizona's citizens and visitors outweigh the costs to its' industry. The Board is a self-supporting 90/10 Agency.

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

    None known or identified.

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

    The Board complies with A.R.S. § 41-1037.

Pursuant to A.A.C. R1-6-301 (A):

A.A.C. R4-45-101 Definitions:

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   A.R.S. §§ 32-3501 (5), 32-3504, 32-3506, 32-3521, and 32-3522.

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule adds additional definitions that are required to clarify terms established in statute and utilized in the licensing and regulation of the professions

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, an agency may indicate that no action is necessary for the rule.

    The Board plans to initiate rule amendments to amend the definition of Approved continuing education" by October 2016. The board is contemplating amending several other definition is conform with current policy and practice and to comply with SB1300.

A.A.C. R4-45-102. Fees

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. §§ 32-3526, 39-121.03, 41-1008(C), 41-1077 and 41-1092.07.

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies and sets fees authorized by statute.

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, an agency may indicate that no action is necessary for the rule.

Promulgate renewal fee increase for biennial renewal of license to $150.00 by October 2016. The Board voted to increase fees to address unfunded mandates and increase appropriation for: New Licensing and Enforcement Database (with all the online bells and whistles); fund Employee Compensation Plan, fund 4th FTE which is currently vacant and hire a contract rule writer as necessary.

The Board is currently amending this section, deleting the temporary license fee.

A.A.C. R4-45-103. Service by the Board

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. § 32-3557(C).

   2. Objective of the rule, including the purpose for the existence of the rule;

      This rule explains the mandate of service of official documents to licensees involved in administrative actions before the Board.

   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, an agency may indicate that no action is necessary for the rule.

      The board does not plan to take any action on this rule.

A.A.C.R4-45-104. Change of Name or Address

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. § 32-3504(A)(7).

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule directs licensees for the necessity and time frames required to submit name changes and update their address.

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, an agency may indicate that no action is necessary for the rule.

The Board is contemplating a rule change to remove the requirement mandating notarization and certification of required documents for a name change. These amended rules may be submitted by July 2017.

R4-45-105. Electronic Communication

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. §§ 32-3504(A)(9); 32-3506(C)(4);.

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule is intended to facilitate easier and electronic communication between the Board and its stakeholders. It provides what forms will be available on its website, how an individual may receive these forms if they do not have access to the Board's website, and other information for electronic communication.

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, an agency may indicate that no action is necessary for the rule.

    The Board is not planning any amendments to this rule at this time.

Article 2. Licensure
R4-45-201. Application

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. §§ 32-2504, 32-3522 and32-3523.

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies the information and documentation required to be submitted by applicants.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning any amendments to this rule at this time.

R4-45-202. Approved Respiratory Therapy Training programs

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. § § 32-3501, 32-3504(B), and 32-3551.

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies that any program accredited by the Committee on Accreditation for Respiratory Care shall be approved by the Board.

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, an agency may indicate that no action is necessary for the rule.

    The Board is not planning to request any amendments to this rule at this time.

R4-45-203. Examinations

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. §§ 32-3504, 32-3522, and 32-3523 .

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies the qualifying examination for documentation of competency.

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, an agency may indicate that no action is necessary for the rule.

    The Board is not planning to request any amendments to this rule at this time.

R4-45-204. Application Based on Foreign Training

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3522(C).

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies the licensure requirements for individuals who receive training outside of the United States.

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, an agency may indicate that no action is necessary for the rule.

The board is contemplating a rule change that will be initiated by July 2017.

R4-45-205. Application Based on Licensure By Another State

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. § § 32-3522(C) and 32-3524(3)(a).

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies the requirements for licensure for applicants who are or have been licensed in a state other than Arizona.

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, an agency may indicate that no action is necessary for the rule.

    The Board is not planning any amendments to this rule at this time.

R4-45-206. Licensure Based on Organizational Registration or Certification

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

   This rule is specifically authorized by A.R.S. § 32-3524(3)(b).

2. Objective of the rule, including the purpose for the existence of the rule;

   This rule specifies the requirements for individuals who are applying based upon their registration or certification by the national credentialing body for respiratory therapists.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning to request any amendments to this rule at this time.

R4-45-207. Renewal; Reinstatement

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3525.

2. Objective of the rule, including the purpose for the existence of the rule;

This rule specifies the requirements for renewal or reinstatement of a license.

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, an agency may indicate that no action is necessary for the rule.

The Board is planning to amend these rules to eliminate "reinstatement language" and refine the questions on the renewal application to be easily understood and usable. The Board plans these rule changes to be requested by July 2017.

R4-45-208. Continuing Education Requirements

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3504(A)(9).

2. Objective of the rule, including the purpose for the existence of the rule;

The rule specifies the number and kind of continuing education units required for renewal of a license.

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, an agency may indicate that no action is necessary for the rule.

The Board has been authorized by SB1300 for exempt rulemaking to modify this rule. The Board plans to initiate by November 2016. The changes are contemplated to provide more continuing education opportunities for the industry and allow for additional automatic organization approvals

on a local and national basis. Please see attachment.

R4-45-209. APPROVED CONTINUING EDUCATION PROGRAMS

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § § 32-3504(A)(9) and 32-3523(B).

2. Objective of the rule, including the purpose for the existence of the rule;

This rule specifies continuing education programs approved by the Board.

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, an agency may indicate that no action is necessary for the rule.
The Board has been authorized by SB1300 for exempt rulemaking to modify this rule. The Board plans to initiate by November 2016.

R4-45-210. CRITERIA FOR APPROVED CONTINUING EDUCATION COURSES AND PROGRAMS

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3504(A)(9).

2. Objective of the rule, including the purpose for the existence of the rule;
This rule specifies the nature and content requirements for approval of continuing education programs.

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, an agency may indicate that no action is necessary for the rule.

The Board has been authorized by SB1300 for exempt rulemaking to modify this rule. The Board plans to initiate by November 2016

R4-45-211. AUDIT AND SANCTIONS FOR NONCOMPLIANCE

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3525.

2. Objective of the rule, including the purpose for the existence of the rule; This rule specifies the procedure for auditing compliance with continuing education requirements and spells out the sanctions for non-compliance.

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, an agency may indicate that no action is necessary for the rule.

The Board does not plan to change this rule at this time.

R4-45-212. WAIVER OF REQUIREMENTS

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3504(A)(9).

2. Objective of the rule, including the purpose for the existence of the rule;

This rule specifies the procedure for requesting a waiver from the continuing education requirements and spells out the criteria used by the Board for granting or denying a waiver request.

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, an agency may indicate that no action is necessary for the rule.

The Board does not plan to change this rule at this time.

R4-45-213. TEMPORARY LICENSURE

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule was specifically authorized by A.R.S. § 32-3521.

2. Objective of the rule, including the purpose for the existence of the rule;

This rule detailed the requirements for the issuance of a temporary license and a temporary license extension.

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, an agency may indicate that no action is necessary for the rule.

This rule is currently being eliminated.

R4-45-214. STANDARDS OF PROFESSIONAL CONDUCT

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3501(10)(i).

2. Objective of the rule, including the purpose for the existence of the rule;

This rule sets out more specific standards for ethical conduct and practice by licensees.

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, an agency may indicate that no action is necessary for the rule.

The Board is contemplating amending and adding additional standards of professional conduct and may be initiating rule promulgation by July 2017. The Board will conduct a comparison to other health related boards in Arizona and will update and conform these rules as identified in the near future. The Board has not yet completed this review; however, based upon comments at Board meetings these rules will be amended and updated.

R4-45-215. PROCEDURES FOR PROCESSING INITIAL LICENSE APPLICATIONS; TIME-FRAMES

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. §§ 41-1072 through 41-1076.

2. Objective of the rule, including the purpose for the existence of the rule;

This rule complies with the requirements under the Arizona Administrative Procedures Act to establish time-frames in which the Board will act on a license application.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning to change this rule at this time.

R4-45-216. PROCEDURES FOR ISSUING LICENSE RENEWAL APPLICATIONS; TIME-FRAMES

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. §§ 41-1072 through 41-1076.

2. Objective of the rule, including the purpose for the existence of the rule;

This rule complies with the requirements under the Arizona Administrative Procedures Act to establish time-frames for renewal of licensure.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning to change this rule at this time.

R4-45-217. APPEAL FROM DENIAL

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3552.

2. Objective of the rule, including the purpose for the existence of the rule;

This rule provides the following information regarding the denial of a license application: right of appeal; time-frame for filing an appeal; procedures for appeal; and a provision for re-application. The rule also provides for the administrative closing of application files.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning to change this rule at this time.

ARTICLE 3. HEARINGS

R4-45-301. HEARING PROCEDURES

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 32-3553 and A.R.S. Title 41, Chapter 6.
2. Objective of the rule, including the purpose for the existence of the rule;

This rule details the procedures for all Board hearings.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning to change this rule at this time.

R4-45-302. REHEARING OR REVIEW OF DECISION

1. Specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;

This rule is specifically authorized by A.R.S. § 41-1092.09.

2. Objective of the rule, including the purpose for the existence of the rule;
This rule details the time-frames for, and requirements of, rehearing or review of Board decisions.

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, an agency may indicate that no action is necessary for the rule.

The Board is not planning to change this rule at this time.

Douglas A. Ducey
Governor

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Jack Confer
Executive Director

MEMORANDUM

TO: Governor's Regulatory Review Council

FROM: Jack Confer
Executive Director

DATE: October 6, 2016

SUBJECT: Executive Summary of SB1300

Please find the following executive summary of SB1300

BACKGROUND:

Established by Laws 1990. Chapter 265 the Board licenses and regulates respiratory care practitioners. A respiratory care practitioner performs inhalation therapy and respiratory therapy, which includes administering pharmacological, diagnostic and therapeutic agents, as directed by a physician. According to the Board's website, respiratory care practitioners currently provide services in settings covering the full continuum of health care-from hospitals to skilled nursing facilities to home health care.

The Board consists of seven Governor-appointed members: three licensed respiratory care practitioners, one physician licensed in medicine and surgery or osteopathic medicine, two public members and one hospital administrator (A.R.S. § 32-3502). Current statute requires the Board to meet in January of each year to elect a chairman and other Board officers. The Board is required to meet at least one more time before the end of each calendar year; otherwise, meetings may be convened at the call of the Board chairman or at the written request of any two Board members. Statute requires all Board meetings to be open to the public, with the exception of closed sessions in which the Board approves examinations. Additionally, at the request of an applicant who fails an examination, the Board may hold a closed session to prepare a response indicating a reason for the requesting applicant's failure. Finally, Board members are eligible to receive compensation not to exceed $30 per day and reimbursement of expenses necessarily and properly incurred in carrying out Board duties. (A.R.S. § 32-3503). The Board currently oversees approximately 4,100 respiratory care practitioners.

NEW STATUTORY AUTHORITY:

REPORTING TIMEFRAME: Current statute requires a licensee to report to the Board an incident or incidents that appear to show the existence of a cause for disciplinary action or that a licensee is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care, but statute does not require this report be made within a specified timeframe (ARS § 32-3501).

LATE RENEWAL FEE: The Board is a 90/10 Board. Although S.B. 1300 authorizes the Board to collect fees for late license renewals. Because this legislation may generate additional fee monies from late license renewals there may be additional revenue generated to the Board's fund. Of every added dollar in additional fee collections, 90 cents is deposited into the Board's fund, and the other 10 percent is allocated to the state General Fund. Therefore, any positive or negative impact to the state General Fund would be minimal.

CONFIDENTIAL MONITORED AFTERCARE: Allows the Board to establish a confidential monitoring program for licensees who are chemically dependent and who enroll in rehabilitation programs that meet Board established criteria, and requires the Executive Director of the Board to enter into stipulated agreements with licensees for the confidential treatment, rehabilitation and monitoring of chemical dependency. Allows the Board to take further action if the licensee refuses to enter into a stipulated agreement or fails to comply with its terms. States that stipulated agreements are not public records if the following conditions are met: a) the licensee voluntarily agrees to participate in the Program; b) the licensee complies with all treatment requirements or recommendations, including participation in Alcoholics Anonymous or an equivalent twelve-step program and support group; c) the licensee refrains from the practice of respiratory care until the return to respiratory care has been approved by the treatment program and the Executive Director or the Executive Director's designee; d) the licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing; and e) the licensee's respiratory care employer is notified of the licensee's chemical dependency and participation in the Program and is provided a copy of the stipulated agreement. Requires a licensee who materially fails to comply with a Program requirement to be reported to the Board and terminated from the Program, and states that any records of a licensee who is terminated from the Program are no longer confidential or exempt from the public records law. Terminates the Program on July 1, 2026.

DISCIPLINARY ACTION: Adds a timeframe of ten calendar days within which a licensee is required to report to the Board an incident or incidents that appear to show the existence of a cause for disciplinary action or that the licensee is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care.

COMPLAINT RESPONSE: Requires the licensee to submit within 20 days after notification an answer to the Board regarding allegations contained in an initial complaint notification received from the Board.

HEARING RESPONSE: Requires a licensee to respond in writing to the Board within 30 days after notice of hearing is served after the Board finds the investigative information warrants suspension or revocation of a license and the Board has initiated formal proceedings for the revocation or suspension of the license and states that if the notice of hearing is served by certified mail, service is complete on the date the notice is placed in the mail.

DISCIPLINATY ACTION AFTER FAILURE TO RESPOND: Allows the Board to consider a licensee's failure to respond within the 30 days as an admission by default to the allegations stated in the complaint. and allows the Board to take any disciplinary action without conducting a hearing.

CIVIL PENALTY: Allows the Board to issue a civil penalty of up to $500 per violation if after investigation the Board finds that the information is not of sufficient seriousness to merit suspension or

EXECUTIVE DIRECTOR DELEGATION: Allows the Board or, if delegated by the Board, the Executive Director, on determination of reasonable cause, to require a licensee or applicant to undergo at the licensee or applicant's expense any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the person's competence or ability to practice safely. States that the examinations may include bodily fluid testing and other examinations known to detect the presence of alcohol or drugs. Requires the licensee or applicant who is ordered by the Executive Director to undertake an examination, assessment or evaluation to affirm to the Board in writing within 15 days after receipt of the notice of the order that the licensee or applicant intends to comply with the order. Requires the Executive Director, if the licensee or applicant fails to affirm to the Board that the licensee or applicant intends to comply with the order. to refer the matter to the Board to allow the Board to determine whether to issue an order. Requires the Executive Director at each regular Board meeting to report to the Board data concerning orders issued by the Executive Director relating to examinations, assessments or evaluations ordered since the last regular Board meeting and any other data requested by the Board.

TERMINOLOGY CLEAN UP: Removes the ability of the Board to license applicants as respirator1 therapy technicians, codifying current Board practice.

EXPIRED LICENSE TIME FRAM REDUCTION AND LATE FEE: Allows the Board to renew an expired license within 90 days after the expiration of the license if the applicant has complied with all late renewal application requirements and has paid the application and renewal fees, and allows the Board to charge a late renewal fee not to exceed $200.

EXAMINATION FEE ELIMINATION: Removes the ability of the Board to charge an examination fee.

BOARD CLOSED SESSION DELETION: Removes the provision which allows the Board to hold closed sessions in which the Board approves examinations or prepares a response to a requesting applicant who failed an examination indicating a reason for the applicant's failure.

CONTINUIG EDUCATION AMENDMENTS: Requires the Board, in approving education programs to consider the requirements and standards set by the Commission on Accreditation for Respiratory Care or its successor organization instead of the American Medical Association's Committee on Allied Health Education and Accreditation in collaboration with the Joint Review Committee for Respiratory Therapy Education.

RULEMAKING EXEMPTION: The board of respiratory care examiners shall adopt rules to implement this act. For the purposes of this act, the board of respiratory care examiners is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

EFFECTIVE DATE: Becomes effective on the general effective date.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

(Authority A.R.S. § 32-3504 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-45-101 through R4-45-104, amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

Article 1, consisting of Sections R4-45-101 through R4-45-104, adopted effective September 12, 1996 (Supp. 96-3).

Section
R4-45-101. Definitions
R4-45-102. Fees
R4-45-103. Service by the Board
R4-45-104. Change of Name or Address
R4-45-105. Electronic Communication

ARTICLE 2. LICENSURE

Article 2, consisting of Sections R4-45-201 through R4-45-214, adopted effective September 12, 1996 (Supp. 96-3).

Section
R4-45-201. Application
R4-45-202. Approved Respiratory Therapy Training Programs
R4-45-203. Examinations
R4-45-204. Application by a Foreign-trained Applicant
R4-45-205. Application Based on Licensure by Another State
R4-45-206. Licensure Based on Organizational Registration or Certification
R4-45-207. Renewal
R4-45-208. Continuing Education Requirement
R4-45-209. Approved Continuing Education
R4-45-210. Criteria for Approved Continuing Education
R4-45-211. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement
R4-45-212. Waiver of Requirements
R4-45-213. Temporary Licensure
R4-45-214. Standards of Professional Conduct
R4-45-215. Procedures for Processing Initial License Applications; Time-frames
R4-45-216. Procedures for Processing License Renewal or Reinstatement Applications; Time-frames
R4-45-217. Appeal from Denial
R4-45-218. Reinstatement Following Revocation; Modification of Probation

ARTICLE 3. HEARINGS

Article 2, consisting of Sections R4-45-301 and R4-45-302, adopted effective September 12, 1996 (Supp. 96-3).

Section
R4-45-301. Hearing Procedures
R4-45-302. Rehearing or Review of Decision

ARTICLE 1. GENERAL PROVISIONS

R4-45-101. Definitions

In addition to the definitions in A.R.S. § 32-3501, in this Chapter, unless otherwise specified:

"Applicant" means an individual who meets the qualifications of A.R.S. § 32-3523 and applies for licensure under A.R.S. § 32-3522.

"Approved continuing education" means a planned course or program that the Board confirms meets the criteria in R4-45-210 or is approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.

"Contested case" has the same meaning as prescribed in A.R.S. § 41-1001.

"Continuing education unit" or "CEU" means a segment of an approved continuing education.

"CRT examination" means the objective measure of essential knowledge, skills, and abilities required of an entry-level respiratory therapist, which is approved by the Board and administered by the NBRC.

"Day" means calendar day.

"Direct supervision" means that a licensed respiratory care practitioner, or physician licensed under A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient or observe and direct the practice of a temporary licensee.

"Executive Director" means the officer employed by the Board to perform administrative and investigative functions.

"Individual," as used in A.R.S. § 32-3521(B)(4), means only those persons listed with current, valid certifications, registrations, or licenses acting within the scope of their authorized practice.

"License" means the document issued by the Board to practice respiratory care in Arizona.

"License application package" means a license application form and any documents required to be submitted with the license application form.

"Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Ch. 35.

"National Board for Respiratory Care, Inc." or "NBRC" means the national credentialing board for respiratory therapy.

"Party" has the same meaning as prescribed in A.R.S. § 41-1001.

"Pharmacological, diagnostic, and therapeutic agents," as used in A.R.S. § 32-3501(5), means medications that are aerosolized and given through artificial airways or vascular access.

"Temporary license" means the document issued by the Board under A.R.S. § 32-3521 that allows an applicant to practice respiratory care under direct supervision before the Board issues the applicant a license.

"Verification by a licensed respiratory therapist," as used in A.R.S. § 32-3521(B)(7) and (C), means a licensee's written confirmation, before equipment is delivered, that the equipment is consistent with the patient's prescription and needs.

"Verification of license" means a form the Board provides to an applicant to submit for completion by a state to confirm that the applicant currently holds or previously held a license, certification, or registration from that state.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3).
Amended by final rulemaking at 5 A.A.R. 1110, effective

March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-102. Fees

A. Under the authority provided by A.R.S. § 32-3526 or other specified statutes, the Board establishes and shall collect the following fees:
1. Application for a license, $100;
2. Application based on a diploma from a foreign respiratory therapy school, $200;
3. Initial license, $120;
4. Biennial renewal of a license, $120;
5. Extension to a temporary license, $75;
6. Verifying an Arizona license to another state:
   a. Current valid license, $25;
   b. Expired license, $50;
7. Duplicate license or duplicate wallet license card, $25;
8. Copy of the Board's Respiratory Care Practitioner Register compiled under A.R.S. § 32-3504(A)(7):
   a. Noncommercial, $25;
   b. Commercial, $25 or the amount allowed under A.R.S. § 39-121.03(A), whichever is greater;
9. Insufficient funds check submitted to the Board as payment of any fee, $25;
10. Fingerprint fee, authorized by A.R.S. § 41-1750(L), remitted by credit card, certified check, or money order, $50; and
11. Copy of the audiotape of a hearing under A.R.S. § 41-1092.07(E), $25.

B. With the exception of the fingerprint fee specified in subsection (A)(10), all fees shall be remitted to the Board of Respiratory Examiners by personal check, credit card, certified check, or money order. All fees remitted to the Board are nonrefundable, except as provided in A.R.S. § 41-1077.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1575, effective April 4, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-103. Service by the Board

Service of any decision, order, subpoena, notice, or other written process may be made by, for, or on behalf of the Board by personal service or by mailing a copy by certified mail. The Board shall make service by certified mail to the address of record on file with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is by certified mail, service is complete upon deposit in the United States mail.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-104. Change of Name or Address

A. A licensee shall notify the Board in writing within 30 days after the licensee's name is legally changed. The licensee shall include with the notice a notarized or certified copy of the official document evidencing the name change. At the time of notification, the licensee shall request a duplicate license in the new name and pay the fee prescribed in R4-45-102(A)(7).

B. A licensee shall notify the Board in writing within 10 days after a change in the licensee's address of record.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-105. Electronic Communication

A. To facilitate communication between the Board and an applicant, licensee, or continuing education provider, the Board shall make the following forms available on its web site:
1. Application for licensure,
2. Verification of licensure,
3. License renewal application,
4. Request for an extension to a temporary license, and
5. Notice of change of address.

B. After completing a form that is available on the Board's web site, an applicant or licensee shall submit the form to the Board electronically or by mail or personal delivery.

C. An applicant or licensee that submits a form to the Board electronically shall use mail or personal delivery to submit or have submitted on behalf of the applicant other documents required under this Chapter.

D. An applicant or licensee that does not have access to the Board's web site may request from the Board a printed copy of any form listed in subsection (A).

Historical Note

New Section made by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

ARTICLE 2. LICENSURE

R4-45-201. Application

A. In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on the Board's license application form:
1. Applicant's full name and Social Security number;
2. Applicant's current mailing, permanent, and e-mail addresses;
3. Current employer's name, address, and telephone number;
4. Current employment position and beginning date of employment;
5. Current supervisor's name and telephone number;
6. Applicant's area of care or specialty;
7. Applicant's birth date;
8. Applicant's home and work telephone numbers;
9. Any name by which the applicant has ever been known. The applicant shall submit documentation of name change if the applicant is applying for licensure under a name different from that on the applicant's credentials, educational degree, or diploma;
10. A statement of the facts entitling the applicant to take the CRT examination or to receive a license without examination under R4-45-206;
11. Name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including certificate number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;
12. A statement whether the applicant has ever been denied a professional license or certificate or the privilege of taking an examination by a governing licensing authority

and, if the answer is yes, a complete explanation of the denial including date, state or province, and a copy of any order issued;

13. A statement whether the applicant is the subject of any pending disciplinary action that is directly or indirectly related to the practice of respiratory therapy and, if the answer is yes, a complete explanation, including date, state or province, and a copy of any order issued;
14. A statement whether the applicant has ever voluntarily surrendered a professional license and, if the answer is yes, a complete explanation, including dates, state or province, and a copy of any order issued;
15. A statement whether the applicant has ever filed an application for a respiratory care practitioner license in Arizona and, if the answer is yes, the date;
16. A statement whether the applicant has been enrolled in or committed to a substance-abuse or alcohol-treatment program in the past 10 years and, if the answer is yes, a complete explanation, including date, place, and a copy of any documentation of completion of the program;
17. Except for a minor traffic violation, a statement whether the applicant has ever been convicted of, pled no contest (nolo contendere) to, entered into any agreement concerning an arrest or charge (even if the agreement resulted in a dismissal or expungement of record), or has an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country and, if the answer is yes, a complete explanation, including place, date, and a copy of any pertinent documentation such as a court order or plea agreement;
18. A statement whether the applicant has had an intemperance to drugs or alcohol within the last 10 years and, if the answer is yes, a complete explanation;
19. Applicant's physical description, including height, weight, and eye and hair color;
20. Highest level of education completed by the applicant;
21. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.;
22. Consistent with the Board's authority under A.R.S. § 32-3522(B)(4), other information or documentation the Board determines is necessary to evaluate the applicant fully;
23. A record or documentation release; and
24. Applicant's certification that the information provided is true and complete and that the applicant has not engaged in any act prohibited by Arizona law or this Chapter.

B. An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:

1. If NBRC-certified or registered, a copy of the applicant's:
   a. NBRC-issued certification or registration; or
   b. CRT examination results;
2. If not NBRC-certified or registered, a copy of the applicant's diploma awarded upon successful completion of an approved respiratory therapy training program or letter of completion from the registrar of an approved respiratory therapy training program that provides the date of the applicant's successful completion;
3. If ever licensed as a respiratory care practitioner in another state, the information specified in R4-45-205;
4. If foreign-trained, the information specified in R4-45-204;
5. The fee required under R4-45-102(A)(1); and
6. A full set of fingerprints submitted on a card provided by the Board for a state and federal criminal background check along with the fee prescribed at R4-45-102(A)(10).

C. The Board shall issue a temporary license to an applicant who is qualified under R4-45-213.

D. An applicant shall inform the Board in writing of a change in the applicant's address or other contact information within 10 days from the date of the change.

E. An applicant shall inform the Board immediately, by fax or e-mail, of the following:

1. A change in any non-contact information provided on the license application,
2. A change in the applicant's employment status and the reason for the change, or
3. Other information that a reasonable person would believe is relevant to the Board's decision to grant or deny a license to the applicant.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-202. Approved Respiratory Therapy Training Programs

The Board shall approve any respiratory therapy training program that is accredited by the Committee on Accreditation for Respiratory Care.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-203. Examinations

A. Except when a license may be issued without an examination under A.R.S. § 32-3524, an applicant shall pass the CRT examination. The passing score is the scaled score set by the NBRC.

B. An applicant shall inform the Board as soon as possible by one of the following methods that the applicant passed the CRT examination:

1. Forward to the Board a copy of either the examination results or certificate, or
2. Direct the NBRC to forward to the Board a copy of either the examination results or certificate.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-204. Application by a Foreign-trained Applicant

An applicant who has a diploma from a respiratory therapy school located outside the United States shall:

1. Cause the school from which the diploma was issued to deliver to the Board a certified copy of course transcripts and other information concerning the applicant's course of study sufficient to enable the Board to determine whether the course of study is equivalent to a training program approved under R4-45-202, and
2. Submit a photocopy of the applicant's diploma from the foreign respiratory therapy school.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-205. Application Based on Licensure by Another State
If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board:
1. A certified copy of the license;
2. A verification of license, completed, signed, and authenticated by seal or notarization by the Board of the state issuing the license; and
3. Either a copy of the results of the CRT examination or a copy of another examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent to the CRT examination.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-206. Licensure Based on Organizational Registration or Certification
The Board shall issue a license to an applicant without examination if the applicant:
1. Is qualified under A.R.S. § 32-3523,
2. Files an application for licensure under R4-45-201, and
3. Is registered or certified as a respiratory therapist by the NBRC.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-207. Renewal
A. A respiratory care practitioner's first license expires on the licensee's second birthday following issuance of the license. Thereafter, a respiratory care practitioner's license expires every other year on the licensee's birthday.
B. To apply for renewal of a license, a licensee shall:
1. Complete a license renewal application form and provide the following information:
   a. Applicant's full name;
   b. Applicant's Arizona license number;
   c. Applicant's mailing, permanent, and e-mail addresses and telephone number;
   d. Applicant's highest educational degree;
   e. Applicant's employment status;
   f. Applicant's principal field of employment;
   g. Current employer's name and address;
   h. Current supervisor's name and telephone number;
   i. Applicant's physical description, including height, weight, and eye and hair color;
   j. A statement whether, since the time of last application, the applicant:
      i. Has been arrested for, has pled guilty or no contest to, or has been convicted of a felony, misdemeanor, or undesignated offense, and if the answer is yes, a complete explanation, including place, date, charge, and a copy of any pertinent documentation such as a court order or plea agreement;
      ii. Has been arrested for a traffic violation that resulted in a fine greater than $150, and if the answer is yes, a complete explanation, including date, offense, and a copy of any pertinent documentation such as a court order;
      iii. Has been named in a civil or malpractice lawsuit relating to the applicant's employment as a respiratory care practitioner, and if the answer is yes, a complete explanation;
      iv. Has been or is subject to any disciplinary action, consent order, or settlement regarding the applicant's license in any jurisdiction, and if the answer is yes, a complete explanation;
      v. Has abused illegal substances, prescription drugs, or alcohol or been enrolled or committed to a substance-abuse or alcohol-treatment program, and if the answer is yes, a complete explanation, including date, place, and copy of any documentation of program completion; and
      vi. Has been disciplined, suspended, or terminated from employment as a respiratory care practitioner, and if the answer is yes, a complete explanation;
   k. A statement of whether the applicant is in compliance with all federal and state law regarding storage, transfer, and access to medical records;
   l. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; and
   m. The applicant's certification that the information provided is true and complete;
2. Pay the renewal fee prescribed in R4-45-102(A)(4); and
3. Complete the required continuing education units.

C. The Board shall notify a licensee of:
1. Need to renew the licensee's license,
2. Expiration of the licensee's license, and
3. Audit of the licensee's continuing education records.

D. If a license expires because it is not renewed timely, the former licensee may apply for late renewal within two years from the date of expiration. To apply for late renewal, the former licensee shall comply with subsection (B).
E. If a former licensee does not apply for late renewal under subsection (D), the former licensee may obtain a new license only by applying as a new applicant.
F. Misrepresentation of information on the license renewal application form or of compliance with the continuing education requirement in R4-45-208 constitutes grounds for disciplinary action.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-208. Continuing Education Requirement
Continuing education is required as a condition of licensure renewal.
1. A respiratory care practitioner shall acquire 20 CEUs during every two-year licensure period. To renew a license, a respiratory care practitioner shall report compliance with the continuing education requirement. A respiratory care practitioner shall submit documentation showing evidence of compliance only if requested by the Board.
2. During the first licensure period, a licensee shall use the licensure issuance date as the beginning of the period in which the licensee is required to acquire CEUs. A licensee shall acquire 20 hours of CEUs before expiration of the first licensure period. Subsequent continuing education periods coincide with subsequent licensure periods.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-209. Approved Continuing Education

A. The Board shall accept for CEUs a continuing education approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.

B. The provider of or an individual who takes a continuing education that is not approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care may apply to the Board for approval under R4-45-210.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-210. Criteria for Approved Continuing Education

A. The Board shall approve for CEUs a continuing education that meets the following criteria:
1. The content of the continuing education is relevant to the scope of practice of respiratory care as defined in A.R.S. § 32-3501(5),
2. At least 2/3 of the continuing education hours relate to clinical practice,
3. The non-clinical continuing education hours cover:
   a. Activities relevant to specialized aspects of respiratory care, such as education, supervision, and management;
   b. Health care cost containment or cost management;
   c. Preventative health services and health promotion;
   d. Required abuse reporting; or
   e. Other subject matter required by statute or rule to be included in continuing education for a licensed health professional, and
4. The faculty who provide the continuing education are knowledgeable in the continuing education subject matter as evidenced by:
   a. A degree from an accredited college or university and verifiable experience in the subject matter, or
   b. Teaching and clinical experience in the same or similar subject matter.

B. A continuing education provider that wishes to grant CEUs shall apply to the Board using an application, which is available from the Board, and provide the following information:
1. List of educational objectives;
2. Description of the teaching methods, for example: lecture, seminar, audio-visual materials, or simulation;
3. Description of the manner in which participants will be involved in the learning activities; and
4. Names and qualifications of all faculty.

C. A continuing education provider shall maintain a record of who attended each continuing education for three years.

D. A continuing education provider shall provide documentation of attendance to each participant that includes:
1. The participant's name,
2. The participant's respiratory care practitioner license number,
3. Title of the continuing education,
4. Number of CEUs earned,
5. Date or dates of attendance, and
6. Name and address of the continuing education provider.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-211. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

The Board shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit documentation that demonstrates compliance with the continuing education requirement within the time specified in the audit notice. If the licensee fails to submit documentation that demonstrates compliance with the continuing education requirement on or before the date specified in the audit notice, the Board shall provide written notice of intent to revoke the license issued to the licensee.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-212. Waiver of Requirements

A. When applying for renewal of a license, a licensee may request a waiver from completion of the continuing education requirement. The Board shall grant a waiver only if the licensee verifies in writing that during the period immediately before expiration of the license, the licensee:
1. Resided in a country outside the United States for at least one year, reasonably preventing completion of the continuing education requirement;
2. Was absent from Arizona for at least one year, reasonably preventing completion of the continuing education requirement; or
3. Was prevented from completing the continuing education requirement for reasons of health or other good cause including:
   a. Physical or mental disability of the licensee for at least one year, reasonably preventing completion of the continuing education requirement; or
   b. Physical or mental disability of a member of the licensee's family for at least one year and the licensee had responsibility for the family member's care, preventing completion of the continuing education requirement.

B. A licensee who claims a disability under subsection (A)(3) shall submit with the waiver request a written verification of the disability by a licensed physician.

Historical Note
Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-213. Temporary Licensure

A. To be considered for a temporary license, an applicant shall submit a license application package, as described in R4-45-201, and pay the application fee. The Board shall issue a temporary license, valid for eight months, to the applicant only if the Board's Executive Director determines, after reviewing the license application package, that the applicant has never held a temporary license and is eligible to receive a license except that one or more of the following documents are missing from the license application package:
1. Passing score on the CRT examination,
2. Verification of license from another state in which the applicant is or was licensed,

3. Certified copy of course transcripts and descriptive information regarding the applicant's course of study at a foreign respiratory therapy school, or
4. Completed federal and state criminal background check.

B. An applicant who is issued a temporary license shall:
1. Perform respiratory care services only under direct supervision,
2. Not supervise a licensee or another temporary licensee, and
3. Work as an instructor or in a management position only if issued the temporary license under A.R.S. § 32-3524.

C. A temporary licensee who applied for licensure under A.R.S. § 32-3524 may extend the temporary license for an additional 120 days by submitting a request for an extension to a temporary license form to the Board.

D. A temporary licensee who is required by A.R.S. § 32-3523 and R4-45-201 to pass the CRT examination before becoming licensed may extend the temporary license for an additional 120 days by submitting to the Board:
1. A request for an extension to a temporary license form, and
2. Evidence that the temporary licensee has either:
   a. Passed the CRT examination, or
   b. Attempted to pass the CRT examination and is registered to take the next scheduled CRT examination.

E. A temporary licensee shall ensure that a request for an extension to a temporary license:
1. Includes an address of record,
2. Is typed or written in black ink,
3. Is signed by the applicant, and
4. Is accompanied by the following:
   a. The fee prescribed in R4-45-102(A)(5), and
   b. An affirmation that the temporary license has not expired.

F. A temporary licensee who is required but unable to submit the evidence under subsection (D)(2) may request an opportunity to explain this inability to the Board.

G. If the Board has not acted on an applicant's application for licensure, the Board shall administratively close the application for licensure if the applicant fails to request an extension to the applicant's temporary license. The temporary licensee shall apply for extension no more than 60 days before expiration of the temporary license. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.

H. Reapplication under subsection (G) does not qualify an individual for a second temporary license. The Board shall not issue more than one temporary license to an individual.

I. A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3553.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-214. Standards of Professional Conduct

Conduct or practice that is contrary to recognized standards of ethics of the respiratory therapy profession, as used in A.R.S. § 32-3501(10)(i), includes the following:
1. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard;
2. Procuring or attempting to procure by fraud or misrepresentation a license or renewal of a license to practice respiratory care;
3. Violating a formal order, condition of probation, or stipulation issued by the Board, another regulatory entity of any state, or a court of law;
4. Obtaining a fee by fraud, deceit, or misrepresentation;
5. Falsely claiming attendance at an approved continuing education to meet license renewal requirements;
6. Endangering a patient's or the public's physical or emotional health or safety or engaging in conduct or practice that may reasonably be expected to do so;
7. Engaging in sexual intimacies with a patient unless the sexual intimacies were initiated before the practitioner-patient relationship was established;
8. Committing an act of sexual abuse, misconduct, harassment, or exploitation;
9. Acting in a manner that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient;
10. Abandoning or neglecting a patient, including leaving a respiratory therapy assignment before properly advising supervisory personnel;
11. Failing to report for scheduled duty without properly advising supervisory personnel;
12. Using or being under the influence of alcohol, illegal drugs or substances, or drugs or substances that impair judgment, while on duty in any health care work location;
13. Impersonating another licensed practitioner;
14. Knowingly employing, directing, or supervising an individual in the performance of respiratory care who is not authorized to practice respiratory care;
15. Violating the confidentiality of information concerning a patient;
16. Inaccurately recording, falsifying, or altering a patient record, including a patient chart or medication administration record;
17. Misrepresenting or omitting a fact on an application for employment as a respiratory care practitioner;
18. Retaliating against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any practitioner;
19. Using, removing, or possessing property that belongs to an individual or entity without authorization;
20. Threatening the physical health or safety of a Board member or the Board's staff; and
21. Knowingly exceeding the scope of practice for a respiratory care practitioner at any health care location as the scope of practice is defined by the entity responsible for that health care location.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3430, effective October 4, 2008 (Supp. 08-3).

R4-45-215. Procedures for Processing Initial License Applications; Time-frames

A. For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for an initial license application:
1. Administrative completeness review time-frame: 15 days;
2. Substantive review time-frame: 90 days;

3. Overall time-frame: 105 days.

B. The administrative completeness review time-frame listed in subsection (A)(1) begins on the date the Board receives a license application package. During the administrative completeness review time-frame, the Board shall notify the applicant that the package is either complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

C. An initial license application package is not complete until the Board receives the results of the state and federal criminal background check required at A.R.S. § 32-3504(A)(6), and the applicant fully complies with the requirements of R4-45-201, the applicable provisions of R4-45-202 through R4-45-206, and submits the fee prescribed in R4-45-102(A)(3).

D. An applicant with an incomplete license application package shall supply the missing information within 210 days from the date of the notice. Both the administrative completeness review and overall time-frames are suspended from the date of the Board's notice until the date that the Board office receives all missing information.

E. Upon receipt of all missing information, the Board shall notify the applicant that the license application package is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time-frame in subsection (A)(1).

F. If an applicant fails to submit the missing information within the 210 days provided under subsection (D), the Board shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

G. The substantive review time-frame listed in subsection (A)(2) begins on the date of the Board's notice of administrative completeness.

H. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for the additional information. Both the substantive review and overall time-frames are suspended from the date on the Board's request until the date that the Board office receives the additional information.

I. Within the time listed in subsection (A)(3), the Board shall grant or deny a license.

J. If the Board denies a license, the Board shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time period for appealing the denial.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-216. Procedures for Processing License Renewal or Reinstatement Applications; Time-frames

A. For the purposes of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for renewal or reinstatement of a license:
1. Administrative completeness review time-frame: 7 days;
2. Substantive review time-frame: 60 days;
3. Overall time-frame: 67 days.

B. The administrative completeness review time-frame listed in subsection (A)(1) begins on the date the Board receives a license renewal application package. Within seven days of receiving a license renewal application package, the Executive Director shall notify the applicant that the license renewal application package is complete or incomplete. If the license renewal application package is incomplete, the Board's notice shall specify the missing information.

C. A license renewal application package is not complete until the applicant fully complies with R4-45-207 and R4-45-208.

D. The Board shall not send a notice of completeness if the Board renews the license within the administrative completeness time-frame in subsection (A)(1).

E. The Board shall substantively review a license renewal application package and grant or deny the renewal within 60 days from the postmark date of the completion notice as follows:
1. For an applicant who submits a license renewal application package before the applicant's existing license expires:
   a. If the license renewal application package is complete, the Board shall renew the license; or
   b. If the license renewal application package is incomplete and the applicant supplies the missing information before the existing license expires, the Board shall renew the license;
2. For an applicant with an incomplete license renewal application package who supplies the missing information within seven days after the date the applicant's license expires, or an applicant who submits a complete license renewal application package within seven days after the date that the applicant's license expires, the Executive Director shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement regarding whether the applicant violated A.R.S. § 32-3556 during the time that the applicant's license was expired. The applicant shall submit the required statement within seven days from the postmark date of the Board's notice. Upon receipt of a complete license renewal application package and the signed statement:
   a. For an applicant who did not knowingly violate A.R.S. § 32-3556, the Board shall renew the license and issue a letter of concern within the substantive review time-frame;
   b. For an applicant who knowingly violated A.R.S. § 32-3556, the Board shall:
      i. Deny the renewal unless the applicant can demonstrate to the Board that no person was harmed by the violation, and the applicant understands the nature and consequences of the applicant's actions; or
      ii. Require the applicant to appear before the Board, present evidence regarding the applicant's violation of A.R.S. § 32-3556, and enter into an agreement regarding discipline. The Board shall conditionally renew the applicant's license. The Board shall remove the condition when the applicant complies fully with the agreement;
3. An applicant with an incomplete license renewal application package who supplies the missing information more than seven days after the date the applicant's license expires, or an applicant who submits a complete license renewal application package more than seven days but less than two years after the date the applicant's license expires, is an applicant for reinstatement. The Executive Director shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement regarding whether the applicant violated A.R.S. § 32-3556. The

applicant shall submit the required statement within seven days from the postmark date of the Board's notice. Upon receipt of the signed statement, the Board shall:

i. Deny the reinstatement unless the applicant can demonstrate to the Board that no person was harmed by the violation, and the applicant understands the nature and consequences of the applicant's actions; or

ii. Require the applicant to appear before the Board, present evidence regarding the applicant's violation of A.R.S. § 32-3556, and enter into an agreement regarding discipline. The Board shall conditionally reinstate the applicant's license. The Board shall remove the condition when the applicant complies fully with the agreement.

F. If the Board denies a license renewal or reinstatement, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time period for appealing the denial.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-217. Appeal from Denial

A. If the Board denies a license, an applicant may make a written request for a hearing to review the denial. The applicant shall file the request with the Board within 30 days following service of notice of the denial. The request shall state specifically the reasons why the Board should review its decision. The Board shall schedule the hearing at its next meeting or at the first meeting that is convenient for all parties.

B. If an applicant who is denied a license does not request a hearing to review the denial or if the denial is affirmed, the Board shall administratively close the applicant's file. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

R4-45-218. Reinstatement Following Revocation; Modification of Probation

A. Under A.R.S. § 32-3554, a former licensee whose license is revoked may apply to the Board after one year to have the license reinstated. A licensee who is placed on probation may apply to the Board after one year to have the conditions of probation modified.

B. If a former licensee wishes to have a revoked license reinstated after the time stated in subsection (A), the former licensee shall meet the qualifications in A.R.S. § 32-3523(A) and comply with R4-45-201. The Board shall not issue a temporary license to a former licensee who applies for reinstatement.

C. A licensee who is placed on probation shall comply with R4-45-207 while on probation. If the licensee wishes to have the conditions of probation modified after the time stated in subsection (A), the licensee shall submit to the Board:

1. A letter that contains the following information:
   a. Name and address of licensee,
   b. License number,
   c. Date on which probation was imposed,
   d. Reason that probation was imposed,
   e. Conditions of probation,
   f. Modification of conditions of probation requested, and
   g. Reason a modification of conditions is warranted; and
2. Evidence that supports the request for modification of conditions.

D. The Board shall grant or deny a request for modification of conditions of probation based on its assessment of whether the licensee has complied with all conditions of probation and is able to practice respiratory care in a safe, skillful, and professional manner.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3430, effective October 4, 2008 (Supp. 08-3).

ARTICLE 3. HEARINGS

R4-45-301. Hearing Procedures

The Board shall conduct all hearings, including those held under A.R.S. § 32-3553, according to the procedures in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

R4-45-302. Rehearing or Review of Decision

A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; or
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

F. Not later than 15 days after the date of a decision, and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.

G. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 15 days after service of the motion. This period may be extended by the Board for a maximum of 20 days for good cause as described in subsection (H) or upon written stipulation of the parties. Reply affidavits may be permitted.

H. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:

1. Further administrative convenience, expedition, or economy; or
2. Avoid undue prejudice to any party.

I. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

Historical Note

Adopted effective September 12, 1996 (Supp. 96-3).
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

[R16-148]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — Rulemaking Action

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R4-45-101	Amend
R4-45-102	Amend
R4-45-105	Amend
R4-45-201	Amend
R4-45-203	Amend
R4-45-205	Amend
R4-45-213	Repeal
R4-45-218	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-3504

Implementing statute: A.R.S. §§ 32-3504, 32-3506(C), 32-3521, 32-3522, 32-3523, 32-3524, 32-3526

3. The effective date of the rule

October 2, 2016

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:

Notice of Rulemaking Docket Opening: 21 A.A.R. 3085, December 4, 2015

Notice of Proposed Rulemaking: 22 A.A.R. 549, March 11, 2016

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jack Confer, Executive Director
Address: Board of Respiratory Care Examiners
1400 W. Washington, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-5990
Fax: (602) 542-5900
E-mail john@rb.az.gov
Website: www.respiratorycare.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board is amending and repealing some of its rules in Articles 1 and 2 to make them conform to current changes in Board policy. The Board has determined that the Registered Respiratory Therapist (RRT) credential will be required for licensure as a respiratory therapist in Arizona instead of the Certified Respiratory Therapist (CRT) credential. The Commission on Accreditation for Respiratory Care has adopted new accreditation standards for respiratory care therapists that set the standard of minimum level of competency by examination pursuant to A.R.S. § 32-3504(B). The RRT examination is a higher level of competency than the CRT examination and contains clinical questions. The CRT examination does not contain clinical questions. The rules will allow respiratory therapists with a CRT credential who apply for a license before January 1, 2017 to be "grandfathered", which allows the respiratory therapist to continue to practice or obtain a license without earning the RRT credential.

R4-45-213 for temporary licenses is being repealed because its statutory authority has been repealed and the Board no longer issues them. References to temporary licenses in the rules have been repealed throughout the rules.

The Board sent a copy of the rules to the Arizona Society of Respiratory Care and the American Association of Respiratory Care and posted the rules on the Board's website to solicit comments on the rules and the rules' economic impact. The Board did not receive any comments from these solicitations.

The Board is submitting this rulemaking to the Secretary of state's office in accordance with the exemption authorization under item (2)(b) of Executive Order 2015-01, State Regulatory Rulemaking Moratorium. The rulemaking exemption was approved by the Governor's office on February 13, 2015 and May 22, 2015.

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

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
None

9. The summary of the economic, small business, and consumer impact:
Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $5,000, and substantial when greater than $5,000.

The changes to the rules may affect the Board, an applicant, a licensee, schools that provide a respiratory care program, health care institutions, and consumers.

The Board has determined that the RRT credential will be required for licensure as a respiratory care therapist in Arizona. Thus, the Board is changing the credential it requires of a respiratory care therapist from the CRT to the RRT. The Registry Examination system was developed to objectively measure knowledge, skills, and abilities required of advanced respiratory therapists and to set uniform standards for measuring such knowledge. Many health care institutions expect services at the RRT level, but there are no costs to them. The Board is eliminating all references to temporary licenses throughout the rules. One of these rules is R4-45-102 for Fees. The Board is not increasing or decreasing any of its fees, but is removing the reference to temporary license. The Board is not increasing costs for an application or application renewal, so all fees for applicants remain the same. Costs should not increase to schools because schools have already updated their curriculum in the accreditation process. Respiratory therapists who apply for license before January 1, 2017 may be "grandfathered" into licensing, which allows the respiratory therapist to continue to practice without earning the RRT credential. The Board should experience moderate costs for writing the rules and economic impact statement.

The Board currently licenses about 4,100 individuals. Costs should not increase to a licensee due to amendment or repeal of the rules.

Consumers benefit from rules that require respiratory therapists to qualify at a higher level. Consumers should not experience increased costs. The Board, applicants, licensees, and consumers should benefit from rules that are clearly and consistently written.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:
There are no substantial changes between the proposed rules and final rules. There are minor changes to style, format, grammar, and punctuation requested by GRRC staff.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response:
The Board received the following comments regarding the rules:

Comment: Experienced therapists are and will be forced out of the field.

Response: The grandfather provision of these rules allows experienced RCPs to continue practicing while holding a CRT credential. The Board does not have jurisdiction over the employment practices of health care institutions that may require a RRT credential as a term of employment.

Comment: There is no difference between a CRT and RRT. Eventually the CRT will go away.

Response: The NBRC determines the difference in testing to obtain these credentials. The Board has determined that beginning January 1, 2017, any new applicant will be required to obtain the RRT credential as its minimum level of competency. Eventually, as RCPs retire from the industry, the number of CRTs will diminish and eventually disappear.

Comment: I am against a third party credential, a college degree should be all that is required for licensure.

Response: The Board disagrees and has established the minimum level of competency to obtain a license to practice the respiratory care profession in this state beginning January 1, 2017 is at the RRT examination and credential level.

Comment: Under the proposed rules, a "grandfathered" CRT who was unable to maintain his/her credential with the NBRC would subsequently loose his/her license and livelihood.

Response: This is not true for CRTs or RRTs; the Board only requires the credential as its current and future minimum level of competency. The Board does not require continued maintenance of that credential issued by the NBRC.

Comment: Requiring the RRT credential as a condition of licensure would force individuals to become members and pay fees for organization, which they might not otherwise do.

Response: The Board is not forcing any current licensees that hold the CRT to obtain the RRT credential. The NBRC no longer provides a stand-alone CRFT examination, so the fiscal impact to a new graduate or applicant is the same.

Comment: Let the market place take care of the market, no new law.

Response: The legislature has identified this industry as requiring regulation and oversight. The Board does not believe that regulation will change in the immediate future and does not concur with this response.

Comment: The rules are an attempt to interfere with the legal practice of respiratory therapy by credentialed respiratory practitioners.

Response: The Board will continue to protect the public's health, safety, and welfare by licensing only those individuals that meet the licensing requirements. The Board is providing a grandfather provision that will allow CRTs to continue practicing.

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

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

The rules comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

Federal law is not applicable to the subject of the rules.

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

The Board did not receive such an analysis from any person.

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages

The rules were not made as emergency rules.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-45-101. Definitions
R4-45-102. Fees
R4-45-105. Electronic Communication

ARTICLE 2. LICENSURE

Section
R4-45-201. Application
R4-45-203. Examinations
R4-45-205. Application Based on Licensure By Another State
R4-45-213. ~~Temporary Licensure~~ Repealed
R4-45-218. Reinstatement Following Revocation; Modification of Probation

ARTICLE 1. GENERAL PROVISIONS

R4-45-101. Definitions

In addition to the definitions in A.R.S. § 32-3501, in this Chapter, unless otherwise specified:

"Applicant" means an individual who meets the qualifications of A.R.S. § 32-3523 and applies for licensure under A.R.S. § 32-3522.

"Approved continuing education" means a planned course or program that the Board confirms meets the criteria in R4-45-210 or is approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.
~~"Contested case" has the same meaning as prescribed in A.R.S. § 41-1001.~~
"Continuing education unit" or "CEU" means a segment of an approved continuing education.
"CRT examination" means the objective measure of essential knowledge, skills, and abilities required of an entry-level respiratory therapist, which is approved by the Board and administered by the NBRC.
"Day" means calendar day.
"Direct supervision" means that a licensed respiratory care practitioner, or physician licensed under A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient ~~or observe and direct the practice of a temporary licensee.~~
"Executive Director" means the officer employed by the Board to perform administrative and investigative functions.
"Grandfathered" means to license a respiratory therapist who has a CRT credential and applies for licensure before January 1, 2017 without meeting the qualifications required by these rules.
~~"Individual," as used in A.R.S. § 32-3521(B)(4), means only those persons listed with current, valid certifications, registrations, or licenses acting within the scope of their authorized practice.~~
"License" means the document issued by the Board to practice respiratory care in Arizona.
"License application package" means a license application form and any documents required to be submitted with the license application form.
"Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Ch. 35.
"National Board for Respiratory Care, Inc." or "NBRC" means the national credentialing board for respiratory therapy.
~~"Party" has the same meaning as prescribed in A.R.S. § 41-1001.~~
"Pharmacological, diagnostic, and therapeutic agents," as used in A.R.S. § 32-3501(5), means medications that are aerosolized and given through artificial airways or vascular access.
"RRT credential" means an award issued to a respiratory therapist by the NBRC who passes the RRT examination.
"RRT examination" means the objective measure of essential knowledge, skills, and abilities at a level that is higher than the CRT examination and that is required of a respiratory therapist and approved by the Board.
~~"Temporary license" means the document issued by the Board under A.R.S. § 32-3521 that allows an applicant to practice respiratory care under direct supervision before the Board issues the applicant a license.~~
"Verification by a licensed respiratory therapist," as used in A.R.S. § 32-3521(B)(7) and (C), means a licensee's written confirmation, before equipment is delivered, that the equipment is consistent with the patient's prescription and needs.
"Verification of license" means a form the Board provides to an applicant to submit for completion by a state to confirm that the applicant currently holds or previously held a license, certification, or registration from that state.

R4-45-102. Fees

A. No change
1. No change
2. No change
3. No change
4. No change
~~5. Extension to a temporary license, $75;~~
~~6.~~5. No change
~~7.~~6. No change
   a. No change
   b. No change
~~8.~~7. No change
~~9.~~8. No change
   a. No change
   b. No change
~~10.~~9. No change
~~11.~~10. No change

B. No change

R4-45-105. Electronic Communication

A. No change
1. No change
2. No change
3. License renewal application, and
4. ~~Request for an extension to a temporary license, and~~

~~5.~~4. No change
B. No change
C. No change
D. No change

ARTICLE 2. LICENSURE

R4-45-201. Application

A. In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on the Board's license application form:
1. ~~Applicant's~~ The applicant's full name and Social Security number;
2. ~~Applicant's~~ The applicant's current mailing, permanent and e-mail addresses;
3 ~~Current~~ The applicant's current employer's name, address, and telephone number;
4. ~~Current~~ The applicant's current employment position and beginning date of employment;
5. ~~Applicant's Current~~ The applicant's current supervisor's name and telephone number;
6. ~~Applicant's~~ The applicant's area of care or specialty;
7. ~~Applicant's~~ The applicant's birth date;
8. ~~Applicant's~~ The applicant's home and work telephone numbers;
9 No change
10. A statement of the facts entitling the applicant to take the ~~CRT~~ RRT examination, ~~or~~ to receive a license without examination under R4-45-206;
11. ~~Name~~ The name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including the number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. ~~Applicant's~~ The applicant's physical description, including height, weight, and eye and hair color;
20. ~~Highest~~ The highest level of education completed by the applicant;
21. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.;
22. No change
23. No change
24. ~~Applicant's~~ The applicant's certification that the information provided is true and complete and that the applicant has not engaged in any act prohibited by Arizona law or this Chapter.

B. An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:
1. If NBRC-~~certified or~~ registered, a copy of the applicant's:
   a. NBRC-issued ~~certification or~~ registration; ~~or~~
   b. ~~CRT~~ RRT examination results; or
   c. If grandfathered, CRT examination results.
2. No change
3. No change
4. No change
5. No change
6. No change

~~C. The Board shall issue a temporary license to an applicant who is qualified under R4-45-213.~~
~~D.~~C. No change
~~E.~~D. No change
1. No change
2. No change
3. No change

R4-45-203. Examinations

A. Except when a license may be issued without an examination under A.R.S. § 32-3524 or grandfathered, an applicant shall pass the ~~CRT~~ RRT examination. The passing score is the scaled score set by the NBRC.
B. An applicant shall inform the Board as soon as possible by one of the following methods that the applicant passed the ~~CRT~~ RRT examination:
1. No change
2. No change

R4-45-205. Application Based on Licensure by Another State

If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board:

1. No change
2. No change
3. Either a copy of the results of the ~~CRT~~ RRT examination or a copy of another examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent to the ~~CRT~~ RRT examination.

R4-45-213. ~~Temporary Licensure~~ Repealed

~~A. To be considered for a temporary license, an applicant shall submit a license application package, as described in R4-45-201, and pay the application fee. The Board shall issue a temporary license, valid for eight months, to the applicant only if the Board's Executive Director determines, after reviewing the license application package, that the applicant has never held a temporary license and is eligible to receive a license except that one or more of the following documents are missing from the license application package:~~

~~1. Passing score on the CRT examination,~~
~~2. Verification of license from another state in which the applicant is or was licensed,~~
~~3. Certified copy of course transcripts and descriptive information regarding the applicant's course of study at a foreign respiratory therapy school, or~~
~~4. Completed federal and state criminal background check.~~

~~B. An applicant who is issued a temporary license shall:~~

~~1. Perform respiratory care services only under direct supervision,~~
~~2. Not supervise a licensee or another temporary licensee, and~~
~~3. Work as an instructor or in a management position only if issued the temporary license under A.R.S. § 32-3524.~~

~~C. A temporary licensee who applied for licensure under A.R.S. § 32-3524 may extend the temporary license for an additional 120 days by submitting a request for an extension to the Board on a form prescribed by the Board.~~

~~D. A temporary licensee who is required by A.R.S. § 32-3523 and R4-15-201 to pass the CRT examination before becoming licensed may extend the temporary license for an additional 120 days by submitting to the Board:~~

~~1. A request for an extension to a temporary license form, and~~
~~2. Evidence that the temporary licensee has either:~~
~~a. Passed the CRT examination, or~~
~~b. Attempted to pass the CRT examination and is registered to take the next scheduled CRT examination.~~

~~E. A temporary licensee shall ensure that a request for an extension to a temporary license:~~

~~1. Includes an address of record,~~
~~2. Is typed or written in black ink,~~
~~3. Is signed by the applicant,~~
~~4. Is accompanied by the following:~~
~~a. The fee prescribed in R4-45-102(A)(5), and~~
~~b. An affirmation that the temporary license has not expired.~~

~~F. A temporary licensee who is required but unable to submit the evidence under subsection (D)(2) may request an opportunity to explain this inability to the Board.~~

~~G. If the Board has not acted on an applicant's application for licensure, the Board shall administratively close an application for licensure if the applicant fails to apply for extension to the applicant's temporary license. The temporary licensee shall apply for extension no more than 60 days before expiration of the temporary license. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.~~

~~H. Reapplication under subsection (G) does not qualify an individual for a second temporary license. The Board shall not issue more than one temporary license to an individual.~~

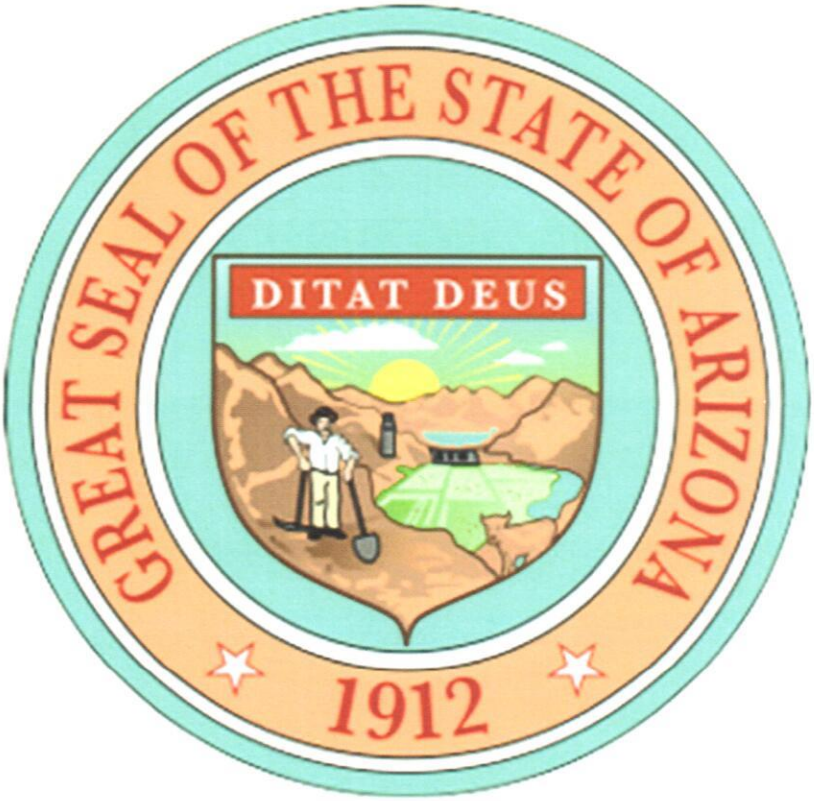
~~I. A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3553.~~

R4-45-218. Reinstatement Following Revocation; Modification of Probation

A. No change
B. If a former licensee wishes to have a revoked license reinstated after the time stated in subsection (A), the former licensee shall meet the qualifications in A.R.S. § 32-3523(A) and comply with R4-45-201. ~~The Board shall not issue a temporary license to a former licensee who applies for reinstatement.~~
C. No change
   1. No change
      a. No change
      b. No change
      c. No change
      d. No change
      e. No change
      f. No change
      g. No change
   2. No change

LAWS and RULES

Governing the Practice of Respiratory Care in the State of Arizona



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ERRATA

This publication is provided as a service to foster voluntary compliance with laws and regulations. Reasonable effort has been taken to ensure its accuracy; however, readers are reminded that the only official versions appear in the Arizona Revised Statutes and the Arizona Administrative Code, which are available in most Arizona libraries, the Secretary of State's office and on the official websites of the State of Arizona.

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ARIZONA RESPIRATORY CARE ACT

ARS § 32-3501 - 32-3558

BOARD OF RESPIRATORY CARE EXAMINERS

Laws 1990, Chapter 256, § 1. Legislative Intent

The legislature also recognizes that the practice of respiratory care is a dynamic and changing art and science which is continually evolving to include new developments and more sophisticated techniques in patient care, thus creating a need for continuing education and maintenance of minimum standards of competence for those who practice this area.

The intent of the legislature in this act is to provide clear legal authority for functions and procedures which have common acceptance and usage. In this act, the legislature also intends to recognize the existence of overlapping functions between physicians, registered nurses, physical and occupational therapists, respiratory care practitioners and other licensed health care personnel and to continue to allow appropriate sharing of functions among the various health care professions.@

ARTICLE 1. GENERAL PROVISIONS

§32-3501. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of respiratory care examiners.

2. "Diagnostic testing" includes obtaining physiologic samples and determining acid-base status and blood gas values from blood samples and pulmonary function measurements.

3. "Licensed respiratory care practitioner" means a respiratory therapist or respiratory therapy technician licensed pursuant to this chapter.

4. "Medical direction" means direction by a physician licensed pursuant to chapter 13 or 17 of this title.

5. "Practice of respiratory care" means direct and indirect respiratory care services performed in a clinic, hospital, skilled nursing facility or private dwelling or other place deemed appropriate or necessary by the boa in accordance with the prescription or verbal order of a physician and performed under qualified medical direction. These services include:

(a) Administering pharmacological, diagnostic and therapeutic agents related to respiratory care procedures and necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician.

(b) Transcribing and implementing the written or verbal orders of a physician pertaining to the practice of respiratory care and observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including a determination of whether these signs, symptoms, reactions, behavior or general response exhibits abnormal characteristics.

(c) Implementing appropriate reporting, referral, respiratory care protocols or changes in treatment bas on observed abnormalities and pursuant to a prescription by a physician licensed pursuant to chapter 1 or 17 of this title.

(d) Initiating emergency procedures pursuant to board rules or as otherwise permitted in this chapter.

(e) Respiratory therapy.

(f) Inhalation therapy.

6. "Respiratory therapist" means a person who successfully completes a respiratory therapy training program approved by the board.

7. "Respiratory therapy technician" means a person who successfully completes a training program for respiratory therapy technicians approved by the board.

8. "Respiratory therapy training program" means a program accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education adopted by the board.

9. "Therapeutics" includes the following:

(a) Applying and monitoring oxygen therapy.

(b) Administering pharmacological agents to the cardiopulmonary systems.

(c) Ventilation therapy.

(d) Artificial airway care.

(e) Bronchial hygiene therapy.

(f) Cardiopulmonary resuscitation.

(g) Respiratory rehabilitation therapy.

(h) Barometric therapy.

(i) Assisting physicians licensed pursuant to chapter 13 or 17 of this title with hemodynamic monitoring.

10. "Unprofessional conduct" includes the following acts:

(a) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude.

(b) Habitual intemperance in the use of alcohol.

(c) Illegal use of narcotic or hypnotic drugs or substances.

(d) Gross incompetence, repeated incompetence or incompetence resulting in injury to a patient.

(e) Having professional connection with or lending the name of the licensee to an illegal practitioner of respiratory therapy or any of the other healing arts.

(f) Failing to refer a patient whose condition is beyond the training or ability of the respiratory therapist to another professional qualified to provide such service.

(g) Immorality or misconduct that tends to discredit the respiratory therapy profession.

(h) Refusal, revocation or suspension of a license by any other state, territory, district or country, unless it can be shown that this was not caused by reasons which relate to the person's ability to safely and skillfully practice respiratory therapy or to an act of unprofessional conduct prescribed in this paragraph.

(i) Any conduct or practice which is contrary to recognized standards of ethics of the respiratory therapy profession or any conduct or practice which does or might constitute a danger to the health, welfare or safety of the patient or the public.

(j) Any conduct, practice or condition which does or might impair the person's ability to safely and skillfully practice respiratory therapy.

(k) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(l) Failing to report to the board an incident or incidents which appear to show the existence of a cause for disciplinary action or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care.

§32-3502. Board of Respiratory Care Examiners; Membership, Appointment, Qualifications

A. The board of respiratory care examiners is established consisting of seven members appointed by the governor. Each board member shall be a resident of this state at the time of appointment. The governor shall appoint:

1. Three licensed respiratory care practitioners, at least one of whom is a technical director of a respiratory care department or respiratory care corporation or an officer or faculty member of a college, school or institution engaged in respiratory therapy education and at least one of whom is involved in direct patient care.

2. A physician who is licensed pursuant to chapter 13 or 17 of this title and who is knowledgeable in respiratory care.

3. Two public members who are not engaged, directly or indirectly, in the provision of health care services.

4. One hospital administrator.

B. The respiratory care practitioner members shall:

1. Have at least five years of experience in respiratory care or respiratory therapy education.

2. Have been employed actively in direct patient care, respiratory therapy education or management or supervision of respiratory care for at least three years immediately preceding appointment.

3. Be licensed pursuant to this chapter.

C. The governor may appoint the licensed respiratory care practitioners from a list of seven qualified persons submitted to the governor by the Arizona society for respiratory care.

D. The governor may appoint the physician member from a list of three qualified persons submitted to the governor by the Arizona medical association and the Arizona osteopathic medical association.

E. The governor may appoint the hospital administrator member from a list of three qualified persons submitted to the governor by the Arizona hospital association.

F. The term of office of each member is three years, to begin and end on June 30. A member shall not serve for more than two consecutive terms.

G. The governor may remove board members for neglect of duty, malfeasance or misfeasance.

§32-3503. Meetings; Organization; Compensation

A. The board shall meet in January of each year to elect a chairman and other officers. The board shall hold at least one additional meeting before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any two board members. A majority of the members of the board constitutes a quorum.

B. All board meetings are open to the public, except that the board may hold closed sessions to approve examinations or, on the request of an applicant who fails an

examination, to prepare a response indicating a reason for an applicant's failure.

C. Board members are eligible to receive compensation pursuant to section 38-611 and are entitled to reimbursement of expenses necessarily and properly incurred in carrying out board duties.

§32-3504. Powers and Duties; Inspection of Records; Personnel Examinations; Immunity

A. The board shall:

1. Enforce and administer the provisions of this chapter.

2. Adopt rules necessary to administer this chapter.

3. Examine applicants for licensure pursuant to this chapter at times and places it designates.

4. Investigate each applicant for licensure, before a license is issued, in order to determine if the applicant is qualified pursuant to this chapter.

5. Keep a record of all its acts and proceedings pursuant to this chapter, including the issuance, refusal, renewal, suspension or revocation of licenses.

6. Beginning on January 1, 1999, require each applicant for initial licensure to submit a full set of fingerprints to the board for a state and federal criminal history records check pursuant to section 41-1750 and Public Law 92-544.

7. Maintain a register which contains the name, the last known place of residence and the date and number of the license of all persons licensed pursuant to this chapter.

8. Compile, once every two years, a list of licensed respiratory care practitioners who are authorized to practice in this state.

9. Establish minimum annual continuing education requirements for persons licensed under this chapter.

B. The board, in approving training programs for respiratory therapists and training programs for respiratory therapy technicians shall consider the requirements and standards set by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education. The board may recognize examinations administered by a national board for respiratory care approved by the board.

C. The board may employ an executive officer and other temporary and permanent personnel it deems necessary. The executive officer and other personnel are eligible to receive compensation pursuant to section 38-611.

D. The board may conduct examinations under a uniform examination system and may make arrangements with the national board of respiratory care or other organizations regarding examination materials it determines necessary and desirable.

E. The board and its members, temporary and permanent personnel and board examiners are personally immune from suit with respect to all acts done and actions taken

in good faith and in furtherance of the purposes of this chapter.

§32-3505. Board of respiratory care examiners fund

A. The board of respiratory care examiners fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies from whatever source that come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of respiratory care examiners fund. Monies in the board of respiratory care examiners fund may be used by the board for payments of all necessary board expenses.

B. Monies deposited in the board of respiratory care examiners fund are subject to section 35-143.01.

§32-3506. Executive director; duties; compensation

A. The board shall appoint an executive director who serves at the pleasure of the board. The executive director shall not be a board member.

B. The executive director is eligible to receive compensation pursuant to section 38-611.

C. The executive director shall:

1. Perform the board's administrative duties.

2. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6 employ, evaluate, dismiss, discipline and direct personnel as necessary to carry out board functions.

3. Set compensation for board employees pursuant to section 38-611.

4. Initiate an investigation if there is reason to believe that a licensee is incompetent, mentally or physically unable to safely practice respiratory care or engaged in unprofessional conduct.

5. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and evidence.

6. As directed by the board, sign and execute disciplinary orders, rehabilitative orders and notices of hearings.

7. On behalf of the board, enter into stipulated agreements with licensees for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

8. Perform all other duties required by the board.

ARTICLE 2. LICENSURE

§32-3521. Allowable respiratory care services; transactions by medical equipment dealers

A. This chapter does not prohibit:

1. The performance of respiratory care services that are an integral part of a program of study by students enrolled in respiratory therapy training programs if the services are rendered under the supervision of a licensed respiratory care practitioner or a physician licensed pursuant to chapter 13 or 17 of this title.

2. Self-care by a patient or the gratuitous care by a friend or relative who does not purport to be a licensed respiratory care practitioner.

3. The performance of respiratory care services in case of an emergency, including an epidemic or public disaster.

4. The performance of respiratory care services by registered, certified or licensed individuals as provided pursuant to chapters 7, 8, 11, 13, 14, 15, 17, 18, 19, 21, 25, 28 and 29 of this title and title 36, chapter 21.1.

5. The performance of specific diagnostic testing techniques relating to respiratory care by a person under medical direction in a clinical laboratory that is regulated pursuant to title 36, chapter 4.1.

6. The performance of respiratory care services by a person employed as a respiratory therapist or respiratory therapy technician by the United States government or any of its agencies if that person provides respiratory therapy only under the direction or control of the federal government or an agency of the federal government.

7. Medical equipment dealers who comply with subsection B of this section from taking a prescription for respiratory equipment, as long as that prescription is verified by a licensed respiratory therapist or respiratory therapy technician, and delivering oxygen equipment to or demonstrating the operation, safety and maintenance of oxygen equipment at a patient's home.

B. In a sale or lease of respiratory equipment by a medical equipment dealer to a patient, the terms of the sale or lease shall be in writing and signed by the parties describing the date of the sale or lease, the equipment to be sold or leased and the cost and method of payment for the equipment and shall include verification by a licensed respiratory therapist or respiratory therapy technician attesting that purchase or lease of the equipment is consistent with the prescription and the needs of the patient. The patient shall be provided a copy of all documents pertaining to the sale or lease at the time the documents are signed by the parties.

§32-3522. Application of Licensure

A. All applications for licenses to practice respiratory care shall be filed with the board.

B. Each application shall:

1. Be accompanied by the prescribed application fee.

2. Be signed by the applicant.

3. Contain a statement under oath of the facts entitling the applicant to take an examination or to receive a license without examination.

4. Contain information the board deems necessary to determine the qualifications of the applicant.

C. If an applicant's application is based on a diploma from a foreign respiratory therapy school or a certificate of license issued by another state, he shall furnish documentary evidence, to the satisfaction of the board, that he has completed courses of study which are at least equivalent to the minimum standards established by the board in its rules.

§32-3523. Qualifications

A. An applicant for a license shall:

1. Be a high school graduate or the equivalent as prescribed by the board by rule.

2. Be a graduate of a respiratory therapy training program.

3. Pass a written examination approved by the board or be eligible to take a written examination pursuant to section 32-3522.

4. Not have committed acts or crimes which constitute grounds for denial of a license or disciplinary action pursuant to section 32-3552.

B. An applicant who otherwise meets the requirements for licensure pursuant to this chapter but who has not practiced respiratory care or held a license in this or any other state during the three years immediately preceding the date the applicant files an application for licensure shall provide documentation of completing at least twenty board approved continuing education units relating to clinical practice.

§32-3524. Licensure without examination

The board may issue a license to an applicant without examination if the applicant:

1. Files an application pursuant to section 32-3522.

2. Satisfies the requirements prescribed in section 32-3523.

3. At the time of his application is either:

(a) Licensed as a licensed respiratory care practitioner in another state in which, in the opinion of the board, the licensure requirements are at least equivalent to those in this state and has passed, to the satisfaction of the board, an examination in the state where he is licensed that is, in the opinion of the board, equivalent to the examination

given under its direction.

(b) Registered as a respiratory therapist or certified as a respiratory therapy technician by a national organization for respiratory care approved by the board.

§32-3525. Renewal of License

Except as provided in section 32-4301, a license issued under this chapter is subject to renewal every other year on or before the birthday of the licensee and expires unless renewed. The board may reinstate a license cancelled for failure to renew on compliance with board requirements for renewal of licenses.

§32-3526. Fees

A. The board by rule shall establish and collect fees that do not exceed the following:

1. Application for a license, one hundred dollars.
2. Application based on a diploma from a foreign respiratory therapy school, two hundred dollars.
3. Initial license, two hundred dollars.
4. Renewal of a license, two hundred dollars.
5. Duplicate license, fifty dollars.
6. Examination fee, one hundred fifty dollars.

B. The board shall prescribe the fee necessary to obtain a copy of the list of licensed respiratory care practitioners. Any interested person may obtain a copy upon payment of the fee.

C. The board by rule may establish and collect fees for license renewals and verifications and for checks that are returned for nonpayment because of insufficient monies, payments stopped or closed accounts.

ARTICLE 3. REGULATION

§32-3551. Use of title; initials; prohibited acts

A. A person who is licensed pursuant to this chapter may use:

1. The title "licensed respiratory care practitioner" or the initials "R.C.P." which indicate that he is a licensed respiratory care practitioner.

2. An initial or other suffix which indicates possession of a specific academic degree which is earned at an institution accredited by an accrediting agency recognized by the national commission on accrediting and which the board determines is at least equivalent to its minimum standards.

3. An initial or initials which indicate possession of a specific credential issued by the National Board for Respiratory Care, Inc.

B. A person who is licensed pursuant to this chapter shall not use the prefix "Dr.", the word "doctor" or any other prefix, suffix or initials which indicate or imply that he is licensed pursuant to any other chapter of this title if he is not.

C. A student enrolled in a respiratory therapy training program shall be identified as a respiratory care practitioner student or by the initials "R.C.P.S.".

§32-3552. Grounds for denial of licenses or disciplinary action; appeal

A. The board may deny an application for a license or take disciplinary action pursuant to section 32-3553 if the applicant or licensee:

1. Makes a material misrepresentation on an application or procures a license by fraud.

2. Negligently or knowingly employs an unlicensed person who represents himself as a licensed respiratory care practitioner.

3. Commits an act of unprofessional conduct.

4. Is convicted of a felony if the conviction has not been set aside by the court. Conviction by a court of competent jurisdiction is presumptive evidence that the person committed the felony.

B. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

§32-3553. Disciplinary action; duty to report; immunity; proceedings; board action

A. The board on its own motion may investigate any evidence that relates to a licensee and that appears to show the existence of any of the causes for disciplinary action prescribed in section 32-3552 or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care. A licensed respiratory care practitioner or a health care institution as defined in section 36-401 shall, and any other person may, report to the

board information the licensed respiratory practitioner, health care institution or individual may have that appears to show the existence of any of the causes for disciplinary action prescribed in section 32-3552 or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care.

B. A licensed respiratory care practitioner, a health care institution or any other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting the information, and on request the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

C. Within ninety days of receipt of information, the board shall notify the licensed respiratory care practitioner about whom information has been received as to the content of the information.

D. A health care institution shall inform the board if a licensed respiratory care practitioner is terminated due to a cause listed in section 32-3552, along with a general statement of the reasons that led the health care institution to take the action.

E. If the board finds, based on the information it receives pursuant to this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may order a summary suspension of a license pending proceedings for revocation or other action. If an order of summary suspension is issued, the licensee shall also be served with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee, and is entitled to a formal hearing before the board on the charges within sixty days.

F. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit direct action against the license of the licensed respiratory care practitioner, it may take any of the following actions:

> **1.** Dismiss the complaint if the board believes that the information is without merit.
>
> **2.** File a letter of concern if the board believes that while there is insufficient evidence to support direct action against the license of the licensed respiratory care practitioner there is sufficient evidence for the board to notify the licensee that continuing the activities that led to the information being submitted to the board may result in action against the license.
>
> **3.** Issue a non-disciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If after completing the investigation the board believes that the information provided pursuant to this section is or may be true, the board may request an interview with the licensee. If the licensee refuses this request or is interviewed and the results indicate that suspension or revocation of the license might be in order, the board shall issue a formal complaint and hold a formal hearing pursuant to title 41, chapter 6, article 10. If, after

completing the informal interview, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit suspension or revocation of the license, it may either dismiss the complaint if it believes it is without merit or take any combination of the following actions:

1. File a letter of concern if the board believes that while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities that led to the information being submitted to the board may result in action against that person's license.

2. Issue a decree of censure, which constitutes an official action against the respiratory care practitioner's license.

3. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensed respiratory care practitioner concerned.

4. Restrict the licensee's practice to specific settings in a manner the board determines best protects the public health and safety.

5. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. Failure to comply with probation is cause for initiation of a formal proceeding for suspension or revocation of a license pursuant to this section based on the information considered by the board at the informal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted pursuant to this chapter.

I. If the board finds that the information provided pursuant to this section warrants suspension or revocation of a license issued under this chapter, the board shall immediately initiate formal proceedings for the revocation or suspension of the license as provided in title 41, chapter 6, article 10. At the conclusion of that hearing the board may dismiss the complaint or revoke or suspend the license and may take any combination of actions listed in subsection G of this section.

J. In connection with the board investigation the board or its duly authorized agents or employees at all reasonable times may examine and copy any documents, reports, records or other physical evidence of any person being investigated, or the reports, the records and any of the documents maintained by and in the possession of any hospital, clinic, physician's office, or other public or private agency, and any health care institution as defined in section 36-401, that relate to the person's professional competence, unprofessional conduct or mental or physical ability to safely practice respiratory care. These requests shall be made in writing.

K. Patient records, hospital records, medical staff records, medical staff review committee records, clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to the care of patients, any information from which a patient or a patient's family may be identified or information received or reports kept by the board as a result of the investigation procedure prescribed in this chapter and testimony concerning these records and proceedings relating to their creation are not available to the public, shall be kept confidential by the board and are

subject to the same provisions concerning discovery and use and legal actions as are the original records in the possession and control of the hospital, the health care institutions or health care providers or other individual, practitioner or agency from which they are secured. The board shall use the records and testimony during the course of investigations and proceedings pursuant to this chapter.

§32-3554. Reinstatement of license; modification of probation

A. If the license of a licensed respiratory care practitioner is revoked or probation is imposed he may apply to the board for reinstatement of his license or modification of the conditions of the probation one year after the date of revocation or imposition of probation.

B. The board may accept or reject an application for reinstatement or modification of probation and may require an examination for reinstatement or modification.

§32-3555. Hearings and investigations; subpoenas; representation

A. The board may issue subpoenas to compel attendance of witnesses and the production of documents and administer oaths, take testimony, hear offers of proof and receive exhibits in evidence in connection with a board investigation or hearing. If a board subpoena is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

B. A person appearing before the board may be represented by counsel.

§32-3556. Unlawful acts

From and after August 31, 1991, it is unlawful for a person to:

1. Engage in the practice of respiratory care unless he is licensed or excepted from licensure pursuant to this chapter.

2. Represent himself to be a licensed respiratory care practitioner or an inhalation therapist or use the letters "R.C.P." or "I.T." unless he is licensed pursuant to this chapter.

§32-3557. Injunctive relief; bond; service of process

A. In addition to all other available remedies, if the board has any reason to believe that a person has violated a provision of this chapter or a board rule, the board through the attorney general or the county attorney of the county in which the violation is alleged to have occurred may apply to the superior court in that county for an injunction

restraining that person from engaging in the violation.

B. A temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond.

C. Service of process may be on the defendant in any county of this state where he is found.

§32-3558. Violation; classification

A person who violates a provision of this chapter is guilty of a class 1 misdemeanor.