

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

[R06-466]

PREAMBLE

- 1. Section Affected**
R4-38-105
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific).**
Authorizing Statute: A.R.S. § 32-2904(B)(1)
Implementing Statute: A.R.S. § 32-2914
- 3. The effective date of the rules:**
December 4, 2006
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**
No
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule.**
The Board of Homeopathic Medical Examiners is initiating this rulemaking to increase fees to address a severe cash shortage brought about by recent unavoidable increases in operating costs and a revenue shortfall brought about by an unanticipated decrease in new applications.
- 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 summary of the economic, small business, and consumer impact:**
The rulemaking is necessary to increase existing fees to provide cash sufficient to continue Board operations through the current fiscal year. Cash balance as of September 25, 2006 is approximately \$11,216. Payroll and employee related expenses through November 30, 2006 are projected at \$10,386. The remaining balance of \$830 is insufficient to continue Board operations.

The emergency rule will increase renewal application fees for currently licensed physicians, dispensing permits, and currently registered homeopathic medical assistants. The Board is also requesting an increase in the application fees for prospective physicians seeking a homeopathic medical license.

Notices of Emergency Rulemaking

The following table shows the current fee, the recommended increase, and the total fee adopted by the Board in this emergency rulemaking.

	Current Fee	Recommended Increase in Fee	Total Fee	Statutory Cap
Physician -Initial Application	500	50	\$550	\$550
Physician Renewal	600	375	\$975	\$1,000
Dispensing Permit Renewal	150	50	\$200	\$200
Homeopathic Medical Assistant Renewal	100	100	\$200	\$200

The total additional projected revenue is \$36,000 which will be sufficient to meet current fiscal year expenses until fees can be made permanent.

Annual cost/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000 and substantial when greater than \$10,000. Costs to the Board are minimal for promulgations of the emergency rules. The Board's administrative and staff costs to implement the rules are minimal. The Secretary of State's cost for publishing the rules is minimal. The cost to review the emergency rules by the Attorney General's Office is minimal. There is a minimal cost to the regulated community (licensed physicians and homeopathic medical assistants), many of whom operate as small businesses. A licensee or registrant may chose to pass the cost onto consumers. The costs would be minimal if spread out between all patients. These changes should result in a moderate increase in revenue to the Board and a moderate increase in revenue to the State General Fund. The effect of not implementing the emergency rules would create a situation in which the Board office would reduce operating hours to remain within the remaining revenues. There would be a domino effect on the State Board's Office which is the administrative arm to which the Board remits quarterly joint office costs in the amount of \$4,800. These costs would not be paid until revenues were sufficient to enable the Board to meet its obligation.

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

The Board is undergoing a performance audit as mandated by the legislature in 2006 Session Law.

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

Not applicable

11. An explanation of the situation justifying the rule's making as an emergency rule:

The Board is requesting an emergency implementation of the rules to prevent the necessity of closing board operations as a result of insufficient cash balance. The current state of the board cash balance was brought about by a combination of factors:

- 1) During the previous fiscal year (2006) there were a series of *unanticipated increases in several areas of the board budget* that had the effect of reducing the board's cash balance. These increases affected joint office costs, risk-management costs, telecommunications costs as a result of the state's new telecommunications contract (AzNet), increased cost of in-state travel expenses brought on by the appointment of a new board member that was traveling from outside the county, increases in the state's mileage reimbursement for in-state travel, pay increases granted to state employees by the legislature, and increased employee related expenses with regard to the board's responsibility to pay additional health insurance premiums.

Please note that new fees had been implemented through a *regular rulemaking package and approved effective July 2, 2005*. As part of the regular rulemaking package, the Board had carefully considered the effects of increasing fees and had arrived at a new fee structure after numerous consultations with the budget analysts at OSPB and JLBC. The fees for the homeopathic board had not been raised since 1995. However, with the combined impact of two negative news articles as a result of a highly charged sunset review, increased costs in fiscal year 2006 that were effectively out of the Board's control and a decrease in the number of new physician applications (discussed below) the cash balance has been negatively impacted. At the September 12, 2006 annual meeting, the board voted to approve an emergency rate request. The vote was taken following a presentation by the OSPB analyst that showed the projected impact of current expenditures while maintaining current fees and simultaneously, scenarios that showed a projected cash balance based on existing expenditures with increased fees. It was quite clear that the ability of the board to continue operations would necessitate the implementation of emergency fees as soon as possible.

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Below is a table that reflects the amount of increased costs the board has experienced since fiscal year 2004.

	FY 2004 (actual)	FY 2005 (actual)	FY 2006 (actual)	FY 2007 (appropriated)
Personnel Services	32,700	44,200	42,445	48,200
Ere	8,800	14,700	16,779	19,500
Professional Services	16,600	15,000	17,931	16,500 (actual contract increased to 18,800)
In-state Travel	700	800	1,028	700
Other Operating	3,300	2,600	3,500	2,900
Equipment		300		
	62,100	77,600	81,683	87,800
FTE's	1	1	1	1

2) Another unanticipated factor that affected the board's revenues was a decrease in the number of new applications received in fiscal year 2006. Historically, the board has received 8-12 new applications each fiscal year which netted approximately \$7,500-\$8,000 in cash revenues. The board has received no physician applications and only two homeopathic medical assistant applications as of the date of this writing. The decrease in new applications was not anticipated, had not occurred in any previous fiscal years, and has contributed to an imminent budget crisis. It is difficult to ascertain the exact reason for the decline in new applications. However, in two recent e-mails from interested applicants the executive director has been asked about the effects of a negative performance audit review and the anticipated impact to new applicants and long-term licensees. As further proof of the concern in the alternative medical community with the long-term prospects of the board, three applications were pending in October 2005, when two negative news articles were published in the *Arizona Republic Newspaper*. Following the publication of the articles, one of the applications was denied by the Board. However, of the other two pending applications, neither of them completed the application process. They chose to allow their applications to lapse in an incomplete status rather than to move forward with the process. No other physician applications have been forthcoming since that time.

On another note, the Board has worked closely with their assigned budget analyst from the Governor's Office of Strategic Budget and Planning. In the immediate future, the budget process is dependent upon the emergency fees reflected in this request. In the long run, the board will immediately initiate regular rulemaking to make these emergency fees permanent.

Should emergency fees be approved, the board anticipates additional revenues of \$36,000 (Based on a \$375 increase in renewal fees from \$600 to \$975 for 100 licensed physicians and a \$100 increase in renewal fees from \$100 to \$200 for 25 registered medical assistants. The amount of additional revenue reflects the following: the amount of additional revenue that would be realized with the approval of emergency fees in comparison to the amount of potential revenue should the emergency fees not be approved; a projected loss of seven physician renewals based on the negative impact of increased fees, a projected loss of four medical assistant renewals based on the negative impact of increased fees, and a 10% payment of the total to the general fund (the board is a 90/10 agency).

12. The date of the Attorney General's approval of the emergency rules:

December 1, 2006

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ARTICLE 1. GENERAL

Section
R4-38-105. Fees

ARTICLE 1. GENERAL

Notices of Emergency Rulemaking

R4-38-105. Fees

The Board may charge the following fees according to A.R.S. § 32-2914 and § 32-2916:

1. Application for license:	\$500.00 <u>\$550.00</u>
2. Issuance of initial license:	\$250.00
3. Annual renewal of license:	\$600.00 <u>\$975.00</u>
4. Late renewal penalty:	\$350.00
5. Application for dispensing permit:	\$200.00
6. Annual renewal of dispensing permit:	\$150.00 <u>\$200.00</u>
7. Locum tenens registration application:	\$200.00
8. Locum tenens registration issuance:	\$100.00
9. Application for registration to conduct a practical education course for supervised medical assistants:	\$150.00
10. Annual renewal of registration to conduct a practical education course:	\$50.00
11. Initial application for supervision of medical assistant:	\$200.00
12. Triennial renewal of supervision of medical assistant:	\$50.00
13. Annual renewal for registration of medical assistant:	\$100.00 <u>\$200.00</u>
14. Annual directory:	\$25.00
15. Copies, per page:	\$0.25
16. Copies, per audio tape	\$35.00
17. Copies, per 1.44 M computer disk:	\$100.00
18. Mailing lists - non-commercial (per name)	\$0.05
19. Mailing lists - commercial (per name)	\$0.25
20. Mailing list labels (per name)	\$0.30
21. Copy of statutes or rules, each	\$5.00