

# NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

[R07-289]

#### PREAMBLE

- 1. Sections Affected**  
R4-38-105
- Rulemaking Action**  
Amend
- 2. The specific 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  
Implementing statutes: A.R.S. §§ 32-2904(A)(3); 32-2914, 32-2916
- 3. The effective date of the rules:**  
August 7, 2007  

Pursuant to A.R.S 41-1032(A)(4) the Board is requesting an immediate effective date upon filing at the Office of the Secretary of State. An immediate effective date is being requested to authorize collection of the increased fees during annual renewal that is conducted in October of each year. Renewal fees account for 90% of the Board's revenue collections and without the increased fees the ability of the Board to continue operations will be severely impacted. Although the Board applied on June 3, 2007, for renewal of the emergency rulemaking to increase fees, the renewal of that emergency has not been approved by the Office of the Attorney General as of this writing. The rule provides a benefit to the public by ensuring that the Board continues to operate in an effective and efficient manner. In support of the implied benefit to the public, it is important to note that the Board is near the end of an ongoing performance audit. It is clear that the ability of the Board to operate in an effective manner is dependent upon adequate staff levels and the ability of the Board to hire contractors to assist with rulemaking, development of an effective credentialing process relevant to examinations, and medical consultants to assist in the investigation of complaints. A penalty is not associated with a violation of the rule.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**  
Notice of Rulemaking Docket Opening: 12 A.A.R. 3904, October 20, 2006  
Notice of Proposed Rulemaking: 13 A.A.R. 18, January 5, 2007  
Notice of Emergency Rulemaking: 12 A.A.R. 4894, December 29, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Chris Springer, Executive Director  
Address: 1400 W. Washington St., Room 230  
Phoenix, AZ 85007  
Telephone: (602) 542-8154  
Fax: (602) 542-3093  
E-mail: chris.springer@azhomeopathbd.az.gov
- 6. An explanation of the rules, including the agency's reason for initiating the rules:**  
The Board is amending the fees authorized in R4-38-105 for the annual renewal of a physician license, homeopathic medical assistant registration, and permit to dispense. In addition, the homeopathic physician license application fee

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will increase. The homeopathic physician license application fee will increase by \$50 from \$500 to \$550. The homeopathic physician annual renewal will increase by \$375 from \$600 to \$975; the annual renewal of the homeopathic medical assistant registration will increase by \$50 from \$150 to \$200; and the annual renewal of a permit to dispense will increase by \$50 from \$150 to \$200.

The Board is raising fees to provide sufficient funds to operate the Board and provide a sufficient carry forward in the cash balance to continue operating the Board in the next two-year budget cycle. The Joint Legislative Budget Committee approved an annual appropriation of \$93,200 in FY 2008 and \$91,500 in FY 2009. The FY2007 appropriation was \$87,800. The Board has been unable to maintain a sufficient cash balance with fees authorized by permanent rulemaking that became effective July 2, 2005. After in-depth discussions and a detailed presentation by a budget analyst assigned to the Board by the Office of Strategic Planning and Budgeting, the Board voted to approve a rulemaking to request emergency fees. On December 4, 2006, the Office of the Attorney General authorized emergency rulemaking increasing fees. The Board applied to renew the emergency rulemaking on June 4, 2007 but no action has been taken by the Attorney General's Office as of this writing. By this Notice of Final Rulemaking, the Board is requesting that the fees approved in the emergency rulemaking become permanent. If the rulemaking to increase fees is not approved there will be insufficient cash revenues to operate the Board beyond October 2008.

On September 25, 2006 the Board's cash balance was \$11,216. At that time there was insufficient cash to continue Board operations beyond the end of December 2006. The shortfall in the Board's cash balance was brought about by a combination of factors. In 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 reserve. The increases affected joint office costs, risk management, telecommunications, in-state travel and increased mileage reimbursement, pay increases granted to state employees, and employee-related expenses related to health insurance premiums. It is important to note that even though permanent rules to increase fees were implemented by the board on July 2, 2005, the unanticipated increases overwhelmed the cash reserves of the Board.

An additional important factor was a decrease in the number of new applications received in fiscal year 2006. Historically, the board received 8-12 new applications in a fiscal year, which netted approximately \$7,500-\$8,000 in cash revenues. Between October 2005 and October 2006 the board received five physician applications. Of these applications, two did not complete the licensing process. The decrease in new applications was not anticipated, had not occurred in any previous fiscal year, and contributed to an imminent budget crisis.

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

The Board did not review any study relevant to the rules.

**8. 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

**9. The summary of the economic, small business, and consumer impact:**

The Board has been operating under emergency fees approved by the Attorney General on December 4, 2006. The approval for the emergency fee expired on June 6, 2007. The Board applied for a renewal of the emergency rulemaking on June 4, 2007 but has not yet received notice that the renewal will be granted.

On January 5, 2007 the board filed a Notice of Proposed Rulemaking to make the emergency rules permanent.

The following table shows the fee categories that increased when emergency rules were approved. The emergency fee currently charged, the amount of the increase above the previous permanent fee, and the amount of the fee before the approval of emergency fees are also indicated for each fee category.

| <b>Fee Category</b>                   | <b>Current Emergency Fee</b> | <b>The Amount of the Increase from the Previous Fee to the Emergency Fee</b> | <b>Permanent Fee Charged Before the Implementation of the Emergency Fees</b> |
|---------------------------------------|------------------------------|--|--|
| Application for License               | \$550                        | + \$50   | \$500  |
| Annual Renewal of License             | \$975                        | + \$375  | \$600  |
| Annual Renewal of Dispensing Permit   | \$200                        | + \$50   | \$150  |
| Homeopathic Medical Assistant Renewal | \$200                        | + \$100  | \$100  |

Annual costs/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.

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The primary economic impact will be to the physicians and registered homeopathic medical assistants who pay annual renewal fees. The impact is minimal in each fee category since the increased amounts are below the \$1,000 indicated as "minimal" in the above scale. The increased fees may be passed on to the patients utilizing homeopathic therapies but again, these costs are defined as minimal when looked at on an annual basis.

The cost incurred by the Board to promulgate the rule and designate staff time to prepare the economic impact statement and forms necessary to file the rules with the Council and the Secretary of State are moderate but will be off-set by the additional fees that will accrue to the Board when the rule is approved.

The Secretary of State's cost to publish the rules 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 on to consumers. The costs would be minimal if spread out between all patients.

If the rule is approved, revenue from the increased fees will result in a moderate increase in revenue to the Board and a moderate increase in revenue to the State General Fund. If the rule is not approved there would be insufficient cash revenue to operate the Board beyond October 2008. The immediate effect of not implementing the rule would create a situation in which the Board would reduce operating hours, which would negatively impact the Board's ability to regulate the community and protect the public.

**10. A description of the changes between the proposed rules, including supplemental notices, and the final rules:**

Minor technical and grammatical changes were made at the request of the Governor's Regulatory Review Council staff.

**11. A summary of the comments made regarding the rules and the agency response to them:**

Six written comments were received from physicians and one written comment was received from a homeopathic medical assistant concerning the annual renewal fee increases. No written comments were received regarding the increases related to the application for physician license and annual renewal of a physician's dispensing permit.

Of the six written comments from physicians expressing a concern about the increased renewal fees, three requested that the Board consider a statutory change creating an annual renewal fee *recognizing an 'inactive status.'* At this time the Board's statutes do not authorize an inactive status fee. The Board has determined that due to the very small number of licensees, an inactive status fee would not allow the Board to operate with sufficient funds. Should the number of licensees increase over time, the subject would be reconsidered.

The other three physician comments expressed concern about the *amount* of the increase. In 2006, the annual renewal of license was \$600. In 2007, the annual renewal fee increased by \$375 to \$975. The Board recognizes that this is a significant increase. However, as explained in the economic impact statement, the Board had a cash balance of approximately \$11,216 on September 25, 2006. Had the annual renewal fee remained at the current \$600 level and steps had not been taken to increase the fees, there would have been insufficient cash to continue operations beyond December 2006. Should the number of licensees increase to a level that would sustain Board operations, the fee for annual renewal would be reduced.

The final written comment was submitted by a registered homeopathic medical assistant. The information presented included a comparison of annual renewal fees charged by other medical professional regulatory boards. The comparison was helpful but did not consider the size of each regulatory board's license base and that each board is self-supporting. To compare the Board of Homeopathic Medical Examiners with a regulated community of 105 licensees and 29 homeopathic medical assistants to the Board of Nursing, Physical Therapy Board, and Naturopathic Board who have substantially more licensed professionals did not provide an accurate financial comparison.

The Board is very cognizant of the affects of the increased fees to licensees. The Board took steps to mitigate the increases by forgoing per diem payments for the last fiscal year. In addition, the executive director (who is the Board's sole employee) reduced weekly work hours to 20 per week for three months to ensure that funds would be available to cover the increased costs of joint office costs, mileage, risk management, telecommunications, and other personnel costs related to health premiums. The Board worked many hours with staff from the Office of Strategic Planning and Budgeting to arrive at a solution that would ensure that the operations of the Board would continue and that a sufficient cash balance carry-forward would be available in fiscal year 2007.

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

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Were the rules previously adopted as emergency rules?**

Notice of Emergency Rulemaking: 12 A.A.R. 4894, December 29, 2006

**15. The full text of the rules follows:**

Notices of Final Rulemaking

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ARTICLE 1. GENERAL

Section R4-38-105. Fees

ARTICLE 1. GENERAL

R4-38-105. Fees

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

- 1. Application for license: \$-500.00 \$550.00
2. Issuance of initial license: \$ 250.00
3. Annual renewal of license: \$-600.00 \$ 975.00
4. Late renewal penalty: \$ 350.00
5. Application for dispensing permit: \$ 200.00
6. Annual renewal of dispensing permit: \$-150.00 \$ 200.00
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 \$ 200.00
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

NOTICE OF FINAL RULEMAKING

TITLE 20. COMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-284]

PREAMBLE

- 1. Sections Affected: R20-5-602; 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. § 23-405(4); Implementing statute: A.R.S. § 23-410
3. The effective date of the rules: July 31, 2007

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The effective date of this final rule package will be the date it is filed with the Secretary of State according to A.R.S. § 41-1032. The new changes to the rule directly effects the health and safety of those employees working in the state of Arizona who work with electrical components and electrical systems that are covered by these new changes to the electrical standard. These new rules will further help to reduce the numbers of deaths and injuries associated with electrical hazards by providing additional requirements for installation safety and by recognizing alternative means of compliance.

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 872, March 16, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1374, April 20, 2007

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

Name: William M. Wright

Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

E-mail: wright.william.m@dol.gov

**6. An explanation of the rule, including the agency's reason for initiating the rule:**

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The Industrial Commission is amending R20-5-602 by adopting amendments to Subpart S, Electrical and Subpart F, Powered Platforms, Man lifts, and Vehicle - Mounted Work Platforms of § 1910, as published in 72 FR 7135 - 7221, February 14, 2007. These rules revise the existing Electrical Standards that are contained in 1910.302 through 1910.308 of Subpart S. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, that the requirements in the revised standard, which draw heavily from the 2000 edition of the National Fire Protection Association's (NFPA) Electrical Safety Requirements for Employee Workplaces (NFPA 70 E), and the 2002 edition of the National Electric Code (NEC) are necessary to provide protection from these hazards. This revision focuses on safety in the design and installation of electric equipment in the work place, and provides the first update of the installation requirements in the general industry electrical installation standard since 1981. These rules also revise and replace the mandatory Appendix to the general industry powered platform standard found in Subpart F of 29 CFR 1910 with reference to OSHA's electrical standard.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not 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

**8. 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

**9. The summary of the economic, small business, and consumer impact:**

The Federal Occupational Safety and Health Administration has determined that these amendments will have minimal financial impact on the general industry sector and has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington St., Phoenix, AZ 85007.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

None

**11. A summary of the comments made regarding the rule and the agency response to them:**

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning this rule.

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

None

**Notices of Final Rulemaking**

**13. Incorporations by reference and their location in the rules:**

*CFR 1910 Federal Occupational Safety and Health Standards for General Industry* with amendments as of February 14, 2007. This incorporation by reference will appear in A.A.C. R20-5-602.

**14. Was this rule previously made as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~February 17, 2004~~, February 14, 2007, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~February 17, 2004~~, February 14, 2007.