

Notices of Proposed Rulemaking

Implementing statutes: A.R.S. §§ 32-301 through 32-306, 32-321 through 32-328, 32-351 through 32-356

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4012, September 12, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mario J. Herrera, Executive Director
Address: Board of Barbers
1400 W. Washington, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-4498
Fax: (602) 542-3093

5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

After publication of the Notice of Rulemaking Docket Opening listed in item #3, the entire Chapter expired on May 31, 2004 as a result of a required action under A.R.S. § 41-1056(E). The expiration action was noticed by the Governor's Regulatory Review Council as published at 10 A.A.R. 2942, July 23, 2004.

The Secretary of State's Office Public Services Division has acknowledged to the Board of Barbers that in the case of this rulemaking, R1-1-406 is not applicable and that the Board may reuse old Article and Section numbers for this rulemaking even though a full year has not lapsed since the Chapter's expiration.

In this rulemaking, the Board remakes its rules substantially similar to the expired rules but with the following special objectives:

- A. To ensure the Chapter is conforming with current Arizona Administrative Procedure Act standards for clarity, conciseness, and understandability.
- B. To add completely new sections that set forth provisions for:
 - 1. Licensing time-frames;
 - 2. Application forms;
 - 3. Inspections; and
 - 4. Minimum school curriculum.
- C. To modify the Board's Article on hearings to bring provisions into full conformity with A.R.S. Title 46, Chapter 6, Article 10.

Because this rulemaking follows the above-referenced statutory expiration action, it does not arise from a previous five-year rule review submitted to the Governor's Regulatory Review Council.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

The Board will not rely on any study for this rulemaking.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Under the proposed provisions of 4 A.A.C. 5, the following persons or entities will bear costs and experience benefits as briefly described according to the included scale:

- a. Licensed barbers or instructors: minimal licensure costs; moderate to substantial annual income benefits.
- b. Barbershop or barber school owners: minimal to moderate licensure and compliance costs; substantial business profitability benefits.
- c. Student barbers or student instructors: moderate to substantial tuition costs; minimal examination costs; moderate to substantial annual income to recoup initial costs.
- d. Board of Barbers: substantial operating costs; substantial gross annual fee receipts.
- e. Vendors of barbering furnishing, equipment, supplies, and maintenance services: no Board-imposed costs; presumed substantial business profitability.
- f. Public patrons of barbering services: no direct Board-imposed costs; non-financially quantifiable benefit in assurance of minimum professional standards, safety, and welfare integrity.

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|--------------|-------------|--------------------|
| <u>Scale</u> | Minimal | less than \$1,000 |
| | Moderate | \$1,000 to \$9,999 |
| | Substantial | more than \$10,000 |

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

An interested person may communicate with the Board's designee listed in item #4 concerning the economic impact statement.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Monday – September 27, 2004
Time: 9 a.m.
Location: 1400 W. Washington, Room B2
Phoenix, AZ 85007
Nature: Oral proceeding to receive public comment
Closure: Following the oral proceeding, the public record for this rulemaking will close at 4:30 p.m. on Friday, October 1, 2004.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 5. ~~EXPIRED~~ BOARD OF BARBERS

ARTICLE 1. GENERAL PROVISIONS

| | |
|------------------|--|
| Section | |
| <u>R4-5-101.</u> | <u>Definitions</u> |
| <u>R4-5-102.</u> | <u>Fees and Service Charges</u> |
| <u>R4-5-103.</u> | <u>Fee Payment</u> |
| <u>R4-5-104.</u> | <u>Safety and Sanitation Provisions</u> |
| <u>R4-5-105.</u> | <u>Disinfectants: Approval; Usage Guidelines</u> |
| <u>R4-5-106.</u> | <u>Change of Ownership or Location</u> |
| <u>R4-5-107.</u> | <u>Inspections</u> |

ARTICLE 2. EXAMINATION AND PRACTITIONER LICENSING

| | |
|------------------|---------------------------------------|
| Section | |
| <u>R4-5-201.</u> | <u>Examinations</u> |
| <u>R4-5-202.</u> | <u>Barber License Application</u> |
| <u>R4-5-203.</u> | <u>Instructor License Application</u> |
| <u>R4-5-204.</u> | <u>License Renewal</u> |
| <u>R4-5-205.</u> | <u>Licensing Time-frames</u> |

ARTICLE 3. SHOPS

| | |
|------------------|--|
| Section | |
| <u>R4-5-301.</u> | <u>Shop License Application</u> |
| <u>R4-5-302.</u> | <u>Shop Premises and Basic Equipment</u> |
| <u>R4-5-303.</u> | <u>Shop Supervision</u> |
| <u>R4-5-304.</u> | <u>Shop Mobile Units</u> |

ARTICLE 4. SCHOOLS

| | |
|------------------|--|
| Section | |
| <u>R4-5-401.</u> | <u>Barber School Application</u> |
| <u>R4-5-402.</u> | <u>Notification of Changes</u> |
| <u>R4-5-403.</u> | <u>Use of "Accredited," "Approved," or Similar Terms</u> |

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| | |
|-------------------|---|
| <u>R4-5-404.</u> | <u>General School Operating Requirements</u> |
| <u>Exhibit 1.</u> | <u>Required Age and Education Notice to a Barber Trainee</u> |
| <u>Exhibit 2.</u> | <u>Required Age and Education Notice to an Instructor Trainee</u> |
| <u>R4-5-405.</u> | <u>Minimum School Curriculum</u> |
| <u>R4-5-406.</u> | <u>School Records</u> |
| <u>R4-5-407.</u> | <u>School Closure</u> |
| <u>R4-5-408.</u> | <u>Multiple-location Schools</u> |
| <u>R4-5-409.</u> | <u>Limited-scope Training Facilities</u> |

ARTICLE 5. HEARINGS

Section

| | |
|------------------|---|
| <u>R4-5-501.</u> | <u>Hearing Procedures</u> |
| <u>R4-5-502.</u> | <u>Rehearing and Review of Decision</u> |

ARTICLE 1. GENERAL PROVISIONS

R4-5-101. Definitions

The following definitions apply to this Chapter unless context otherwise requires:

“Barbering implement” means any tool or device used for barbering.

“Diploma from a high school or its equivalent” means any of the following:

- a. A credential that certifies successful course completion from any accredited secondary school in the United States, a U.S. territory, the District of Columbia, or a foreign country recognized by the local education authority as a high school or its equivalent;
- b. A cumulative score of no fewer than 45 points on a General Education Development “GED” test administered by an authorized authority; or
- c. An academic degree from a college or university recognized by the local education authority of any state of the United States, a U.S. territory, the District of Columbia, or foreign country.

“Domestic administration” means barbering performed:

- a. On oneself; or
- b. By a person on another person related by one of the following relationships:
 - i. Father;
 - ii. Mother;
 - iii. Grandfather;
 - iv. Grandmother;
 - v. Child;
 - vi. Step-child;
 - vii. Brother;
 - viii. Sister;
 - ix. Foster parent;
 - x. Legal guardian;
 - xi. Step-parent; or
 - xii. Spouse.

“Dry sanitizer” means a container large enough to store any barbering implement that requires:

- a. Sanitation by a Board-approved fumigant or ultraviolet radiation; and
- b. Maintenance of the implement’s sanitary condition.

“Establishment” means a distinct physical location but does not include a limited-scope training facility.

“Liquid sanitizer” means a container large enough to completely immerse any barbering implement that requires disinfectant solution sanitization.

“One year’s experience as a licensed barber” means that during any period of 12 consecutive months, a person:

- a. Maintained a valid license as prescribed under A.R.S. § 32-322; and
- b. Engaged in barbering at least 1,200 hours.

“Owner” means a person who has controlling interest in a barber shop or school or the owner’s designee.

“Patron” means a person that receives barbering services.

“Practiced barbering for at least two years” means that during any period of 24 consecutive months, a person engaged in barbering at least 1,200 hours.

“Shop” has the meaning prescribed under A.R.S. § 32-301(6) and when used in this Chapter includes the term “salon.”

“Study” means to receive classroom or theoretical instruction in a subject.

“Two years of high school education or its equivalent” means either of the following:

- a. Receipt of ten high school credits, or

- b. Receipt of an overall score of 39 points on a GED test.
- “Workstation” means a specific location within a shop, mobile unit, limited-scope training facility, or school where barbering is performed not including hair cleaning activity.

R4-5-102. Fees and Service Charges

A. Under authority of A.R.S. § 32-328, the Board shall charge the following fees:

1. Barber:
 - a. Examination \$100.
 - b. License by reciprocity \$175.
 - c. First license \$40.
 - d. Renewal valid for two years \$80.
2. Instructor:
 - a. Examination \$100.
 - b. First license \$50.
 - c. Renewal valid for two years \$60.
3. Shop:
 - a. Application and initial inspection \$150.
 - b. Change of location \$85.
 - c. Change of ownership \$85.
 - d. Renewal \$50.
4. Late renewal penalty for any license issued under subsection (A)(1) through (A)(3):
 - a. First time in a five-year period \$25.
 - b. Second time in a five-year period \$50.
 - c. Third time in a five-year period \$75.
5. School:
 - a. Application and initial inspection \$1,000.
 - b. Change of location \$500.
 - c. Change of ownership \$500.
 - d. Renewal \$400.
 - e. Late renewal penalty:
 - i. First time in five-year period \$50.
 - ii. Second time in five-year period \$100.
 - iii. Third time in five-year period \$150.
6. Re-examination fee for an examinee that failed a part of an examination after an original fee assessment under subsection (A)(1)(a) or (A)(2)(a):
 - a. Written \$25.
 - b. Practical \$50.
7. A duplicate of any license issued under this subsection \$20.

B. The Board shall charge the following for copies of non-confidential records:

1. Name and address of licensee \$.25 per licensee.
2. Public records \$.50 per page.

R4-5-103. Fee Payment

A. A person shall pay any fee required by the Board in full, in cash or certified instrument, on or before the fee’s due date.

B. The Board shall consider a fee payment timely if:

1. The Board receives the fee on or before its due date; or
2. The fee is postmarked on or before its due date by postage prepaid first class U.S. mail.

R4-5-104. Safety and Sanitation Provisions

A. A licensee under A.R.S. Title 32, Chapter 3 and this Chapter shall conduct the following safety and sanitation procedures.

A licensee shall:

1. Use barbering implements that are:
 - a. New if intended for sole use on a single patron and disposed of after use; or
 - b. Maintained in good repair, free of defect if intended for multiple use;
2. Sanitize any barbering implement intended for multiple use under subsection (A)(1)(b) according to the following procedure:
 - a. For any immersible barbering implement other than a scissors or razor, a licensee shall:
 - i. Remove all hair or debris;
 - ii. Wash with soap and water;
 - iii. Completely immerse in a disinfectant solution that is approved and used as prescribed under R4-5-105;

| <u>Solution type</u> | <u>Strength</u> | <u>Minimum immersion time</u> |
|---|-----------------|-------------------------------|
| <u>Quaternary Ammonium Compounds "Quats" – liquid or dissolved tablet</u> | <u>1:1000</u> | <u>20 minutes</u> |
| <u>Formalin</u> | <u>25%</u> | <u>10 minutes</u> |
| <u>Formalin</u> | <u>10%</u> | <u>20 minutes</u> |
| <u>Alcohol*: Ethyl, Grain, or Isopropanol</u> | <u>70%</u> | <u>10 minutes</u> |
| <u>Sodium Hypochlorite</u> | <u>10%</u> | <u>10 minutes</u> |

* Note: for sharp cutting implement or electrode sanitization

2. Dry sanitizing. A licensee shall use either of the following:
 - a. A fumigant prepared as a mixture of:
 - i. One tablespoon of borax; and
 - ii. One tablespoon, one premanufactured tablet, or one container of formalin.
 - b. An ultraviolet-ray electric sanitizer manufactured specifically for sanitation purposes.

R4-5-106. Change of Ownership or Location

Within 15 days after a change in location or ownership of a shop or school, the new owner shall submit the following to the Board:

1. Written notification of the applicable change;
2. A completed shop or school operation application; and
3. The applicable fee prescribed under R4-1-102(A)(3)(b), (A)(3)(c), (A)(5)(b), or (A)(5)(c).

R4-5-107. Inspections

A. Applicability. This Section applies to any barbering establishment that operates within Arizona.

B. Time of inspection. An inspector designated by the Board:

1. Shall inspect each establishment's premises at least twice per calendar year; and
2. May inspect an establishment at any time permitted under A.R.S. § 32-304(B)(2).

C. Inspection procedure. According to the requirements of A.R.S. Title 32, Chapter 3 and this Chapter, the Board's inspector shall inspect an establishment and document whether:

1. Each applicable license is current and displayed as prescribed under A.R.S. § 32-351;
2. Equipment and implements are present and in appropriate quantity to the number of employees in the establishment; and
3. Each sanitary product and procedure is appropriately maintained.

D. Inspection findings. An inspector shall submit a copy of a completed inspection report to:

1. The owner of the inspected establishment; and
2. The Board.

E. Disciplinary action. The Board shall follow disciplinary procedures prescribed under A.R.S. §§ 32-352 through 32-356 for any inspection finding indicating a violation of any provision under A.R.S. Title 32, Chapter 3 or this Chapter.

ARTICLE 2. EXAMINATION AND PRACTITIONER LICENSING

R4-5-201. Examinations

In addition to requirements prescribed under A.R.S. § 32-324, the Board shall make the following provisions for any examination administered by the Board:

1. The Board shall send written notification of an assigned examination time and location to an applicant for a license under A.R.S. Title 32, Chapter 3 and this Chapter at least seven days in advance of a scheduled examination.
2. Examination language provision. The Board shall:
 - a. Administer an examination under this Section in the English language; and
 - b. Allow an applicant to provide a personal foreign language interpreter that shall not be:
 - i. A currently or previously licensed barber or cosmetologist;
 - ii. A barber or cosmetology instructor; or
 - iii. A barber or cosmetology student in any state of the U.S. or foreign country.
3. Examination integrity provision. The Board shall not:
 - a. Provide advance disclosure of examination questions; or
 - b. Return a completed examination or other examination records kept by the Board to a school or applicant.
4. The Board shall dismiss an applicant from an examination under penalty of examination fee forfeiture if the appli-

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cant:

- a. Cheats; or
- b. Solicits any information from another person except the examiner.
5. The Board shall require re-examination if an applicant fails to apply for a license within one year after successfully completing an initial examination.
6. For purposes of an examination's practical portion, an applicant shall supply:
 - a. All necessary barbering implements and supplies; and
 - b. Any necessary live model that shall not be:
 - i. A currently or previously licensed barber or cosmetologist;
 - ii. A barber or cosmetology instructor; or
 - iii. A barber or cosmetology student in any state of the U.S. or foreign country.
7. If an applicant fails to pass a portion of an examination, the Board shall allow the applicant to review the failed portion of the examination if the applicant submits a written review request notice to the Board within 30 days after the examination.

R4-5-202. Barber License Application

- A.** On a form provided by the Board, a first-time barber license applicant shall submit the following:
1. Full name;
 2. Full address;
 3. Telephone number;
 4. Social Security Number;
 5. Birth date and place;
 6. Name and location of high school attended;
 7. Highest school grade completed;
 8. Alternate school enrollment name if different from subsection (A)(1);
 9. Dates of high school attendance;
 10. An affirmation of an earned GED if subsections (A)(6) through (9) are not applicable;
 11. An affirmation and explanation if the applicant has had a barber license suspended or revoked in a five-year period before the application date;
 12. An affirmation of any current reciprocal license in another state and state name;
 13. Any other information required by the Board; and
 14. The applicant's notarized signature to certify that all information is true, correct, and complete at the time of submission.
- B.** In addition to requirements under subsections (A), (D)(1), and (D)(2)(b), the Board shall require the following information on a special application form when an applicant applies by examination:
1. An affirmation whether the applicant was ever previously a licensed barber in Arizona;
 2. An affirmation whether the applicant was ever licensed as a barber or apprentice in another state or country;
 3. A disclosure of the state or country if warranted by the applicant's response to (B)(2);
 4. The date of first barber or apprentice license;
 5. The name and location of barber school attended;
 6. Total number of earned credit hours;
 7. Attendance dates; and
 8. An affirmation of whether the applicant graduated from barber school.
- C.** In addition to the requirements of subsections (A), (D)(1), and (D)(2)(c), an applicant for a barber license by reciprocity shall submit to the Board the following documentation:
1. Proof the applicant is at least 16 years old;
 2. Proof of a minimum tenth grade education in one of the following forms:
 - a. A copy of a high school diploma;
 - b. A high school transcript or letter that verifies the minimum education requirement under this subsection;
 - c. Military discharge documentation that verifies the minimum education requirement under this subsection; or
 - d. A GED grade report indicating an overall passing grade as prescribed under R4-5-101 for two years of high school education or its equivalent;
 3. A copy of a current barber license from a state that is in reciprocity agreement with Arizona; and
 4. Notarized documentation of at least one year barbering work experience.
- D.** The Board shall require any applicant under this Section to submit the following application attachments:
1. A photograph as prescribed under A.R.S. § 32-322(A)(3) that is:
 - a. A professionally produced photograph of the applicant only;
 - b. U.S. passport sized; and
 - c. Signed by the applicant across the front;

2. The applicable fee in cash or by certified instrument for the type of license issued as follows:
 - a. First-time barber license as prescribed under R4-5-102(A)(1)(c);
 - b. License by examination as prescribed under R4-5-102(A)(1)(a); or
 - c. License by reciprocity as prescribed under R4-5-102(A)(1)(b).

R4-5-203. Instructor License Application

- A.** On a form provided by the Board, an applicant for a barbering instructor license shall submit the following:
1. Full name;
 2. Full address;
 3. Telephone number;
 4. Birth date and place;
 5. Current barber license number;
 6. Name and address of barbering school attended for instructor training;
 7. Total hours of instructor training;
 8. Attendance dates;
 9. An indication whether the applicant:
 - a. Completed more than one instructor examination in Arizona before the current application;
 - b. Has been a licensed instructor in any other country or state of the U.S.; and
 - c. Had a former instructor license suspended or revoked;
 10. Name and location of high school attended;
 11. Highest school grade completed;
 12. Alternate school enrollment name if different from subsection (A)(1);
 13. Dates of high school attendance;
 14. An affirmation of an earned GED if subsections (A)(10) through (13) are not applicable;
 13. Any other information required by the Board; and
 14. The applicant's notarized signature to certify that all information is true, correct, and complete at the time of submission.
- B.** Attached to a completed application under subsection (A), an applicant shall submit the instructor license fee in cash or by certified instrument as required under R4-5-102(A)(2)(b).

R4-5-204. License Renewal

- A.** A licensee shall renew a license by submitting the renewal fee for the applicable license type as prescribed under R1-4-102(A)(1)(d), (A)(2)(c), (A)(3)(d), or (A)(5)(d) to the Board:
1. No earlier than 30 days before the expiration date; and
 2. No later than midnight on the expiration date.
- B.** Fee payment provisions prescribed under R4-1-103 also apply to this Section.

R4-5-205. Licensing Times-frames

- A.** Licensure and renewal. For purposes of A.R.S. § 41-1073(E)(2), the Board shall issue or deny all licenses and renewals under A.R.S. Title 32, Chapter 3 and this Chapter within seven days of receipt of an application except for an initial school license.
- B.** Initial school licensure. For purposes of A.R.S. Title 41, Chapter 6, Article 7.1, the Board shall issue an initial school license according to the following procedural time-frame:
1. The overall time-frame for issuance of a license under this subsection is 60 days. The Board and an applicant may agree in writing to extend the substantive review time-frame and the overall time-frame.
 2. The administrative completeness time-frame for a license under this subsection is 15 days beginning the day the Board receives a school license application.
 - a. The Board shall send notice of administrative completeness or deficiencies within the administrative completeness time-frame.
 - b. In a notice of deficiency, the Board shall list each deficiency and items required to complete the application.
 - c. The Board shall suspend for a maximum of 30 days the administrative completeness time-frame and the overall time-frame until the date the Board receives all required items specified in the notice of deficiency as prescribed under subsection (B)(2)(b).
 - d. If an applicant fails to submit the deficient items within 30 days after the date of the notice of deficiency, the Board shall consider the application withdrawn.
 3. The substantive review time-frame for a license under this subsection is 45 days beginning on the date of a notice of administrative completeness sent as prescribed under subsection (B)(2)(a).
 - a. As part of the substantive review for a license under this subsection, the Board shall inspect the applicant's premises according to procedure prescribed under R4-5-107.
 - b. The Board shall send a license or a written notice of denial to an applicant within the substantive review time-

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- frame.
 - c. During the substantive review time-frame, the Board may send a single comprehensive written notice of request for additional information that includes a written statement of deficiencies stating each statute or rule that comprises grounds for noncompliance.
 - d. An applicant shall submit all required information within 15 days after the date of a notice of request for additional information sent as prescribed under subsection (B)(3)(c).
 - e. The Board may suspend the substantive review time-frame if the Board and applicant agree in writing to a specified amount of time necessary for the applicant to return all information required under subsection (B)(3)(c) to the Board. The Board shall not grant a substantive time-frame extension that exceeds the amount of time allowed under A.R.S. § 41-1075(B).
 - f. The Board shall send written notice of denial to an applicant if the applicant fails to submit all required information to the Board within:
 - i. The number of days specified under subsection (B)(3)(d); or
 - ii. The amount of time specified by written agreement made as prescribed under subsection (B)(3)(e) if applicable.
 - g. If the Board denies a license under this subsection, the Board shall send a written denial notice to the applicant that specifies each reason for denial.
4. A person denied a school license under this Section may immediately reapply according to the provisions of R4-5-401.

ARTICLE 3. SHOPS

R4-5-301. Shop License Application

- A.** Application time-frame. An applicant shall submit required items to the Board under subsections (B) and (C) no fewer than seven state business days before the opening date of the applicant's shop.
- B.** On a form provided by the Board, a shop license applicant shall submit the following information:
- 1. Licensee information for the owner or each member of a partnership:
 - a. Name; and
 - b. Social Security Number;
 - 2. Shop information:
 - a. Shop name;
 - b. Full physical address;
 - c. Telephone number;
 - d. A line drawing of approximate shop location indicating the names of major cross streets; and
 - e. Any applicable corporate information that includes:
 - i. Corporation name if different from subsection (B)(2)(a);
 - ii. Address of corporate headquarters; and
 - iii. Telephone number;
 - 3. If known at the time of application, the name and license number of a barber that will manage the shop on the licensed owner's behalf;
 - 4. A projected ready date for the Board's initial inspection;
 - 5. An indication of the applicant's requested licensing action as one of the following:
 - a. A new shop license;
 - b. A shop relocation; or
 - c. A change of ownership including the following information:
 - i. Former owner's name;
 - ii. Former shop name;
 - iii. Board file number; and
 - iv. The former owner's signature or a copy of the shop's bill of sale;
 - 6. A listing of equipment in the applicant's shop including the total number of the following:
 - a. Barber chairs;
 - b. Sinks;
 - c. Dry sanitizers;
 - d. Dip sanitizers;
 - e. Soiled towel receptacles; and
 - f. Garbage receptacles;
 - 7. A description of the shop's floor covering type;
 - 8. An indication of whether the applicant's shop also is or will be licensed by the Board of Cosmetology;
 - 9. Any other information required by the Board; and

10. The applicant's notarized signature to certify that:
 - a. The applicant will comply with all provisions of A.R.S. Title 32, Chapter 3, and this Chapter; and
 - b. All application information is true, correct, and complete at the time of submission.

C. Fee. In addition to a completed shop application form, an applicant shall submit to the Board in cash or by certified instrument the appropriate fee for the applicant's indicated licensing action under subsection (B)(5) as follows:

1. A new shop license as prescribed under R4-5-102(A)(3)(a);
2. A shop relocation as prescribed under R4-5-102(A)(3)(b); or
3. A change of ownership as prescribed under R4-5-102(A)(3)(c).

R4-5-302. Shop Premises and Basic Equipment

A shop owner shall ensure that each licensed shop premises has at least the following equipment:

1. A sink that has hot and cold running water;
2. Soap and clean towels for use at each sink; and
3. A separate covered receptacle for the following:
 - a. Hair or garbage; and
 - b. Reusable towels or cloths that are soiled.

R4-5-303. Shop Supervision

A. A shop owner or supervising barber licensed under this Chapter shall ensure that:

1. Each employee, independent contractor, or supervisor that practices barbering in the shop has a current license that meets the requirements prescribed under A.R.S. § 32-322;
2. Each required license and the most recent Board inspector's record are displayed as prescribed under A.R.S. § 32-351(A); and
3. Each licensee practices barbering in compliance with any applicable provision of A.R.S. Title 32, Chapter 3 and this Chapter.

B. The Board shall hold a shop owner and any supervising barber responsible for any violation of an applicable provision of A.R.S. Title 32, Chapter 3 and this Chapter.

C. A shop owner that is a licensed barber may directly supervise a shop.

D. As a specified term and condition of a contract, a shop supervisor shall have direct oversight over any independent contractor or the contractor's employees.

R4-5-304. Shop Mobile Units

The Board shall license a mobile unit as a shop if:

1. The unit is self-contained;
2. The mobile unit meets all other requirements for a shop; and
3. The mobile unit's owner agrees to provide the Board with 15-day written or oral advance notice of the unit's proposed location or a change in location.

ARTICLE 4. SCHOOLS

R4-5-401. Barber School Application

A. Application time-frame. An applicant shall submit required items to the Board under this Section according to licensing time-frame requirements under R4-5-205(B).

B. Application form. On a form provided by the Board, an applicant for a barber school license shall submit the following information:

1. School name;
2. Full physical address;
3. Telephone number;
4. Licensee information:
 - a. Name;
 - b. Full address; and
 - c. Telephone number;
5. Owner information. If the school owner is other than the person specified under (B)(4), the applicant shall supply the following owner information:
 - a. Name;
 - b. Full address; and
 - c. Telephone number;
6. School manager information:
 - a. Name; and
 - b. Applicable barber or instructor license number;
7. An indication of whether the applicant's school also is or will be licensed by the Board of Cosmetology;

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8. An indication of the applicant's requested licensing action:
 - a. A new school license;
 - b. A school move; or
 - c. A change of ownership;
 9. If the applicant indicates a school move under subsection (A)(8)(b):
 - a. The Board file number; and
 - b. The school's former address;
 10. If the applicant indicates a change of ownership under subsection (A)(8)(c):
 - a. The Board file number;
 - b. The school's former name if applicable; and
 - c. The former owner's name and signature;
 11. A listing of equipment in the applicant's school including the total number of the following:
 - a. Barber chairs;
 - b. Sinks;
 - c. Dry sanitizers;
 - d. Dip sanitizers;
 - e. Latherizers;
 - f. Soiled towel receptacles;
 - g. Garbage receptacles; and
 - h. Student lockers;
 12. A description of the establishment's floor covering type;
 13. A projected ready date for the Board's initial inspection;
 14. Any other information required by the Board; and
 15. The applicant's notarized signature to certify that:
 - a. The applicant will comply with all provisions of A.R.S. Title 32, Chapter 3, and this Chapter; and
 - b. All application information is true, correct, and complete at the time of submission.
- C.** Bond. An applicant for a school license shall attach to a completed application a copy of the bond in the amount required under A.R.S. § 32-325(C)(6).
- D.** Fee. In addition to a completed barber school application form, an applicant shall submit to the Board in cash or by certified instrument the appropriate fee for the applicant's indicated licensing action under subsection (B)(8) as follows:
1. A new school license as prescribed under R4-5-102(A)(5)(a);
 2. A school relocation as prescribed under R4-5-102(A)(5)(b); or
 3. A school change of ownership as prescribed under R4-5-102(A)(5)(c).

R4-5-402. Notification of Changes

A school owner shall send written notification and updated information to the Board within 15 days if the school owner:

1. Amends or replaces the school catalogue;
2. Offers a new course;
3. Changes the school operating schedule;
4. Changes the school name;
5. Changes the school manager; or
6. Opens an additional location or establishes a limited-scope training facility.

R4-5-403. Use of "Accredited," "Approved," or Similar Terms

If "accredited," "approved," or a similar term appears in a school catalogue or advertisement, the school's owner shall publish identification of the accrediting or approving organization.

R4-5-404. General School Operating Requirements

A. A school owner shall file the school's operating schedule with the Board before the first scheduled class begins.

B. In addition to the requirements of A.R.S. § 32-325(C)(2) and (C)(3), the Board shall require a school to have the following at a minimum:

1. An instructor licensed to teach each required course of instruction;
2. Instructional furnishings and fixtures for instructor and student use;
3. A workstation for each student scheduled for practical instruction;
4. Filing cabinets for school and student records;
5. Chalkboards or feltboards;
6. A dispensary for preparation, mixing, storage, and disposal of supplies and chemicals for barbering implement sanitation;
7. One liquid sanitizer and one dry sanitizer at each workstation;
8. At least one latherizer for every ten students;

9. At least one sink, with hot and cold running water, soap, and towels for every three students; and
 10. A student library that contains at least the following:
 - a. A dictionary;
 - b. Current barbering manuals and textbooks;
 - c. A current copy of A.R.S. Title 32, Chapter 3; and
 - d. A current copy of this Chapter.
- C.** A school owner shall:
1. Provide all equipment, implements, materials, and supplies necessary for student instruction; and
 2. Ensure that any item provided under this subsection is:
 - a. Shop quality; and
 - b. Maintained in good repair.
- D.** A school owner shall grade students monthly.
- E.** A school owner shall ensure that any safety or sanitary related to an instructional subject is taught together with the subject.
- F.** Continuing education courses. A school owner may offer refresher, post-graduate, or continuing education courses without the required presence of a licensed instructor. A school owner shall not award credit hours for instruction under this subsection.
- G.** An instructor may assist students in the performance of barbering.
- H.** A person that is not a licensed instructor shall not teach in a school but may demonstrate any process, product, or appliance to students when under supervision by a licensed instructor.
- I.** A student shall not dismiss a patron until all the student's work is inspected and approved by a licensed instructor.
- J.** A student shall not attend a school for longer than eight hours per day.
- K.** A student instructor shall not teach students until the student instructor has received 40 hours of training in methods of teaching as a part of the student instructor's training as an instructor.
- L.** No person shall prohibit or discourage a student from filing a complaint with the Board.
- M.** A student may receive a maximum of 20 credit hours for field trips pertaining to barbering.
- N.** No person shall call a student to perform barbering on the public while the student is engaged in:
1. Classroom instruction;
 2. Practical instruction; or
 3. A written examination.
- O.** A student shall wear a name tag during school attendance that clearly identifies the person as a student.
- P.** Trainee age and education requirement notices. At the time of a student's enrollment, a school owner shall follow the following student notification procedure:
1. Serve each student with an original notice form that is:
 - a. Applicable to the student's course of study as shown under Exhibit 1 or 2; and
 - b. Prepared on a separate sheet of paper that conforms to public record measurement requirements prescribed under A.R.S. § 39-103(A);
 2. Require the student to acknowledge the notice by signing and dating the original copy;
 3. Issue a duplicate copy of the acknowledged notice under subsection (P)(2) to the student; and
 4. Keep the original acknowledged notice under subsection (P)(2) in school files for a minimum period of five years after the acknowledgment date.
- Q.** Within five days after enrolling a student, a school owner shall send the following to the Board:
1. A copy of the student's written application that contains the following:
 - a. The student's name and address;
 - b. The student's enrollment date;
 - c. An indication whether the student is enrolled in a barber or instructor course; and
 - d. The student's signature; and
 2. Two passport-size photos of the student.
- R.** Upon receipt of enrollment information under subsection (Q), the Board shall issue an educational card to a student. The student shall:
1. Display the card at the student workstation; and
 2. Return the card to the Board upon completion of the course.
- S.** A school owner shall ensure that each student workstation has at least the following:
1. A wall mirror;
 2. A workstand;
 3. A chair for the patron;
 4. A covered receptacle for soiled towels and cloths;
 5. A covered receptacle for garbage and hair; and
 6. A sufficient supply of tonics, lotions, shampoos, and chemical preparations used in processing curly hair and hair

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weaving.

T. Unless a student possesses items listed under this subsection at the time of enrollment, a school owner shall provide each student with a non-returnable training kit that shall include:

1. Course textbooks.
2. One mannequin for barbering practice.
3. Twelve combs and six brushes without defects.
4. One hair dryer.
5. One straight razor with interchangeable blades.
6. One pair of haircutting shears.
7. One pair of thinning shears.
8. One clipper with interchangeable blades sizes 1 and .000 or an adjustable clipper, and
9. One neck duster.

Exhibit 1. Required Age and Education Notice to a Barber Trainee

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training which will qualify you to apply for a license to be a barber in Arizona. The Arizona State Board of Barbers will not issue you a license unless you are at least 16 years of age when you apply for the license and you can demonstrate to the Board of Barbers that you have completed and received appropriate credits for at least two years of high school education or its equivalent.

It is your responsibility to make sure that you can meet the requirements of the Board of Barbers, particularly regarding the completion of two years of high school or its equivalent. If you are unsure about whether you can meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I hereby acknowledge that I have received and understand the foregoing Notice.
(student signature) (signature date)

Exhibit 2. Required Age and Education Notice to an Instructor Trainee

NOTICE

This Notice is required by the Arizona State Board of Barbers.

You have applied to this school for training which will qualify you to apply for a license to be a barber instructor in Arizona. The Arizona State Board of Barbers will not issue you a license unless you are at least 19 years of age when you apply for the license and you can demonstrate to the Board of Barbers that you hold a high school diploma or its equivalent.

It is your responsibility to make sure that you can meet the requirements of the Board of Barbers, particularly regarding the holding of a high school diploma or its equivalent. If you are unsure about whether you can meet the requirements, you should contact the Board of Barbers for further information.

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

I hereby acknowledge that I have received and understand the foregoing Notice.
(student signature) (signature date)

R4-5-405. Minimum School Curriculum

- A.** A school owner shall determine the school's course of barbering instruction in compliance with the requirements of A.R.S. § 32-325(B).
- B.** A school owner shall include with barbering fundamentals required under A.R.S. § 32-325(B)(1) instruction in the following:

1. Professional ethics;
2. Shop management; and
3. Regulatory provisions prescribed under A.R.S. Title 32, Chapter 3 and this Chapter.

R4-5-406. School Records

- A.** A school owner shall maintain a student's records in the student's enrollment location.
- B.** A school owner shall at least weekly maintain each student's written record that shall include the following:
1. Identification of student;
 2. The date of the recorded entry;
 3. Each subject and number of credit hours earned;
 4. An indication whether instruction in a subject was classroom instruction or practice;
 5. The number of clock hours spent for each item listed under subsection (B)(4); and
 6. The student's signature to acknowledge modification of the record within three days after each record update.
- C.** In addition to the requirements of subsection (B), a school owner shall maintain a permanent record file for each student that shall include:
1. The signed contract made between the student and the school;
 2. The student's current transcript; and
 3. Any applicable original notice required under R4-5-404(P).
- D.** Within 15 days after the end of each month, a school owner shall submit a report to the Board that shall include:
1. An owner-certified list of each student that met graduation requirements during the monthly reporting period;
 2. The name and license number of:
 - a. The school's chief instructor; and
 - b. Each student instructor;
 3. A list of total hours earned by each student during the reporting period;
 4. A list of each student's cumulative hours;
 5. The name any student that during the applicable reporting period:
 - a. Transferred to another school;
 - b. Withdrew; or
 - c. Took leave of absence;
 6. The signature applied by each student as acknowledgment of the student's certified hours; and
 7. The signature of the report preparer that verifies all information as true, correct, and complete at the time of submission to the Board.

R4-5-407. School Closure

- A.** The Board shall consider a school closed if the school fails to provide instruction for a consecutive five-day period that is not compliant with the operating schedule on file with the Board as prescribed under R4-5-404(A).
- B.** Closure notification. A school owner shall deliver written or oral notification of a school's closure to each student and the Board:
1. Ten days in advance of closure in a case where school closure is anticipated; or
 2. Within five days after closure if the school's closure was not reasonably anticipated.
- C.** Disposition of student records. A school owner shall forward all records for each student to the Board within ten days after school closure.

R4-5-408. Multiple-location Schools

The following provisions apply to a school that operates in more than one location:

1. The Board shall license and regulate each school location separately; and
2. The owner of a multiple-location school may keep school records in a single location.

R4-5-409. Limited-scope Training Facilities

- A.** A school owner may operate a limited-scope barber training facility that complies with the provisions of A.R.S. § 32-325(C) and R4-5-404(C), (E), (G) through (L), (N), and (O).
- B.** In addition to the requirements of subsection (A), a school owner operating a limited-scope training facility shall comply with the following:
1. R4-5-404(B)(1), (3), (8), and (9) if training at the facility is practical only; or
 2. Requirements of (1) under this subsection and R4-5-404(B)(2) and (5) if training at the facility includes study.
- C.** In addition to the requirements of subsection (A), an owner operating a limited-scope training facility in a shop shall:
1. Clearly indicate to the public the specific portion of the shop designated as a limited-scope training facility;
 2. Post a sign indicating that barbering services at the limited-scope training facility are provided by students;
 3. Require a student to orally give notice of status as a student to each patron; and
 4. Restrict student barbering only to the portion of the shop designated as a limited-scope training facility.

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D. No student shall receive more than 50 percent of the student's total training at a limited-scope training facility.

ARTICLE 5. HEARINGS

R4-5-501. Hearing Procedures

For purposes of A.R.S. § 32-354(D), the Board shall conduct all formal proceedings according to provisions prescribed under A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

R4-5-502. Rehearing and 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 rules established by the Office of Administrative Hearings.

B. 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, 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 progress of the proceedings;
7. That the Board's decision is a result of passion or prejudice; or
8. That 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 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. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).

G. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, 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.

I. 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:

1. A ruling on the motion will further administrative convenience, expedition, or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Sections Affected

R4-11-101
R4-11-301
R4-11-303
R4-11-305
R4-11-401
R4-11-402
R4-11-403
R4-11-404
R4-11-501

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

Notices of Proposed Rulemaking

| | |
|------------|-------------|
| R4-11-801 | Amend |
| R4-11-802 | Amend |
| R4-11-901 | Amend |
| R4-11-902 | Amend |
| R4-11-904 | Amend |
| R4-11-905 | Amend |
| R4-11-1101 | Amend |
| R4-11-1201 | Amend |
| R4-11-1202 | Amend |
| R4-11-1203 | Amend |
| R4-11-1204 | Amend |
| R4-11-1205 | Amend |
| R4-11-1206 | Amend |
| R4-11-1207 | Amend |
| R4-11-1208 | New Section |
| R4-11-1209 | New Section |
| R4-11-1401 | Amend |
| R4-11-1402 | Amend |
| R4-11-1403 | Amend |
| R4-11-1404 | Amend |
| R4-11-1405 | Amend |
| R4-11-1406 | Amend |
| R4-11-1501 | Amend |
| R4-11-1503 | Amend |
| R4-11-1504 | New Section |
| Article 18 | New Article |
| R4-11-1801 | New Section |
| R4-11-1802 | New Section |

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 32-1207(A)(1), and (4) through (12) and (B)(3)

Implementing statutes: A.R.S. §§ 32-1202, 32-1213, 32-1231, 32-1232, 32-1233, 32-1234, 32-1236, 32-1237, 32-1238, 32-1239, 32-1240, 32-1263, 32-1263.01, 32-1263.02, 32-126432-1284, 32-1285, 32-1287, 32-1292, 32-1295, 32-1297.01, 32-1297.02, 32-1297.03, 32-1297.06, 32-1298

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 977, March 12, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: Julie N. Chapko, Executive Director
Address: State Board of Dental Examiners
5060 N. 19th Ave., Suite 406
Phoenix, AZ 85015
Telephone: (602) 242-1492
Fax: (602) 242-1445
E-mail: jnchapko@azbodex.com

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The Board is proposing amendments to Article 1 Definitions, Article 3 Examinations, Licensing Qualifications, Application and Renewal, Time-frames, Article 4 Fees, Article 5 Dentists, Article 8 Denturists, Article 9 Restricted Permits, Article 11 Advertising, Article 12 Continuing Dental Education, Article 14 Dispensing Drugs and Devices for Profit and Not for Profit, and Article 15 Complaints, Investigations, Disciplinary Action, Reinstatement of Revoked Licenses, and a new Article 18 Business Entities. The proposed amendments to Articles 3, 4, 8, 9, and 12 involve new statutory requirements for denturists, dental consultants, restricted permits, and business entities made during the 2003 legislative session. A new Article 18 is necessary because of statutory changes made during the 2003 legislative session prescribing the registration requirements for business entities. The Board is proposing amendments to Articles 12 and 14 specifying the requirements for continuing education and dentists dispensing drugs based on changes identified in the Board's five-year rule review report approved by the Governor's Regulatory Review Council on September 9, 2003. The Board determined it is necessary to amend Articles 5, 11, and 15 involving dentist of record, advertising, and complaints to improve clarity, conciseness, and understandability of the rules. The rules include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

Notices of Proposed Rulemaking

The Board, dentists, dental hygienists, denturists, and the public benefit from rules that are clear, concise, and understandable. The proposed rules benefit the public health and safety by clearly establishing the Board's regulatory processes for licensing, certifying, registering, and continually monitoring the practice of dentists and supervised personnel.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rules will impact the Board, dentists, dental hygienists, denturists, regulated business entities, and the public. The proposed rules' impact on the Board will be the usual rulemaking-related costs which are moderate. The proposed rules will have little or no economic impact on the majority of dentists, dental hygienists or denturists. The majority of the changes to the rules are simply to improve the clarity, conciseness, and understandability of the rules. The proposed rules have no economic impact on the public. A major economic impact of the proposed rules will be on retired licensees who will now be required to maintain continuing education. As of July 26, 2004, the Board licensed 3,573 dentists, 2,764 dental hygienists, and 11 denturists. Of these, the number of retired licensees is 139 dentists, 21 dental hygienists, and zero denturists. The Board estimates the additional cost to retired licensees to be approximately \$55 per credit hour of continuing education. Under the proposed rules, the number of credit hours of continuing education required for a retired licensee is 24 hours for dentists, 18 hours for dental hygienists, and 6 hours for denturists. The economic impact on a retired licensee will be spread over the three-year renewal period. The approximate impact will be for a retired dentist, \$1320, for a retired dental hygienist, \$990, and for a retired denturist, \$330. The other major economic impact of the proposed rules will be on regulated business entities. A statutory change made by the 2003 Legislature requires the Board to register business entities. The proposed rules include language prescribing the registration process and fee for business entities. The new business entity registration fee is \$100 per year. The Board estimates that there are 93 business entities affected by this rule. The economic impact on a business entity is considered minimal.

The Board, dentists, dental hygienists, denturists, and the public benefit from rules that are clear, concise, and understandable. The proposed rules benefit the public health and safety by clearly establishing the Board's regulatory processes for licensing, certifying, registering, and continually monitoring the practice of dentists and supervised personnel.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Julie N. Chapko, Executive Director
Address: State Board of Dental Examiners
5060 N. 19th Ave., Suite 406
Phoenix, AZ 85015
Telephone: (602) 242-1492
Fax: (602) 242-1445
E-mail: jnchapko@azbodex.com

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Monday, September 20, 2004. An oral proceeding is scheduled for:

Date: September 20, 2004
Time: 10:00 a.m.
Location: 5060 N. 19th Avenue, Suite 406
Phoenix, AZ 85015

A person may request information about the oral proceeding by contacting the person listed above.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

**ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION
AND RENEWAL, TIME-FRAMES**

Section

R4-11-301. Application

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultants Licenses, Denturist Certificates, ~~and~~ Drug or Device Dispensing Registrations, and Business Entity Registrations

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Semi-conscious Sedation Permits, ~~and~~ Conscious Sedation Permits, and Oral Conscious Sedation Permits

ARTICLE 4. FEES

Section

R4-11-401. Retired or Disabled Licensure Fees

R4-11-402. ~~Denturist Certification Fees~~ Business Entity Fees

R4-11-403. ~~Examination Fees~~ Repealed

R4-11-404. ~~Penalty Fees for Late Renewal~~ Repealed

ARTICLE 5. DENTISTS

Section

R4-11-501. Dentist of Record

ARTICLE 8. DENTURISTS

Section

R4-11-801. Denturist Consultants to the Board

R4-11-802. Recognition of Schools of Denture Technology Curriculum

ARTICLE 9. RESTRICTED PERMITS

Section

R4-11-901. Application for Restricted Permit

R4-11-902. Issuance of a Restricted Permit

R4-11-904. Determination of Minimum Rate

R4-11-905. Restricted Permit Denial

ARTICLE 11. ADVERTISING

Section

R4-11-1101. Advertising

ARTICLE 12. CONTINUING DENTAL EDUCATION

Section

R4-11-1201. Continuing Dental Education

R4-11-1202. Compliance

R4-11-1203. Dentists, Dental Consultants

R4-11-1204. Dental Hygienists

R4-11-1205. Denturists

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- R4-11-1206. Restricted Permit Holders - Dental
- R4-11-1207. Types of Courses Restricted Permit Holders - Dental Hygiene
- R4-11-1208. Retired Licensees or Certificate Holders
- R4-11-1209. Types of Courses

ARTICLE 14. DISPENSING DRUGS AND DEVICES ~~FOR PROFIT AND NOT FOR PROFIT~~

Section

- R4-11-1401. Registration and Renewal Prescribing
- R4-11-1402. Prescribing Labeling and Dispensing
- R4-11-1403. Labeling and Dispensing Storage and Packaging
- R4-11-1404. Storage and Packaging Recordkeeping
- R4-11-1405. Recordkeeping Compliance
- R4-11-1406. Compliance Dispensing for Profit Registration and Renewal

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION, ~~REINSTATEMENT OF REVOKED LICENSES~~

Section

- R4-11-1501. Ex-parte Communication
- R4-11-1503. Initial Complaint Review

ARTICLE 18. BUSINESS ENTITIES

Section

- R4-11-1801. Application
- R4-11-1802. Display of Registration

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.
- “Anxiolysis” means the reduction or elimination of anxiety.
- “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 that 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(H).
- “Calculus” means a hard mineralized deposit attached to the teeth.
- “Certificate holder” means a dentist 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 qualifications of an IRS 501(c)(3) and providing dental or dental hygiene services.
- “Clinical evaluation” means a dental examination of the patient named in a complaint regarding the 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.
- “Combined inhalation and enteral conscious sedation” is conscious sedation induced by the administration of nitrous oxide and oxygen in combination with one or more enteral drugs or non-drug substances.
- “Conscious 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 drug or non-drug method or a combination of both methods.
- “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” has the same meaning as “semi-conscious sedation”.
- “Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(6).
- “Dentist of record” means a dentist who examines, diagnoses, formulates treatment plans and may provide treatment to a patient.
- “Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specific 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.

"Direct supervision" means, for purposes of Article 13 only, that a licensed dentist is physically present in the operatory and actually performing dental procedures.

"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 disability based on a physician's order because of a medical reason.

"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.

"Documentation of attendance" means ~~a document~~ documents that ~~contains~~ contain the following information:

Name of sponsoring entity;

Course title ~~and synopsis~~;

Number of credit hours;

Name of speaker; and

Date, time, and location of the course; ~~and~~

Signature of person authorized to verify registration.

"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 or 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 their components, parts, or accessories.

"Enteral" means an administration technique in which a drug or non-drug substance is absorbed through the oral, rectal, sublingual, or nasal mucosa.

"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.

~~"Fully 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.~~

"General anesthesia" is a state of unconsciousness accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway and to respond appropriately to physical stimulation or verbal command, that is induced by a drug or non-drug method or a combination of both methods.

"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.

"Informal interview" means a proceeding conducted under A.R.S. § 32-1263.02, during which a Board member, acting as an informal interviewing officer, and other investigators, hear testimony from a complainant, licensee or certificate holder, and any witnesses, and receive and review evidence relating to a complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.

"Intravenous or intramuscular sedation" is the parenteral use of a drug or non-drug substance to induce general anesthesia, semi-conscious sedation, or conscious sedation.

"Investigative interview" means a proceeding conducted under A.R.S. § 32-1263.02, during which an investigator or investigative panel hears testimony from a complainant, licensee or certificate holder, and any witnesses, and receives and reviews evidence relating to a complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.

"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 requires reconstructive or corrective procedures.

"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.

~~"Lay person" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.~~

"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.

"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.

"Nurse anesthetist" means a licensed nurse with special training in all phases of anesthesia.

"Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any

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current supplement.

“Outpatient” means an individual who receives treatment in a dental office or clinic.

“Oral conscious sedation” is conscious sedation induced by an enterally administered drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance on an outpatient basis.

“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.

~~“Permanently disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a physician’s order because of a medical reason.~~

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“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 essentially the legend “Rx Only.”

“Prescription-only drug” ~~means~~ does not include a controlled substance but does include:

A Any drug that, because of its toxicity or other ~~potential~~ potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized by among experts, ~~who are~~ qualified by scientific training and experience to evaluate ~~the drug’s~~ its safety and efficacy, as safe for use, except by or under the supervision of a medical practitioner;

A 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;

A Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

A Any drug, other than a controlled substance, required by the federal act to ~~contain~~ 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(15), recognized dental hygiene school as defined in A.R.S. § 32-1201(14), or recognized ~~school of denture technology~~ denturist school as defined in A.R.S. § 32-1201(6), or sponsored by a national or state dental, dental hygiene, or denturist association, dental, dental hygiene, or denturist study club, governmental agency, or commercial dental supplier.

“Representative” means, for purposes of Article 15 only, a person recognized by the Board as authorized to act on behalf of a complainant or a party in proceedings governed by this Chapter.

“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 semi-conscious sedation under Article 13.

“Section 1302 permit” means a permit to administer conscious sedation under Article 13.

“Section 1303 permit” means a permit to administer oral conscious sedation under Article 13.

“Semi-conscious sedation” means use of drug or non-drug methods, or a combination of the two methods, to induce a state of depressed consciousness accompanied by partial loss of protective reflexes, and the inability to continually maintain an airway independently or respond appropriately to physical stimulation or verbal command.

~~“Specialist” means, for purposes of Article 15 only, a licensee whose practice is limited to one of the following eight specialty categories recognized by the American Dental Association; endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.~~

“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.

“Triage” means a review during which investigators examine the complaint, licensee response, and dental records to form a recommended disposition for presentation to the full Board. Such recommendations may include termination for lack of supporting evidence, issuance of a letter of concern, further investigation, or discipline in cases involving non-compliance as provided for in A.R.S. § 32-1263.02 and Article 15 of this Chapter.

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

- A. An applicant shall provide the following information and documentation on a form provided by the Board:
1. A sworn statement of the applicant’s qualifications;
 2. A photograph of the applicant that is no more than six months old;
 3. An official, sealed transcript sent directly from the applicant’s dental, dental hygiene, or ~~denture technology~~ denturist school to the Board;
 4. ~~A~~ Except for a dental consultant license applicant, proof of successfully completing a clinical examination by submitting:
 - a. If applying for licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately preceding the date the application was is filed with the Board; or
 - b. If applying for licensure by credential, certified documentation sent directly from the applicable testing agency to the Board containing the name of the applicant, date of examination or examinations, total score for each examination, name of any separately-scored component of the examination and scores for each component;
 5. An official score card sent directly from the National Board examination to the Board, except a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7);
 6. A copy showing the expiration date of the applicant’s current cardiopulmonary resuscitation certification certificate from the American Red Cross, the American Heart Association, or another certifying agency that follow the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association, indicating the expiration date;
 7. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
 8. ~~A~~ If the applicant has been licensed in another jurisdiction more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than six months old;
 9. A letter of endorsement from the dental, dental hygiene, or ~~dental technology~~ denturist school from which the applicant graduated if the applicant is a new graduate or has been practicing less than six months;
 10. A letter of endorsement from the applicant’s commanding officer or superior if the applicant is in the military or employed by the United States government; and
 11. The jurisprudence examination fee.
- B. The Board may request that an applicant provide:
1. An official copy of the applicant’s dental, dental hygiene, or ~~dental technology~~ denturist school diploma,
 2. A copy of a certified document ~~which that~~ indicates the reason for a name change if the applicant’s application contains different names,
 3. Written verification of the applicant’s work history, and
 4. A copy of a high school diploma or equivalent certificate.
- C. An applicant shall pass the Arizona jurisprudence examination.

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultants Licenses, Denturist Certificates, and Drug or Device Dispensing Registrations, and Business Entity Registrations

- A. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, or drug dispensing registration, or business entity registration, the Board shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process a new.
- C. Upon receipt of the missing information, the Board shall notify the applicant, in writing, within 10 calendar days, that the application is complete.
- D. The Board shall not process an application until the applicant has fully complied with the requirements of this Article.

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- E. The Board shall notify an applicant, in writing, whether an initial ~~license~~ application or renewal governed by this Section is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
- F. The Board may deny a license or renewal governed by this Section for any of the reasons stated in A.R.S. Title 32, Chapter 11, or if the applicant:
 - 1. Fails to provide complete documentation;
 - 2. Provides false or misleading information; or
 - 3. Fails to meet the requirements of A.R.S. Title 32, Chapter 11, or this Chapter.
- G. The notice of denial shall inform the applicant of the following:
 - 1. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - 2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - 4. The name and telephone number of an agency contact person who can answer questions regarding the application process.
- H. The following time-frames apply for an initial or renewal application governed by this Section:
 - 1. Administrative completeness review time-frame: 24 calendar days.
 - 2. Substantive review time-frame: 90 calendar days.
 - 3. Overall time-frame: 114 calendar days.
- I. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Semi-conscious Sedation Permits, ~~and~~ Conscious Sedation Permits, and Oral Conscious Sedation Permits

- A. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and semi-conscious sedation permit, ~~or a~~ conscious sedation permit, or oral conscious sedation permit the Board shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
- C. Upon receipt of all missing information, the Board shall notify the applicant, in writing, within 10 calendar days, that the application is complete.
- D. The Board shall not process an application until the applicant has fully complied with the requirement of this Article.
- E. The Board shall notify an applicant, in writing, whether the initial permit or renewal governed by this Section is granted or denied, no later than 120 calendar days after the date of the notice advising the applicant that the package is complete.
- F. The Board may deny a permit or renewal governed by this Section for any of the reasons stated in A.R.S. Title 32, Chapter 11, or if the applicant:
 - 1. Fails to provide complete documentation;
 - 2. Provides false or misleading information; or
 - 3. Fails to meet the requirements of A.R.S. Title 32, Chapter 11 of this Chapter.
- G. The notice of denial shall inform the applicant of the following:
 - 1. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - 2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - 4. The name and telephone number of an agency contact person who can answer questions regarding the application process.
- H. The following time-frames apply for an initial or renewal application governed by this Section:
 - 1. Administrative completeness review time-frame: 24 calendar days.
 - 2. Substantive review time-frame: 120 calendar days.
 - 3. Overall time-frame: 144 calendar days.

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Fees

- A. Dentist:
 - 1- Initial licensure (prorated according to A.R.S. § 32-1236(B)): \$450.00.
 - 2- Licensure renewal: \$450.00.
 - 3- Retired or disabled licensure renewal: \$15.00.
- B. Dental Hygienist:

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- 1- Initial licensure (prorated according to A.R.S. § 32-1287(B)): \$225.00.
- 2- Licensure renewal: \$225.00.
- 3- Retired or disabled licensure renewal: \$15.00.

R4-11-402. ~~Denturist Certification Fees~~ Business Entity Fees

- A.** Initial certification (prorated according to A.R.S. § 32-1297.06(B)): ~~\$225.00.~~ Under A.R.S. § 32-1213(B)(3), the fee for a Business Entity registration is \$100 per year, per location.
- B.** Certification renewal: ~~\$225.00.~~ The penalty fee for late renewal is \$100.
- C.** The 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 penalty fee increases to \$100 if a business entity fails to notify the Board of the change within 60 days.

R4-11-403. ~~Examination Fees~~ Repealed

- A.** Arizona Dental Jurisprudence examination:
 - 1- Dentist: ~~\$200.00.~~
 - 2- Dental Hygienist: ~~\$50.00.~~
- B.** ~~Denturist Certification examination: \$150.00.~~

R4-11-404. ~~Penalty Fees for Late Renewal~~ Repealed

- A.** License: ~~\$25.00.~~
- B.** Certificate: ~~\$25.00.~~

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

- A.** A dentist of record shall ensure that each patient record ~~card~~ has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable institution dental clinic, and the full name of a dentist in the office, clinic, hospital dental clinic, or charitable dental clinic who is responsible for all of the patient's treatment.
- B.** A dentist of record shall obtain a patient's consent to change the treatment plan that the patient originally agreed to ~~and incur~~ including any additional costs the patient may incur because of the change.
- C.** A dentist of record who leaves the practice of dentistry, or a practice in which the dentist is the dentist of record on specific patient records, shall ensure that a new dentist of record is entered on each patient record ~~card~~.
- D.** A dentist of record remains responsible for the care given to the patient while the dentist was the dentist of record even after being replaced by another dentist.
- E.** A dentist of record shall:
 1. ~~remain~~ Remain responsible for the care of a patient during the course of treatment; and
 2. ~~shall be~~ Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist. ~~Lack of availability to the patient on an emergency basis constitutes abandonment, and the dentist is subject to disciplinary action for such unprofessional conduct pursuant to A.R.S. Title 32, Chapter 11, Article 3.~~
- F.** Lack of availability to the patient on an emergency basis constitutes abandonment, and the dentist is subject to disciplinary action for unprofessional conduct under A.R.S. Title 32, Chapter 11, Article 3.

ARTICLE 8. DENTURISTS

R4-11-801. ~~Denturist Consultants to the Board~~

- A.** ~~The Board shall appoint five certified denturists~~ A denturist shall meet the requirements in R4-11-1502 to assist and advise the Board regarding complaints; ~~and disciplinary actions, and examinations concerning denturists.~~
- B.** ~~The Board of Dental Examiners shall appoint an examining team for denturist consultants as designees of the Board to participate in each denturist certification examination pursuant to as specified in A.R.S. § 32-1297.02.~~
- C.** ~~The examining team shall administer and grade the examination as required by A.R.S. § 32-1297.02 and shall make recommendations to the Board for certification of those who successfully completed the examination.~~

R4-11-802. ~~Recognition of Schools of Denture Technology~~ Curriculum

- A.** ~~The Board shall use the criteria in Article 2 to determine whether to recognize a denture technology school.~~
- B.** ~~The basic curriculum to recognize~~ In addition to the requirements in A.R.S. § 32-1297(A), a program in denture technology shall contain those courses and number of course hours delineated in A.R.S. § 32-1297(C) and may include the following subjects: partial denture techniques, cardiopulmonary resuscitation, x-ray interpretation, jurisprudence, and practice management.

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

- A.** An applicant for a restricted permit shall provide the following information and documentation on a form provided by the

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Board:

1. A sworn statement of the applicant's qualifications;
 2. A photograph of the applicant that is no more than six months old;
 3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
 4. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government;
 5. A copy of the applicant's current cardiopulmonary resuscitation certification, indicating the expiration date; and
 6. A copy of the applicant's pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.
- B.** The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the professional and statutory qualifications of the charitable dental clinic or organization. For the Board to recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits, the Board shall make the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at a minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of the law.

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at a minimum rate to provide reimbursement for dental supplies and overhead costs, pursuant to A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered and any other information relevant to its inquiry.

R4-11-905. Restricted Permit Denial

If the applicant for restricted permit or the dental clinic or organization with whom the applicant has a pending contract refuses or fails to furnish information requested by the Board with the result that the Board is unable to perform its duties under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall not issue a restricted permit to the applicant.

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist ~~practices in~~ limits the dentist's practice exclusively to one or more of the specialty areas listed below, is that are:

1. ~~recognized~~ Recognized by the ~~specialty~~ a board which certifies specialists for that area; ~~of specialty;~~ and
2. ~~is accredited~~ Accredited by the Commission on Dental Accreditation of the American Dental Association;.

B. ~~The following specialty areas meet the requirements of subsection (A):~~

1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health, ~~or~~
8. Oral and Maxillofacial Pathology, ~~and~~
9. Oral and Maxillofacial Radiology.

B.C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American

Dental Association.

2. Educationally qualified: A dentist who has successfully completed an educational program, two or more years long, in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association.
 3. Board eligible: A dentist who has met the guidelines of an established specialty board in a recognized specialty area that operates in accordance with the requirements established by the American Dental Association. The specialty board shall have established examination requirements and standards, appraised an applicant's qualifications, administered comprehensive examinations, and upon completion issued a certificate to a dentist who has achieved diplomate status.
 4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection ~~(B)(3)~~ (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.
- ~~C.D.~~ A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection ~~(A)~~ (B), and recognized by a specialty board ~~which that~~ that has been accredited by the Commission on Dental Accreditation of the American Dental Association, has violated this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline ~~pursuant to~~ under A.R.S. Title 32, Chapter 11.
- ~~D.E.~~ A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

ARTICLE 12. CONTINUING DENTAL EDUCATION

R4-11-1201. Continuing Dental Education

- A. A licensee, ~~or certificate holder, or restricted permit holder~~ shall:
1. ~~satisfy~~ Satisfy a continuing dental education requirement ~~which that~~ is designed to provide an understanding of current developments, skills, procedures, or treatment related to the ~~licensee, licensee's or certificate holder, or restricted permit holder's practice; and~~ licensee, licensee's or certificate holder, or restricted permit holder's practice; and
 2. Complete the recognized continuing dental education required by Article 12 each renewal period.
- ~~B.~~ A licensee, ~~certificate holder, or restricted permit holder~~ shall ~~complete the recognized continuing dental education required by Article 12 each triennial period.~~
- ~~C.B.~~ A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full ~~triennial~~ renewal period.

R4-11-1202. Compliance

- A. When applying for a renewal license, ~~or certificate, pursuant to A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, the dentist, dental hygienist, or denturist or restricted permit, a licensee, certificate holder, or restricted permit holder~~ shall certify to the Board completion of the prescribed credit hours of recognized continuing dental education ~~triennially for the renewal period.~~
- B. ~~Each~~ Before receiving a renewal license or certificate, each licensee or certificate holder shall possess, ~~before receiving an original or renewal license or certificate,~~ a current cardiopulmonary resuscitation (CPR) certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association.
- C. A licensee or certificate holder shall include a written affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee's or certificate holder's name, license or certificate number, ~~name of sponsor, program title and description, date, time, and location of the program, and dates of attendance~~ and the number of hours completed in each category.
- D. If a licensee or certificate holder fails to meet the credit hour requirement because of illness, military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement. The licensee or certificate holder shall submit a written request for an extension before the ~~time of June 30 deadline.~~
- E. The Board shall:
1. ~~only~~ Only accept recognized continuing dental education credits accrued during the ~~triennial prescribed renewal period immediately before renewal for license or certificate renewal, and~~
 2. Not allow recognized continuing dental education credit accrued in a prescribed renewal period in excess of the amount required in this Article for a particular license or certificate to be carried forward to the succeeding prescribed renewal period.
- ~~F.~~ A licensee or certificate holder shall ~~not carry forward recognized continuing dental education credit to a succeeding triennial renewal period.~~

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~~G.F.~~ A licensee or certificate holder shall ~~preserve~~ maintain documentation of attendance for each program for which credit is claimed. ~~The documentation shall verify that verifies~~ the recognized continuing dental education credit hours ~~for the licensee or certificate holder participated in during~~ the preceding two ~~triennial~~ renewal periods.

~~H.G.~~ Each year, the Board shall audit continuing education affidavits on a random basis or when the documentation submitted by the licensee or certificate holder does not appear to comply with this ~~Section~~ Article. A licensee or certificate holder whose affidavit is selected for audit shall provide the Board with documentation of attendance in support of the affidavit within 60 days from the date the licensee or certificate holder received notice, by certified mail, of the audit.

~~I.H.~~ Any false statement in an affidavit shall be grounds for suspension, revocation, refusal to renew a license or certificate, or any other disciplinary action authorized by A.R.S. Title 32, Chapter 11.

R4-11-1203. Dentists and Dental Consultants

~~A dentist~~ Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in ~~a triennial~~ each renewal period as follows:

1. At least 45 credit hours of recognized continuing dental education shall be in one or more of the following areas: Dental and medical health, cardiopulmonary resuscitation, preventative services, dental diagnosis and treatment planning, dental clinical procedures, administration of oral sedation and managing medical emergencies in addition to CPR, including courses in corrective and restorative oral health and basic dental sciences which may include current research, new concepts in dentistry, and behavioral and biological sciences which are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, semi-conscious sedation, or conscious sedation, or oral conscious sedation, who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to this requirement.
2. No more than 18 credit hours of recognized continuing dental education shall be in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery.
3. At least three credit hours of recognized continuing dental education shall be in ~~the area of~~ chemical dependency which may include tobacco cessation.
4. At least six credit hours of recognized continuing dental education shall be in ~~the area of~~ infectious diseases and infectious disease control.
5. ~~The Board may apply credit hours earned by a licensee in continuing education ordered by the Board pursuant to A.R.S. Title 32, Chapter 11 toward a licensee's 72 hour requirement~~

R4-11-1204. Dental Hygienists

A dental hygienist shall complete 54 credit hours or recognized continuing dental education in ~~a triennial~~ each renewal period as follows:

1. At least 34 credit hours of recognized continuing dental education shall be in one or more of the following areas: Dental and medical health, cardiopulmonary resuscitation, and dental hygiene services, which may include periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies in addition to CPR, and new concepts in dental hygiene.
2. No more than 14 credit hours of recognized continuing dental education shall be in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery.
3. At least two credit hours of recognized continuing dental education shall be in ~~the area of one or more of the following areas:~~ chemical dependency, tobacco cessation, ethics, risk management or jurisprudence.
4. At least four credit hours of recognized continuing dental education shall be in ~~the area of~~ infectious diseases and infectious disease control.
5. ~~The Board may apply credit hours earned by a licensee in continuing education ordered by the Board pursuant to A.R.S. Title 32, Chapter 11 toward a licensee's 54 hour requirement.~~

R4-11-1205. Denturists

Denturists shall complete 24 credit hours of recognized continuing dental education in ~~a triennial~~ each renewal period as follows:

1. At least 15 credit hours of recognized continuing dental education shall be in one or more of the following areas: Medical and dental health, cardiopulmonary resuscitation, laboratory procedures, and clinical procedures.
2. No more than six credit hours of recognized continuing dental education may be in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery.
3. At least one credit hour of recognized continuing dental education shall be in ~~the area of~~ chemical dependency which may include tobacco cessation.
4. At least two credit hours of recognized continuing dental education shall be in ~~the area of~~ infectious diseases and infectious disease control.
5. ~~The Board may apply credit hours earned by a certificate holder in continuing education ordered by the Board pursuant to A.R.S. Title 32, Chapter 11 toward a certificate holder's 24 hour requirement.~~

ant to A.R.S. Title 32, Chapter 11 toward a certificate holder's 24 hour requirement.

R4-11-1206. Restricted Permit Holders - Dental

~~A In addition to the requirements in R4-23-1202, a dental restricted permit holder shall comply with the following requirements in R4-11-1202 except as indicated below:~~

- ~~1. When applying for renewal pursuant to under A.R.S. § 32-1238, the licensee shall provide information to the Board that the licensee has completed 24 credit hours of recognized continuing dental education yearly.~~
- ~~2. Each renewal application shall include a written affidavit affirming the licensee's completion of 24 credit hours of recognized continuing dental education. The affidavit shall include a licensee's name, license number, name of sponsor, program title and description, date, time, and location of the program, and dates of attendance.~~
- ~~3-2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the licensee submits the renewal application.~~
- ~~4. A restricted permit holder shall maintain documentation of attendance for each program for which credit is claimed. The documentation shall verify the recognized continuing dental education credits in which the licensee has participated during the preceding two renewal periods.~~
- ~~5-3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education prior to before renewal as follows:~~
 - ~~a. At least 15 credit hours of recognized continuing dental education shall be in one or more of the subjects enumerated in R4-11-1203(1).~~
 - ~~b. No more than six credit hours of recognized continuing dental education may be in one or more of the subjects enumerated in R4-11-1203(2).~~
 - ~~c. At least one credit hour of recognized continuing dental education shall be in the subjects enumerated in R4-11-1203(3).~~
 - ~~d. At least two credit hours of recognized continuing dental education shall be in the subjects enumerated in R4-11-1203(4).~~
 - ~~e. The Board may apply credit hours earned by a licensee in continuing education ordered by the Board pursuant to A.R.S. Title 32, Chapter 11 toward a licensee's 24 hour requirement.~~

R4-11-1207. Types of Courses Restricted Permit Holders - Dental Hygiene

~~A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following types of curricula:~~

- ~~1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry, or~~
- ~~2. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11.~~
- ~~3. No more than 18 credit hours for dentists, 14 credit hours for dental hygienists, or six credit hours for denturists per triennial period shall be earned for any of the following activities which provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:~~
 - ~~a. A dental education program based on self instruction which utilizes videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, computers, or independent reading with examination;~~
 - ~~b. Participation on the Board or in Board complaint investigations including clinical evaluations and investigative interviews, peer review, or quality of care or utilization review in a hospital, institution, or governmental agency;~~
 - ~~c. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized school of denture technology, or is sponsored by a national or state dental, dental hygiene, or denturist association; or~~
 - ~~d. Publication or presentation of a dental paper, report, or book that the licensee or certificate holder has authored and published, which provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. Credit hours shall be claimed only once for materials presented. Credits shall be claimed as of the date of publication or original presentation. One credit hour may be reported per hour of preparation, writing or presentation. In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following requirements:~~
 1. When applying for renewal under A.R.S. § 32-1292, the licensee shall provide information to the Board that the licensee has completed 18 credit hours of recognized continuing dental education yearly.
 2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the licensee submits the renewal application.
 3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
 - a. At least 12 credit hours of recognized continuing dental education shall be in one or more of the subjects enumerated in R4-11-1204(1).

- b. No more than 3 credit hours of recognized continuing dental education may be in one or more of the subjects enumerated in R4-11-1204(2).
- c. At least one credit hour of recognized continuing education shall be in the subjects enumerated in R4-11-1204(3).
- d. At least two credit hours of continuing dental education shall be in the subjects enumerated in R4-11-1204(4).

R4-11-1208. Retired Licensees or Certificate Holders

A retired licensee or certificate holder shall:

- 1. Comply with the requirements in R4-11-1202; and
- 2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
 - a. Dentist - 24 credit hours plus CPR;
 - b. Dental hygienist - 18 credit hours plus CPR; and
 - c. Denturist - 6 credit hours plus CPR.

R4-11-1209. Types of Courses

A. A licensee, certificate holder, or restricted permit holder shall obtain recognized continuing dental education from one or more of the following activities:

- 1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry; or
- 2. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
- 3. Subject to the limitations in subsection (B), any of the following activities which provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
 - a. A correspondence course, videotape, distance learning course, internet or similar self-study course, provided that the course includes an examination and the licensee, certificate holder, or restricted permit holder passes the examination;
 - b. Participation on the Board or in Board complaint investigations including clinical evaluations and investigative interviews, peer review, or quality of care or utilization review in a hospital, institution, or governmental agency;
 - c. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national or state dental, dental hygiene, or denturist association;
 - d. Publication or presentation of a dental paper, report, or book that the licensee, certificate holder, or restricted permit holder has authored and published, that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. Credit hours shall be claimed only once for materials presented. Credits shall be claimed as of the date of publication or original presentation. One credit hour may be reported per hour of preparation, writing or presentation; or
 - e. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(3):

- 1. Dentists and Dental Hygienists not to exceed 24 hours.
- 2. Denturists not to exceed 12 hours.
- 3. Retired or Restricted Permit Holder Dentists or Dental Hygienists not to exceed 9 hours.
- 4. Retired Denturists not to exceed 3 hours.

ARTICLE 14. DISPENSING DRUGS AND DEVICES ~~FOR PROFIT AND NOT FOR PROFIT~~

R4-11-1401. ~~Registration and Renewal Prescribing~~

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit after providing the Board the following information:

- 1. A complete registration form which includes the following information:
 - a. The dentist's name and dental license number;
 - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
 - e. Locations where the dentist desires to dispense the drugs and devices for profit; and
- 2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit. In addition to the requirements of A.R.S. § 32-1298(C), a prescription order shall contain the following information:
 - 1. Date of issuance;

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2. Name and address of the patient to whom the prescription is issued;
 3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
 4. Name and address of the dentist prescribing the drug; and
 5. Drug Enforcement Administration registration number of the dentist prescribing for a controlled substance.
- B.** ~~The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."~~
- C.** ~~A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's June 30 triennial license expiration date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.~~

R4-11-1402. Prescribing Labeling and Dispensing

- A.** A prescription order shall contain, in addition to the requirements of A.R.S. § 32-1298(C), the following information:
1. Date of issuance;
 2. Name and address of the patient to whom the prescription has been issued;
 3. Name, strength, and quantity of the drug prescribed;
 4. Name and address of the dentist prescribing the medication; and
 5. Drug Enforcement Administration registration number of the dentist prescribing for controlled substances. A dentist shall include the following information on the label of all drugs and devices dispensed:
 1. The dentist's name, address, and telephone number;
 2. The serial number;
 3. The date the drug or device is dispensed;
 4. The patient's name;
 5. Name, strength, and quantity of drug or name and quantity of device dispensed;
 6. The name of the drug or device manufacturer or distributor;
 7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
 8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
- B.** ~~Before dispensing for profit, a dentist shall write a prescription for the drug or device being dispensed, and include on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice." If a dentist is not dispensing for profit, a prescription does not need to be written. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.~~
- C.** A dentist shall purchase all dispensed drugs and devices from a licensed manufacturer, distributor, or pharmacy.
- D.** When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legalities and pharmaceutical feasibility of dispensing, including allergies, incompatibilities, unusual quantities of dangerous drugs or narcotics, and frequency of refills;
 2. Verify that the dosage is within proper limits;
 3. Interpret the prescription order;
 4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling the drug or device, dispensed under an individual prescription order;
 5. Check the label to verify it precisely communicates the prescriber's directions and hand-initial every label;
 6. Record, or assume responsibility for recording the serial number and the date dispensed on the front of the original prescription order; and
 7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

R4-11-1403. Labeling and Dispensing Storage and Packaging

- A.** A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
 2. The serial number;
 3. The date the drug or device is dispensed;
 4. The patient's name;
 5. Name, strength, and quantity of drug dispensed;
 6. The name of the drug manufacturer or distributor;
 7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
 8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this

drug to any person other than the patient for whom it was prescribed.”

- B.** A dentist shall perform the following professional practices, in directly dispensing for profit a prescription medication or device from a prescription order:
1. Verify the legalities and pharmaceutical feasibility of dispensing, including allergies, incompatibilities, unusual quantities of dangerous drugs or narcotics, and signature of the prescribing dentist;
 2. Verify that the dosage is within proper limits;
 3. Interpret the prescription order;
 4. Prepare the package and label, or assume responsibility for preparing, packaging, and labeling the medication or device, dispensed under an individual prescription order;
 5. Check the label to verify it precisely communicates the prescriber’s directions and hand-initial every label;
 6. Record, or assume responsibility for recording the serial number and the date dispensed on the front of the original prescription order; and
 7. Record on the original prescription order the name or initials of the dentist who dispensed the order.
- C.** Before delivery, the dentist shall prepare the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
- D.** A dentist shall purchase all dispensed drugs and devices from a licensed manufacturer, distributor, or pharmacy. A dentist shall:
1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The written procedure shall be made available to the Board or its authorized agents on demand for inspection or copying;
 2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The written procedure shall be made available to the Board or its authorized agents on demand for inspection or copying;
 3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
 4. Not dispense a drug or device that has expired or is improperly labeled;
 5. Not redispense a drug or device that has been returned;
 6. Dispense a drug or device:
 - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient’s representative requests a non-safety cap; and
 - b. With a label that is mechanically or electronically printed;
 7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
 8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

R4-11-1404. Storage and Packaging Recordkeeping

- A.** A dentist shall keep all drugs and devices secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The written procedure shall be made available to the Board or its authorized agents on demand for inspection or copying. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed,
 2. Sequentially file orders separately from patient records, as follows:
 - a. Schedule II drug orders shall be filed separately from all other prescription orders;
 - b. Schedule III, IV, and V drug orders shall be filed separately from all other prescription orders; and
 - c. All other prescription orders shall be filed separately from those stated in subsections (A)(2)(a) and (b);
 3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
 4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
 5. Record the date the drug or device is dispensed on each prescription order and label.
- B.** A dentist shall maintain storage rooms so that the temperature in the storage rooms does not exceed 85° F. A dentist shall record in the patient’s dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C.** A dentist shall not dispense a drug or device that has expired or is improperly labeled. A dentist shall maintain purchase and dispensing records of all drugs and devices for three years from the date dispensed.
- D.** A dentist shall not redispense a drug or device that has been returned. A dentist who dispenses controlled substances:
1. Shall inventory schedule II, III, IV, and V controlled substances as prescribed by federal law (21 C.F.R. 1304.03,

- 1304.04, 1304.11, 1304.21, and 1304.22);
2. Shall perform a controlled substance inventory on March 1 annually, as directed by the Board, and at the opening or closing of a dental practice;
 3. Shall maintain the inventory for three years from the inventory date;
 4. May use one inventory book for all controlled substances;
 5. When recording Schedule II controlled substances, shall take an exact count; and
 6. When conducting an inventory on bottles of 1,000 or less of Schedule III, IV, and V controlled substances, may take an estimated count.
- ~~E. A dentist shall dispense a drug or device:~~
- ~~1. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and~~
 - ~~2. With a label that is mechanically or electronically printed. A dentist shall maintain invoices, for drugs and devices dispensed for three years from the date of the invoices, filed as follows:~~
 1. Schedule II controlled substance invoices shall be filed separately from all other records;
 2. Schedule III, IV, and V controlled substance invoices shall be filed separately from all other records; and
 3. All non-controlled substance invoices shall be filed separately from those referenced in subsections (E)(1) and (2).
- ~~F. A dentist shall destroy controlled substances pursuant to the Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration. A dentist shall file Drug Enforcement Administration order forms, No. DEA 222, for controlled substances sequentially and separately from every other record.~~
- ~~G. A dentist shall destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.~~

R4-11-1405. Recordkeeping Compliance

- ~~A. A dentist shall:~~
- ~~1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices were originally dispensed;~~
 - ~~2. Sequentially file orders separately from patient records, as follows:~~
 - ~~a. Schedule II drug orders shall be filed separately from all other prescription orders;~~
 - ~~b. Schedule III, IV, and V drug orders shall be filed separately from all other prescription orders; and~~
 - ~~c. All other prescription orders shall be filed separately from those stated in subsections (A)(2)(a) and (b).~~
 - ~~3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label, and~~
 - ~~4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label. A dentist who determines that drugs have been illegally removed from the dentist's office, or that there is a shortage of controlled substances, shall immediately notify a local law enforcement agency and the Board. The dentist shall:~~
 1. For non-controlled substance theft or loss, provide the law enforcement agency and the Board with a written report;
 2. For controlled substance theft or loss, complete a DEA 106 form; and
 3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.
- ~~B. A dentist shall record in the patient's dental record the name, form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device, with respect to dispensing for profit and not for profit. A dentist who dispenses drugs or devices in a manner inconsistent with Article 14 is subject to discipline pursuant to A.R.S. Title 32, Chapter 11, Article 3.~~
- ~~C. A dentist shall maintain purchase and dispensing records of all drugs and devices, for profit and not for profit, for three years from the date dispensed.~~
- ~~D. A dentist who dispenses drugs and devices, for profit and not for profit, shall inventory schedule II, III, IV, and V drugs as prescribed by federal law. A dentist shall perform a controlled substance inventory on March 1 annually, as directed by the Board, and at the opening or closing of a dental practice. A dentist shall maintain the inventory for three years from the inventory date. One inventory book may be used for all controlled substances. When recording Schedule II drugs, an exact count shall be done. When doing an inventory on bottles of 1,000 or less of Schedule III, IV, and V drugs, an estimate may be made.~~
- ~~E. A dentist shall maintain invoices, for drugs and devices dispensed for profit and not for profit, for three years from the date of the invoices, filed as follows:~~
- ~~1. Schedule II drug invoices shall be filed separately from all other records;~~
 - ~~2. Schedule III, IV, and V drugs shall be filed separately from all other records; and~~
 - ~~3. All other invoices shall be filed separately from those referenced in subsections (E)(1) and (2).~~
- ~~F. A dentist shall file Drug Enforcement Administration order forms, No. DEA 222, for controlled substances sequentially~~

and separately from every other record.

R4-11-1406. Compliance Dispensing for Profit Registration and Renewal

- A. ~~A dentist who determines that drugs have been illegally removed from the dentist's office, or that there is a drug shortage of controlled substances, shall immediately notify a local law enforcement agency and the Board. The dentists also shall provide the law enforcement agency with a written report, using a DEA 106 form, and provide copies to the Drug Enforcement Administration and the Board within seven days of the discovery. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:~~
1. A completed registration form which includes the following information:
 - a. The dentist's name and dental license number;
 - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
 - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
 2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
- B. ~~A dentist who dispenses drugs or devices in a manner inconsistent with Article 14 is subject to discipline pursuant to A.R.S. Title 32, Chapter 11, Article 3. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.~~
- C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION, ~~REINSTATEMENT OF REVOKED LICENSES~~

R4-11-1501. Ex-parte Communication

A complainant, ~~and licensee, or certificate holder, or business entity~~ against whom a complaint has been filed, shall not engage in ex-parte communication.

R4-11-1503. Initial Complaint Review

- A. The president's designee shall initially review a complaint. If the designee determines that the Board has no jurisdiction, the complaint shall be forwarded to the Board for termination.
- B. If the designee determines that the Board has jurisdiction:
1. Board personnel shall notify the complainant and licensee, ~~or certificate holder, or business entity~~ of the investigative and adjudicative process as follows:
 - a. By regular U.S. Mail that the complaint has been ~~filed~~ received and whether a clinical evaluation will be scheduled; and
 - b. By certified U.S. Mail of an informal interview, investigative interview, or mediation, if the complaint has been tabled or remanded, of a postponement or continuance, and a subpoena, notice, or order.
 2. The president's designee shall refer the complaint to an informal interview, investigative interview, triage, or mediation. Where the allegations, if proven, may result in suspension or revocation of license or certificate, the complaint shall be referred to an informal interview. All other complaints shall be referred to investigative interview, triage, or mediation.
 3. The Board may subpoena a patient's treatment records from the licensee, certificate holder, business entity, or any other health care provider.
 4. Board personnel shall provide the licensee, ~~or certificate holder, or business entity~~ with a copy of the complaint upon receipt of the treatment records.
 5. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.
 6. If during the course of investigating a complaint, but before ~~an~~ triage, investigative interview, or informal interview, it appears the evidence does not support the allegations contained in the complaint, the president's designee shall forward the complaint to the Board for termination.
- C. The Board's procedures for complaints referred to clinical evaluation are:
1. Except as provided in subsection (C)(1)(a), the president's designee shall appoint one or more dentists to perform a clinical evaluation. If there is more than one clinical evaluation, the clinical evaluators do not need to be present at the same time. The Board shall approve each clinical evaluator.
 - a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1101(B), the president's designee shall appoint a clinical evaluator from that area of practice or specialty.

- b. The Board shall not disclose the identity of the licensee to a clinical evaluator before the Board receives the clinical evaluator's report.
 2. The president's designee or clinical evaluator shall prepare a clinical evaluation report for the informal or investigative interview or Board meeting. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report before the informal or investigative interview or Board meeting.
- D.** The Board's procedures for investigative and informal interviews are as follows:
1. Board personnel shall provide the complainant and licensee, ~~or~~ certificate holder, or business entity with written notice of the time and date of the investigative interview or informal interview. The notice shall include all allegations contained in the complaint and any allegation which arose during the Board's investigation before the notice date.
 2. The Board's president or the president's designee may request an informal interview. The Board president or president's designee:
 - a. May appoint one or more Board members to act as the informal interviewing officer; or
 - b. May appoint a Board approved investigator to assist the informal interviewing officer; and
 - c. Shall appoint one investigator or Board member from the relevant area of practice or specialty, if the licensee or certificate holder is a dental hygienist, denturist, or recognized dental specialist in one of the areas listed in R4-11-1101(B).
 3. If a complaint is referred for an investigative interview, the president's designee shall appoint an investigator or an investigative panel, consisting of at least ~~two~~ one dentist ~~dentist~~ and one ~~lay person~~ public member to conduct the investigative interview. One panel member, who is not a ~~lay person~~ public member, shall serve as the chairperson. If the licensee or certificate holder is a dental hygienist, denturist, or a recognized dental specialist in one of the areas listed in R4-11-1101(B), at least one investigator shall be from that area of practice or specialty.
 4. The ~~complainant and~~ licensee or certificate holder may agree to waive the requirements in this Section regarding appointment of a licensee or certificate holder from a specific practice area or specialty, ~~or a lay person.~~ The complainant, licensee, certificate holder, or business entity may agree to waive the requirements in this Section regarding the appointment of a public member.
 5. The complainant, ~~and~~ licensee, ~~or~~ certificate holder or business entity and any witness present at the informal interview or investigative interview may be questioned by the informal interviewing officer, investigators, or investigative interview panel. ~~Either Counsel~~ counsel representing the complainant, licensee, ~~or~~ certificate holder, or business entity or the complainant, licensee, ~~or~~ certificate holder, or business entity may direct questions through the chairperson of the investigative interview panel or informal interviewing officer. Following the presentation of all testimony and evidence, the complainant, ~~and~~ licensee, ~~or~~ certificate holder, or business entity or their respective representative may make a closing statement.
 6. The informal interviewing officer, investigator, or investigative interview panel shall develop findings of fact, conclusions of law, and a recommendation for disposition of the complaint based on the treatment records, the clinical evaluation observations and documentation, testimony of the complainant and licensee, ~~or~~ certificate holder, or business entity, and any other witnesses or relevant documents.
 7. Board personnel shall prepare a written report of the investigative or informal interview from the recording of the interview and the informal interviewing officer's or investigator's or investigative interview panel's written findings of fact, conclusions of law, and recommendation.
 8. Board personnel shall record all informal and investigative interviews mechanically or stenographically.
- E.** The Board's procedures for triage are as follows:
1. Board personnel shall provide the licensee, certificate holder, or business entity an opportunity to respond to the complaint in writing.
 2. If a complaint is forwarded for triage, the president's designee shall appoint investigators for triage consisting of at least one dentist and either one licensee or certificate holder to conduct a review of the complaint, written response from licensee, certificate holder, or business entity and records.
 3. The triage panel may develop recommendations for termination for lack of supporting evidence, issuance of a letter of concern, further investigation or, in cases involving non-compliance, discipline.
 4. Board personnel shall prepare a written report of the triage panel findings and recommendations and forward to the Board for action. A copy shall be provided by certified mail to the licensee, certificate holder, or business entity.

R4-11-1504. ~~Expired~~ Postponement of Investigative or Informal Interview

- A.** The complainant, licensee, or certificate holder may request a postponement of an investigative or informal interview, and the Board or its designee may grant a postponement under the following circumstances:
1. The complainant, licensee, or certificate holder is entitled to one unquestioned postponement, if the request:
 - a. Is made in writing;
 - b. States the reason for the postponement; and
 - c. Is received by the Board at least ten calendar days before the date of the investigative or informal interview not

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- including the day of the interview; and
- 2. Any request for a subsequent postponement:
 - a. Complies with subsection (1)(a), (b), and (c); and
 - b. Demonstrates good cause for the postponement.
- B.** Within 24 hours of receipt of a request for postponement of an investigative or informal interview, the Board or its designee shall:
 - a. Review and either deny or approve the request for postponement; and
 - b. Notify in writing the complainant, licensee, or certificate holder of the decision to either deny or approve the request for postponement.

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B), the registration application shall include a sworn statement that:

- 1. The information provided by the business entity is true and correct, and
- 2. No information is omitted from the application.

R4-11-1802. Display of Registration

- A.** A business entity's receipt for the current registration period shall:
 - 1. Be conspicuously displayed in the dental practice in a manner that is always readily observable by patients or visitors, and
 - 2. Be exhibited to members of the Board or to duly authorized agents or the Board on request.
- B.** A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

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TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 1 | Amend |
| R18-5-101 | Amend |
| R18-5-104 | Amend |
| R18-5-107 | Amend |
| R18-5-109 | Amend |
| R18-5-115 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statute the rules are implementing (specific):**
 - Authorizing statutes: A.R.S. §§ 49-104, 49-202, 49-203, 49-351, 49-352, 49-353 and 49-361
 - Implementing statute: A.R.S. §§ 49-352, 49-361
 - 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
 - Notice of Rulemaking Docket Opening: 10 A.A.R. 1319, April 2, 2004
 - 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 - Name: Jon Fiegen or Sean McCabe
 - Address: Arizona Department of Environmental Quality
1110 W. Washington St. (MC 5415B-2)
Phoenix, AZ 85007
 - Telephone: Jon Fiegen (602) 771-4596
Sean McCabe: (602) 771-4600
(Toll-free number in Arizona: (800) 234-5677)
 - Fax: (602) 771-4634

E-mail: fiegen.jon@azdeq.gov
mccabe.sean@azdeq.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

A. Background for Proposed Rules

The primary rationale for this rulemaking is to improve the operator certification program administered by the Arizona Department of Environmental Quality (ADEQ), which certifies operators of drinking water and wastewater facilities. The requirements relating to the certification of public water system operators come primarily from the federal Safe Drinking Water Act (SDWA), which seeks to ensure that drinking water supplied to consumers by public water systems is safe to drink, that consumers are confident that their water is safe to drink and that certified operators operate public water systems. The Environmental Protection Agency (EPA) promulgated final guidelines for the certification and recertification of water system operators in February 1999. 64 FR 5916 through 5921, February 5, 1999.

Currently, ADEQ is able to revoke the certificate of an operator of a wastewater or water facility for noncompliance pursuant to A.A.C. R18-5-109. A proposed amendment to these rules will allow ADEQ also to place an operator on probation or suspension for noncompliance pursuant to A.A.C. R18-5-109, among other changes.

B. Section-by-section Explanation of the Rules

R18-5-101 sets forth definitions for this Article.

R18-5-104 sets forth general requirements for the operation of water and wastewater facilities and specific requirements for the owners and operators of water and wastewater facilities.

R18-5-107 sets forth the requirements for certificate renewal for operators of water and wastewater facilities.

R18-5-109 sets forth the enforcement mechanisms the Department may employ with operators of water and wastewater facilities. R18-5-115 sets forth the criteria for classifying the grades of water treatment and water distribution facilities.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

A. Identification of Rule

Title 18, Chapter 5, Article 1, "Classification of Treatment Plants and Certification of Operators."

B. Background and Summary

Arizona has a Safe Drinking Water program approved by the EPA that governs drinking water, public water systems and operators of public water systems. ADEQ also regulates wastewater facilities and wastewater facility operators. Currently, ADEQ may only revoke the certificate of an operator for noncompliance. Possessing only operator certificate revocation creates a program with a "one-size-fits-all" enforcement mechanism. The expanded enforcement mechanism proposed by this rulemaking will provide ADEQ with greater flexibility and an increased ability to take corrective actions with water and wastewater facility operators that are appropriate to the violations committed.

Additionally, EPA calls upon states with an approved drinking water program to have the ability to suspend a public water system operator's certificate for noncompliance, or take other appropriate enforcement measures. Since EPA calls upon states with an approved drinking water program to have this ability, the adoption of suspension and probation as additional enforcement measures will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in Arizona. The adoption of suspension and probation as additional enforcement measures to address noncompliance by operators of wastewater facilities will also assist ADEQ in protecting the public health, safety and the environment.

This proposed rulemaking makes changes to five of the sixteen sections comprising Article 1. ADEQ believes that the results of these changes will represent cost-saving benefits in terms of improved protection to public health and safety. For example, the marginal costs to owners of water and wastewater facilities from replacing the services of an operator placed on suspension are expected to be less than the potential value of marginal benefits to consumers and general public.

The current rule allows ADEQ to deny or revoke an operator certificate. If, however, these proposed rule changes are implemented, ADEQ will be able to suspend a certificate or place an operator on probation for violating provisions of

these rules (see R18-5-109). Potentially, these additional enforcement mechanisms can provide better protection of the public health and the environment. This is vital to Arizona's program since the primary purpose of the Safe Drinking Water Act is to ensure that drinking water supplied to consumers by public water systems is safe to drink. ADEQ must also have this same enforcement authority for wastewater facility operators for the protection of public health and the environment.

Although potential costs and benefits are described in part "D" below, ADEQ anticipates the incremental cost to implement this rule probably will be minimal. ADEQ solicits additional information on entities impacted and potential costs and benefits. Information and data received during the oral proceeding will be evaluated and included, as appropriate, in the final rulemaking.

C. Entities Directly Impacted

Entities that could be directly affected bear costs, or directly benefit from this rule include: owners of water facilities and wastewater facilities, operators, ADEQ, and the public. Water and wastewater facilities include private and public owners. The federal government, state agencies, various political subdivisions of the state and private entities own and operate these facilities and could be impacted by this rulemaking. The public includes consumers and citizens at large.

ADEQ does not anticipate an impact to other state agencies or to the state General Fund.

D. Potential Costs and Benefits

Owners of Facilities. The potential for increased operating costs for owners of water facilities and wastewater facilities may arise for facilities that would find it necessary to replace the services of an operator who has been suspended. A facility faced with the necessity of finding replacement services for a suspended operator may encounter increased transaction costs to find a replacement operator. In addition, the cost for a certified operator may or may not be equivalent to prior service costs. However, if transaction costs are minimal and replacement service costs are relatively equivalent to prior costs, the impact should be "minimal." In cases where transaction costs become more expensive and replacement service costs exceed what the facilities were previously paying, the relative impact should be greater.

Even though the potential does exist for higher costs, ADEQ anticipates that significantly higher costs would be the exception rather than the anticipated scenario. Furthermore, relatively larger facilities may not experience any impact in the event of an operator suspension because of multiple operators already employed at those facilities. Finally, the threat of suspension or probation may actually work as an incentive for existing and new operators to perform their job tasks and to operate the facilities in compliance with the law.

Certified operators. Certified operators are persons who hold a current certificate issued by ADEQ. Earning professional development hours (PDHs) for certificate renewals is an existing requirement. Although the rule currently requires an operator to provide PDH records to ADEQ upon request, the requirement to maintain the documentation for at least five years would be a new requirement under these proposed rules. ADEQ views the impact of this new requirement to be minimal. Although the rule provision that authorizes ADEQ to suspend an operator's certificate or place an operator on probation, represents a potential increased risk to these operators, the outcome, including improved operator performance, may be viewed as a positive and beneficial one.

ADEQ. In addition to the minimal rule development costs incidental to the rulemaking process, ADEQ does not anticipate the need for additional employees, equipment, or other explicit and implicit costs to accrue as a result of implementing this rulemaking. Even though the ability to suspend an operator's certificate or place an operator on probation would fall under a category of increased enforcement costs, ADEQ does not anticipate a significant increase in enforcement costs.

ADEQ expects that the implementation of these proposed rule changes will strengthen the program that certifies and regulates the operators of water and wastewater facilities. Drinking water that is safe to drink is of critical importance to everyone. The proper operation of public water systems that deliver water to consumers is a vital step in maintaining safe drinking water. Similarly, it is important to public health and safety and the environment that wastewater is adequately treated through the proper operation of wastewater facilities. The adoption of suspension and probation as additional enforcement mechanisms for wastewater and water facility operators will improve ADEQ's oversight over these programs and will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in the state.

Consumers and general public. Initially, this rulemaking is not expected to generate costs to consumers or to the general public. However, the potential does exist for owners/operators to pass on increased compliance costs to consumers. ADEQ expects probable benefits to outweigh probable costs because of the potential for increased public protection. In some cases, the potential exists for cost-avoidance benefits to facilities due to improving the operation of systems and mitigating the potential for facilities being out of compliance. Thus, this rulemaking can be viewed as a direct link to improving the well-being of consumers and the general public.

E. Rule Impact Reduction on Small Businesses

State law requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives of the rulemaking. ADEQ considered each of the methods pre-

scribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. Methods that may be used include the following: (1) Exempt them from any or all rule requirements, (2) Establish performance standards which would replace any design or operational standards, or (3) Institute reduced compliance or reporting requirements. An agency may accomplish the 3rd method by establishing less stringent requirements, consolidating or simplifying them, or setting less stringent schedules or deadlines.

After assessing the various methods for reducing the impact on small businesses, ADEQ has been unable to implement any of the suggested methods. Owners and operators of these facilities must meet these rules to maintain an adequate and appropriate Safe Drinking Water program and wastewater program in Arizona.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

A person may submit written comments to the individuals listed in item #4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: October 5, 2004
Time: 1:30 p.m.
Location: Department of Environmental Quality
1110 W. Washington, Room 250
Phoenix, AZ 85007

(Please call 602-771-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

The public record on the proposed rulemaking will close at 5:00 p.m., October 7, 2004. Oral comments may be made at the proceeding referenced above; written comments must be received by the close of record date. Address written comments to one of the individuals identified in item #4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

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TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

**ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND
CERTIFICATION OF OPERATORS**

Section

R18-5-101. Definitions
R18-5-104. General Requirements
R18-5-107. Certificate Renewal
R18-5-109. Denial, Suspension, Probation and Revocation
R18-5-115. Grades of Water Treatment Plants and Distribution Systems

**ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND
CERTIFICATION OF OPERATORS**

R18-5-101. Definitions

The terms in this Article have the following meanings:

“Certified operator” or “operator” means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection, ~~and is responsible for the daily onsite operation or the remote operation from a central location of all or a part of a facility.~~

“Collection system” means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

“Department” means the Department of Environmental Quality or its designated representative.

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- “Director” means the Director of the Department of Environmental Quality or the Director’s designated representative.
- “Direct responsible charge” means day-to-day decision making responsibility for a facility or a major portion of a facility.
- “Distribution system” means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.
- “Facility” means a water treatment plant, wastewater treatment plant, distribution system, or collection system.
- “Industrial waste” means the liquid, gaseous, or solid waste produced at an industrial operation.
- “Onsite operator” means an operator who visits a facility at least daily to ensure that it is operating properly.
- “Onsite representative” means a person located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.
- “Operator” has the same meaning as certified operator, defined in this Section.
- “PDH” means professional development hour, defined in this Section.
- “Population equivalent” means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.
- “Professional development hour” or “PDH” means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.
- “Public water system” has the same meaning prescribed in A.R.S. § 49-352.
- “Qualifying discipline” means engineering, biology, chemistry, or a closely related technical or scientific discipline.
- “Qualifying experience” means experience, skill, or knowledge obtained through prior employment that is applicable to the technical or operational control of all or part of a facility.
- “Remote operator” means an operator who is not an onsite operator.
- “Validated examination” means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.
- “Wastewater” means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.
- “Wastewater treatment plant” means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.
- “Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

R18-5-104. General Requirements

- A.** ~~A facility owner shall ensure that at all times:~~
1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility.
 - ~~1.2. Only a certified operator can make a decision~~ An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator can make a planning decision regarding water quality or water quantity as long as the decision is not a direct operational process control or system integrity decision that affects public health.
 2. ~~The operator in direct responsible charge of the facility is certified for the class of facility at which the operator works, and at or above the grade of the facility for which the operator works;~~
 3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
 4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and grade of the facility;
 5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
 6. The names of all current operators are on file with the Department.
- B.** If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within ten days of the replacement.
- C.** The operator shall notify the Department in writing within ten days of the date the operator either ceases operation of a facility or commences operation of another facility.
- D.** ~~A facility owner shall ensure that an operator holding certification in a particular class and grade only operates a facility of the same class and the same or lower grade for which the operator is certified.~~ An operator shall operate each facility in compliance with applicable state and federal law.
- E.** A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.
- E.** An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
1. The remote operator is certified for the class of each facility and at or above the ~~class and~~ grade of each facility operated by the remote operator.

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2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of ~~(E)(8)~~ (F)(8) are met. The onsite representative is not required to be an operator if the facility has a remote operator who is certified at or above the grade of the facility.
3. The remote operator instructs, supervises and provides written instructions to the onsite representative in the proper operation and maintenance of each facility, ~~providing written instructions~~, and ensuring ensures that adequate records are kept.
4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
6. The remote operator operates each facility in compliance with applicable state and federal laws.
7. The remote operator inspects a facility as often as necessary to ~~assure~~ ensure proper operation and ~~maintenance~~, but in no case less than:
 - a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
 - b. Monthly for a Grade 1 wastewater treatment plant;
 - c. Twice a month for a collection system that serves fewer than 2,500 people; and
 - d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
 - a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available.
 - b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
 - c. The remote operator inspects the facility weekly.

R18-5-107. Certificate Renewal

- A. If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.
- B. To renew a certificate, an operator shall maintain documentation and provide it to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs that is in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the required PDHs may be applied to all certificates if the PDHs are acquired within that certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.
- C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

R18-5-109. Denial, Suspension, Probation and Revocation

- ~~A. The~~ If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with ~~shall act under~~ A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 ~~to deny or revoke a certificate.~~
- ~~B. If it is~~ In determining whether to revoke or suspend a certificate, or to place an operator on probation, or in determining the length of suspension or probation, the Department shall consider whether the operator:
 1. Operates a facility in a manner that violates federal or state law;
 2. Negligently operates a facility or negligently supervises the operation of the a facility;
 3. Fails to comply with ~~a Department orders order~~ or consent decrees order of a court;
 4. Obtains a certificate by fraud, deceit, or misrepresentation;
 5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
 - ~~5-6.~~ Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or management supervision of the a facility; or
 - ~~6-7.~~ Endangers the public health, safety, or welfare;
 8. Fails to comply with the terms or conditions of probation or suspension; or
 9. Fails to cooperate with an investigation by the Department.

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- C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.
- ~~E.D.~~ In order to be recertified, a person whose certificate is revoked shall reapply and be reexamined as a new applicant. A person whose certificate is revoked is not eligible for admission to a certification examination for 12 months from the effective date of the revocation.
- E. The Department may place an operator on probation to address deficiencies in operator performance. The terms of probation may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other conditions.
- F. During the period of suspension or revocation, a person whose certificate is suspended or revoked shall not operate a facility of any class or grade.
- G. A person whose certificate is suspended or revoked shall immediately notify the owner of a facility where the operator is employed of the suspension or revocation.

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

- A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only. The Department shall grade a water treatment plant according to the sum of the points it assigns for each plant characteristic.
 - 1. No Change
 - 2. No Change
- B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points it assigns for each system characteristic.
 - 1. The Department shall assign points for the purpose of grading a distribution system as follows:

| System Characteristics | Points |
|---|--|
| Population | 1 per 5,000 |
| Maximum Design Capacity | 1 per Millions of Gallons per Day up to 10 |
| Pressure Zones | 5 |
| Booster Stations | 5 |
| Storage Tanks | 3 |
| Blending | 5 |
| Fire Protection Systems/ <u>Testable Backflow Prevention Assemblies</u> | 5 |
| Cathodic Protection | 3 |
| Control System Technologies | 2 |
| Chlorine Gas | 6 |
| Hypochlorite Liquid | 2 |
| Hypochlorite Solid | 2 |
| Chloramine | 9 |
| Chlorine Dioxide | 9 |

- 2. No Change
 - a. No Change
 - b. No Change
 - c. No Change
 - d. No Change
- 3. No Change