

**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 lose 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 and 32-3523.

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.