

ARIZONA REGULATORY BOARD OF
PHYSICIAN ASSISTANTS

FIVE-YEAR-REVIEW REPORT

4 A.A.C. 17, Articles 1, 2, and 4

March 2015

INTRODUCTION

The Arizona legislature recognized Physician Assistants in law in the early 1970s. Physician Assistants were believed to be a way to address health care in rural and underserved areas. In 1984, the legislature established the Joint Board on the Regulation of Physicians Assistants to define the Physician Assistant regulatory program. In 2002, the legislature changed the Board's name to the Arizona Regulatory Board of Physician Assistants. Under A.R.S. § 32-2504(A)(1), the Board's primary duty is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional Physician Assistants.

The executive director employed by the Arizona Medical Board and all of its staff carry out the administrative responsibilities of the Regulatory Board of Physician Assistants.

SB1213, which was enacted the legislature during its last session (See Laws 2015, Chapter 84), changes A.R.S. § 32-2523 to have biennial license renewal for Physician Assistants and to require 40 hours of continuing medical education in each biennial period. The National Commission on the Certification of Physician Assistants (NCCPA) is moving to a 10-year recertification cycle. The Board requires that an applicant have NCCPA certification at the time of initial application but does not require a licensee to retain national certification.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2504(B)

1. Specific statute authorizing the rule:

- R4-17-101: A.R.S. Title 32, Chapter 25
- R4-17-102: A.R.S. §§ 41-1072 through 41-1079
- Table 1: A.R.S. §§ 41-1072 through 41-1079
- R4-17-202: A.R.S. § 32-2521(A)(2)
- R4-17-203: A.R.S. §§ 32-2521 and 32-2522
- R4-17-204: A.R.S. § 32-2526
- R4-17-205: A.R.S. § 32-2523(A)
- R4-17-206: A.R.S. § 32-2523

R4-17-207: A.R.S. §§ 32-2522(I), 32-2523(E), and 41-1092.03

R4-17-403: A.R.S. § 41-1092.09

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

R4-17-101 Definitions: The objective of the rule is to define terms used in the rules that are not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R4-17-102 Time-frames for Licenses and Approvals: The objective of this rule is to specify the time frames within which the Board will act on a license or renewal application. This enables an applicant to anticipate when the Board-approval process will be completed.

Table 1 Time-frames: The objective of this rule is to specify in table form the time frames within which the Board will act on a license or renewal application. This enables an applicant to anticipate when the Board-approval process will be completed.

R4-17-202 Examination: The objective of this rule is to provide information to applicants regarding the examinations that must be passed to obtain licensure. This increases efficiency in the licensing process by providing applicants with information necessary to complete the process.

R4-17-203 Regular License Application: The objective of this rule is to specify the content of an application for a license including information required to be submitted directly to the Board by third parties. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.

R4-17-204 Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This increases efficiency in the licensing process by enabling an applicant to submit the correct amount.

R4-17-205 Continuing Medical Education: The objective of this rule is to specify the manner in which a licensee may request an extension of time to complete the required continuing medical education. This protects the public and provides notice to a licensee there are few circumstances under which the Board will grant an extension to complete the required continuing medical education.

R4-17-206 License Renewal: The objective of this rule is to specify the requirements for renewal of a license and the manner in which renewal application is made. This increases efficiency in the licensing process by enabling licensees to submit a timely and administratively complete renewal application and avoid having a license expire.

R4-17-207 Denial of License or Extension to Complete Continuing Medical Education: The objective of this rule is to provide notice of the right to appeal certain Board actions, the time within which an appeal must be made, and the procedure the Board will use to conduct an appeal hearing. This facilitates due process by enabling an applicant or licensee to contest a Board decision that determined the legal rights, duties, or privileges of the applicant or licensee.

R4-17-403 Rehearing or Review: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

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

The Board concludes the rules are effective in achieving their objectives. The Board bases this conclusion of the fact that the Board is able to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional Physician Assistants. It fulfills this statutory responsibility by reviewing the qualifications of those licensed, investigating complaints, and disciplining and rehabilitating licensees.

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:

With the exceptions listed below, the rules are consistent with state statute and other rules. And as indicated in item 12, there are no federal laws directly applicable to licensing and regulation of Physician Assistants.

R4-17-102: The Board determined the table associated with this Section is inconsistent with A.R.S. § 32-2523(C), which provides that licensees may have until October 1 to submit a renewal application. As currently written, renewal applicants must respond to a deficiency notice no later than September 30, which fails to account for licensees who submit renewal applications at or near the October 1 deadline.

R4-17-203(A)(5)(I) and (D): This subsection is inconsistent with the application required for initial licensure. The subsection requires an applicant to disclose whether the applicant has, within the last 10 years, had a malpractice judgment or settlement entered against the applicant. The actual application requires disclosure only of judgments or settlements that exceed \$20,000. Subsection (D) refers to approving a Physician Assistant to issue prescriptions or dispense or issue controlled substances while statute (See A.R.S. § 32-2504(A)(11)) refers to certifying them for 30-day prescription privileges of controlled substances.

R4-17-205: The heading for this Section is misleading. The Section provides no information regarding continuing medical education. Rather, it addresses the procedure for obtaining an extension of time in which to complete the required continuing medical education. The Section would be improved if it specified the standards the Board uses to decide whether to grant or deny an extension of time in which to complete the required continuing medical education. Subsection (A), which references the number of continuing medical education hours required, will have to be amended as a result of the legislature enacting SB1213.

R4-17-206(B): This subsection, which indicates that at the time of license renewal, the Board may audit a randomly selected number of statements regarding continuing medical education,

is inconsistent with A.R.S. § 32-2523(A), which requires the Board to verify continuing medical education compliance by randomly auditing at least 10 percent of the Physician Assistants who are not certified by National Commission on the Certification of Physician Assistants.

R4-17-207: This Section references A.R.S. Title 41, Chapter 6, Article 6, as applicable when requesting a hearing regarding a denial. This reference is incorrect and needs to be deleted.

R4-17-403: Some of the time frames in this Section are inconsistent with A.R.S. § 41-1092.09 regarding a request for review or rehearing. For example, an opposing party is provided 15 days to respond to a request for review or rehearing but when the request for review or rehearing is based on affidavits, the opposing party is provided only 10 days to provide opposing affidavits. Subsection (G) also appears to be inconsistent with the conclusion reached in *Stapert v Board of Psychologist Examiners*, Court of Appeals of Arizona, 2005, which held that because the legislature did not include a good-cause exception in A.R.S. § 41-1092.09, it did not intend that a good-cause exception be available in the review/rehearing process.

A.R.S. § 32-2531(L) indicates that the Board may make a rule regarding imposing a civil penalty for violation of the statutory scope of practice provisions. A.R.S. §§ 32-2507(D) and 32-2551(K) also provide authority to impose a civil penalty. The Board has not made a rule regarding imposition of civil penalties although it has, on rare occasion, imposed them.

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

The Board enforces the rules as written except when inconsistencies noted in item 4 require otherwise. A.R.S. § 32-2523(A) requires the Board to verify compliance with the continuing medical education requirement by randomly auditing at least 10 percent of the licensees who are not certified by the National Commission on the Certification of Physician Assistants. The Board audited all licensees in FY2014 and determined the rate of compliance was approximately 99 percent.

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

The rules are generally clear, concise, and understandable and consistent with current rule writing standards. The Board identified a potential source of confusion in reading R4-17-202 and R4-17-203(C) together. R4-17-202 refers to the PANCE and PANRE examinations. R4-17-203(C) refers to the NCCPA examination. NCCPA is the entity that provides the PANCE and PANRE examinations. This potential source of confusion needs to be eliminated.

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:

During the course of an initial licensure application, the Board received correspondence objecting to R4-17-203(A)(6), which asks an applicant for initial licensure to disclose whether the applicant has been diagnosed with or treated for certain mental health conditions; whether the applicant currently is being or has recently been treated by a health professional for substance use disorder or participated in a rehabilitation program for a substance use disorder; and whether the applicant currently has a disease or condition that interferes with the applicant's ability to perform health care tasks of a Physician Assistant. The Board's renewal application requests the same information (See R4-17-206(A)(6)). In 2014, the U.S. Department of Justice issued a letter in a case involving the Louisiana State Bar calling questions similar to those asked by the Board unnecessary, overbroad, and burdensome to applicants. The DOJ concluded the questions single out applicants based on their status of having a mental health disability rather than their conduct and violate the Americans with Disabilities Act. The Board intends to amend the rules to address this issue.

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 believes its estimate of the economic impact of the 2012 making of the rules was generally accurate. There were, however, some deviations from the estimates. The Board currently licenses 2,495 Physician Assistants, which is approximately one-third more than were licensed in 2012.

During FY2014, 2,243 of the Physician Assistants renewed their licenses. The Board's accounting system does not indicate how many of these renewed online but the Board estimates, based on the cost of renewal, that it was 93 percent. This is less than the 100 percent for which the Board hoped but enough to result in considerable savings for the Board. The savings result from the reduced amount of time required to process an online renewal application. The Board estimates staff can process 12 online renewal applications in one hour versus four paper renewal applications. This has not led to a reduction in licensing staff because of the increase in the number of licensees but it has avoided an increase in licensing staff.

The Board believes the convenience fee was an important obstacle to achieving the goal of 100 percent online renewals. A licensee encountered the convenience fee, determined correctly that placing a \$.49 stamp on the renewal application was less than the \$8 convenience fee, and submitted the renewal application by mail. The Board stopped collecting the convenience fee in January 2012. During the last two years in which the convenience fee was collected, the percentage of renewals done online is estimated to have been 72.1 and 74.5, less than the 93 percent achieved in 2014 without the convenience fee.

It should be noted that the Board's credit card vendors charge an average of 1.9 percent of the transaction amount when a renewal application is submitted online. The renewal fee is \$185, which means the transaction fee is \$3.52, less than half the amount of the forgone convenience fee.

If the current rate of growth in the number of licensed Physician Assistants continues as projected, it will be even more important for the Board to achieve its goal of 100 percent renewals online. The Board intends to push also for online application for initial licensure.

The Board never charged for providing licensees with an identifying wallet card. However, the Board previously incurred costs of at least \$6,500 to provide the cards. This cost resulted from purchasing supplies and maintaining the equipment to make the wallet cards. The Board stopped providing wallet cards on February 14, 2012, and has annually saved the \$6,500 plus the cost of staff time to prepare and mail the wallet cards for the last three years. The Board based its decision to stop supplying wallet cards on its determination that the cards, which provided only the licensee's name and license issuance date, were duplicative of information provided online and seldom used. A licensee has a copy of the licensee's license and the Board posts background information regarding all licensees online (See A.R.S. § 32-2507). Members of the public, including insurance companies, are able to obtain online much more information regarding licensees than could be obtained from a wallet card.

During FY2014, the Board received 83 complaints regarding Physician Assistants. Almost 60 percent of the complaints were about the quality of care provided and 20 percent expressed concern about professional conduct of the Physician Assistant. Two of the complaints lead to a formal hearing before the Office of Administrative Hearings. Nine of the complaints resulted in discipline ranging from revocation to interim practice restriction.

During FY2014, 22 licensees participated in a physician health program designed to help them rehabilitate from alcohol or other substance use issues. A Physician Assistant may participate in the physician health program for two to five years.

The Board is currently experiencing difficulty obtaining bids on contracts to provide services for the Board. For example, it received no bids to provide the physician health program. The Board intends to explore ways to increase competitive bidding for contracts with the Board.

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 was submitted.

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

In the Board's previous 5YRR, which was approved by Council on July 13, 2010, the Board indicated it would amend all of its rules. The Board completed a rulemaking, which was approved by Council on August 7, 2012, that made all necessary changes.

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:

Most of the costs associated with being a Physician Assistant in Arizona, including paperwork and other compliance costs, result from statute rather than rule. It is presumed the legislature determined the benefits from the following requirements outweigh their costs: A.R.S. § 32-2521 prescribes the qualifications an individual must possess to be licensed and requires that an examination approved by the Board be passed; A.R.S. § 32-2522(A) requires an applicant to submit an application; A.R.S. § 32-2523 requires that a license be renewed annually and the licensee complete 20 hours of continuing medical education provided by entities specified in statute; A.R.S. § 32-2527 requires a licensee to report to the Board a change in contact information; A.R.S. § 32-2528 requires a licensee to obtain Board approval before placing the license on inactive status; A.R.S. § 32-2531 prescribes a licensee's scope of practice; and A.R.S. § 32-2532 specifies the information a licensee must include on a prescription order, requires Board approval to prescribe controlled substances, and requires a licensee to maintain a log of all controlled substances prescribed or dispensed.

The rules simply specify the examination approved by the Board (R4-17-202), outline the information included in the required application for licensure (R4-17-203) or application for renewal (R4-17-206); and inform a licensee how to obtain an extension of time to complete

continuing medical education (R4-17-205). The rules impose minimal costs and burdens on applicants and licensees and are necessary to enable the Board to protect the public by licensing and regulating Physician Assistants. The minimal costs and burdens are considerably outweighed by the opportunity to be employed as a Physician Assistant as evidenced by the increasing number of individuals who seek licensure from 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:

There are no federal laws specifically applicable to licensure and regulation of Physician Assistants. There are numerous federal laws relating to the provision of health care but the laws are not applicable to the Board's 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:

The licenses listed in Table 1 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 has determined the following rules need to be amended to address issues identified in this report: R4-17-102 Table 1, R4-17-202, R4-17-203, R4-17-205, R4-17-206, R4-17-207, and R4-17-403. Additionally, R4-17-202 will need to be amended to address the move to a 10-year recertification cycle by the National Commission on the Certification of Physician Assistants. During the last legislative session, SB1213 was enacted (See Laws 2015, Chapter 84). This means R4-17-204 will need to be amended to account for biennial renewal. The Board will decide whether it wishes to exercise the authority to impose civil penalties and if so, make the rule required. Assuming the Board can obtain an exemption

from Executive Order 2015-01, the Board intends to complete the required rulemaking by December 2016.