

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 7. BOARD OF CHIROPRACTIC EXAMINERS

[R08-43]

PREAMBLE

1. Sections Affected

Article 1
R4-7-101
R4-7-902

Rulemaking Action

Amend
Amend
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. § 32-904(B)(2)

Implementing statute: A.R.S. §§ 32-900, 32-924(A)(5), 32-922.02, 32-924(A)(1), (4), (6), (12), (13), (14), (15), (21), (22), (23), 32-925, 32-2811, 12-2291, 12-2292, 12-2293, 12-2294, and 12-2295.

3. The effective date of the rules:

April 5, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3902, October 20, 2006

Notice of Rulemaking Docket Opening: 13 A.A.R. 122, January 12, 2007

Notice of Public Meeting on Open Rulemaking Docket: 13 A.A.R. 1056, March 23, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2732, August 10, 2007

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

Name: Patrice A. Pritzl, Executive Director

Address: 5060 N. 19th Ave., Suite 416
Phoenix, AZ 85015-3210

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6. An explanation of the rule, including the Agency's reasons for initiating the rule:

The amendments to R4-7-101 define terms found or referenced in statute and rule. The amendments to R4-7-902 further clarify acts and omissions that are deemed to constitute unprofessional conduct under A.R.S. § 32-924. The Board initiated this rulemaking for the following reasons:

1. The clarification of unprofessional conduct reflects acts or omissions that are frequently the focus of complaints, investigations, and disciplinary action before the board;
2. The majority of the amended definitions and unprofessional conduct rules are consistent with the laws governing other health care professionals in the state of Arizona. The Board received public comment that the profession believes it should be regulated "on an even playing field" consistent with laws applied to other health care professions. These amendments achieve that goal.

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3. The chiropractic profession has requested greater clarification of the statutes and rules in general and more specifically, those acts or omissions that may constitute a violation of the Chiropractic Act.
4. The greater clarification provides improved notice to the public on those acts that may constitute unprofessional conduct on the part of a practitioner and educates the public on the rights it may exercise when interacting with chiropractic professionals.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

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

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:

In drafting these amendments, the Board’s intent is to address public health, safety and welfare while also providing the regulated community with definition and clarity regarding provisions of the Chiropractic Act. Both the public and the regulated community will benefit from these amendments in that clarity of the laws pertaining to acts or omissions that pose a threat to public health, welfare, and safety will reduce the public’s physical and financial exposure to unprofessional conduct while providing licensees with sufficient notice to avoid acts that may result in disciplinary action being taken against a license. The agency also hopes to benefit from the proposed rulemaking by realizing a reduction in the number of violations of the Chiropractic Act, although some cost will be incurred for the rulemaking process. Overall, the financial impact on a chiropractic business will be limited to minor costs associated with paper-work and education, in that the regulated chiropractor already has the obligation to comply with the laws that govern the practice of chiropractic and to not engage in unprofessional conduct. The Office of the Secretary of State will incur a minor expense through the publication of the proposed rule. The rules will not have an impact on any other state agency or the general fund. The Board has determined that the benefits of this rulemaking outweigh any costs.

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

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

The agency provided a preliminary opportunity for the public to submit written and oral comment regarding an initial draft of the rules prior to the publication of proposed rulemaking. The written and oral comment that was received was then integrated into the proposed rules, which were published on August 10, 2007.

The Notice of Proposed Rulemaking provided opportunity for the public to submit written comment through September 10, 2007 and opportunity to make oral comment on September 20, 2007. The Board did not receive written comment within the noticed time-frame. Written comment was received from one party 10 days after the noticed deadline for written comment. As a result, the comment is addressed in this summary, but was not reviewed by the board members. Oral comment was received from five attendees on September 20, 2007.

Oral Comment Specific to a Rule:

Comment	Rule Addressed	Agency Response
<p>The language requiring a patient record to include information that would “support a diagnosis” is unclear. If a licensee maintains a wellness or maintenance practice, there would be no diagnosis, but the record would still be otherwise complete.</p> <p>(Explanation: “Maintenance care” is elective health care that is typically long-term and by definition not therapeutically necessary, but is provided at preferably regular intervals to prevent disease, prolong life, promote health and enhance the quality of life).</p>	R4-7-101(1)	<p>No rule change will be made.</p> <p>The rule is a definition for “Adequate patient records.” The law requiring a licensee to document examination findings and diagnostic results appears in A.A.C. R4-7-902(3). An adequate patient record will reflect those findings and results. In addition, A.R.S. § 32-925(A) states that a doctor of chiropractic is a portal of entry health care provider who engages in the practice of health care that includes the diagnosis and correction of sub-luxations, functional vertebral or articular dyssarthosis or neuromuscular skeletal disorders for the restoration and maintenance of health.</p>

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<p>The Arizona Association of Chiropractic is concerned that requiring the record to support the diagnosis would be used by insurance to deny coverage. It is another way to attempt to define medical necessity and will be used by insurance companies to deny coverage.</p> <p>The language requiring the patient record to “identify the specific elements of the chiropractic services performed” should clarify that physiotherapy is a chiropractic service.</p> <p>The Board has stated that its interpretation of this rule is that wellness or maintenance care is supported by a diagnosis of subluxation, functional vertebral or articular dysarthrosis. It is possible that in the future, a different set of Board members could decide that wellness care or maintenance care is not supported by a diagnosis and therefore, cannot be provided.</p>	<p>R4-7-101(1) continued</p>	<p>Under a wellness or maintenance plan, the practitioner is detecting, for diagnostic purposes, and correcting, subluxations, functional vertebral or articular dysarthrosis for correction.</p> <p>The Chiropractic Act governs the practice of chiropractic. It has no impact on the insurance industry. In addition, the issue of whether or not an insurance company will or will not pay for wellness care is a contract issue between the provider and the insurance carrier. It is not based on definitions in the Chiropractic Act. Further, insurance companies do not generally cover wellness or maintenance care at this time, without any influence from this rule. Insurance companies do deny coverage if the record fails to include sufficient information to support the charges. Although the intent of this rule is to protect the health, welfare and safety of the public, it is also likely to result in provider charges being supported by the record.</p> <p>A.R.S. § 32-922.02 already establishes physiotherapy as a chiropractic service.</p> <p>Wellness or maintenance care incorporates screening or evaluation procedures designed to identify developing risks or problems associated with subluxation, functional vertebral or articular dysarthrosis or neuromuscular skeletal disorders. This rule cannot prevent a doctor of chiropractic from providing wellness or maintenance care. A.R.S. § 32-925 specifically states that a doctor of chiropractic is a portal of entry health care provider who engages in the practice of health care that includes the diagnosis and correction of subluxations, functional vertebral or articular dysarthrosis or neuromuscular skeletal disorders for the restoration or maintenance of health.</p> <p>The comment received in this is in response to the rule defining an adequate patient record. In general, the comment is directed at the clarity and conciseness of the rule. In some case, the comment reflects an expectation that the rule will be misinterpreted. The definition of “adequate patient record” in this rulemaking is largely consistent with the laws governing the medical, osteopathic and physician’s assistant professions, and as such as been established as viable and of sufficient clarity.</p>
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<p>The definition of “dispense” should identify substances, equipment or services that can be dispensed by a doctor of chiropractic. For example, if a doctor of chiropractic can dispense a nutritional supplement, the rule should state that a doctor of chiropractic can dispense nutritional supplements intravenously.</p>	<p>R4-7-101(9)</p>	<p>No rule change will be made.</p> <p>The rule references A.R.S. §§ 32-925(A) and (B), which identifies the scope of practice of chiropractic, rather than attempting to list all substances, equipment or services that a doctor of chiropractic may provide. In this regard, the rule is not intended to serve as an all-inclusive list of chiropractic services, which may change over time, but to define the term “dispense.” In addition, the comment suggests expanding the scope of chiropractic to include intravenous application of nutritional supplements. Statute does not provide the Board authorization to expand the scope of practice to include intravenous methods of treatment.</p>
<p>The word “all” should be inserted because while certain nutritional supplements do not require a prescription, others such as vitamin B12 may require a prescription.</p>	<p>R4-7-101(13)</p>	<p>No rule change will be made.</p> <p>R4-7-101(13) is a definition of nutrition; it cannot be used to expand the scope of practice of chiropractic to include substances that require a prescription to dispense or administer. The definitions applied to non-prescription drugs and prescription drugs under R4-7-101(12) and R4-7-101(17) provide further clarification within this Chapter.</p>
<p>Would this rule mean that a doctor of chiropractic must see a patient prior to an assistant taking vital signs?</p> <p>The supervision is overly broad and extends beyond the intended supervision of a chiropractic assistant. As is, it could be applied to a licensed massage therapist or another physician. The rule should state that it is limited to chiropractic assistants.</p>	<p>R4-7-101(18)</p>	<p>No rule change will be made.</p> <p>This is not a new rule. The definition of supervision has been in rule since 1998. The Board has not had cause to believe that there is any confusion regarding an assistant’s ability to take vital signs prior to the patient being seen by a physician.</p> <p>The definition of supervision has been in rule since 1998. The Board has not had cause to believe that there is any confusion regarding the rule requiring supervision of independently licensed individuals.</p> <p>In addition, this rule provides a definition of supervision within the context of the Chiropractic Act. A.R.S. §§ 32-900 and 32-926 require a chiropractic assistant to be supervised by a licensed doctor of chiropractic. R4-7-1002 requires and extern to be supervised by an approved doctor of chiropractic. The Chiropractic Act does not require supervision of a person who is providing patient care under an independent license.</p>

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<p>This rule unreasonably expands the existing rule.</p>	<p>R4-7-902(1)</p>	<p>No rule change will be made.</p> <p>A rule requiring disclosure of pecuniary interest when referring a patient for goods or services has been in effect since 1998. In its five-year-rule review, the Board established a need for more specificity in order to enforce the law and to provide sufficient notice and clarity to the profession and the public. All health regulatory boards have language that addresses failure to disclose pecuniary interest as unprofessional conduct. In developing this rule, the Board integrated the language that applies to the regulation of the medical, naturopathic, and osteopathic professionals. Therefore, this rule is significantly similar to the laws that have been reviewed and found to be reasonable and necessary when applied to the regulation of physicians.</p> <p>The last sentence of the rule is specific to the Chiropractic Act, and is based on an issue of substantial concern in multiple states and which frequently appears before this Board. This Section of the rule is in response to a business practice that uses a mobile third-party diagnostic company to conduct nerve conduction studies and ultrasound studies. The studies are conducted in the doctor's office. The doctor receives a payment for each patient that the doctor refers for the diagnostic tests. In earlier cases, the doctor also billed for the technical component of the test. The third-party diagnostic company billed for the interpretation of the test. Criminal investigations and proceedings in other jurisdictions have demonstrated that the physician that is documented as reading and interpreting the study did not read or interpret the study. The prevalence of this practice has not decreased in the years since it initially became a notable concern in Arizona. Therefore, it is reasonable to expect that this rule will continue to be necessary in order to address this particular nature of referral for pecuniary interest.</p>
<p>What if a part of the record, such as the bill or HCFA forms, is maintained on a computer. Does it have to be printed out and put in the hard-copy file?</p>	<p>R4-7-902(5)</p>	<p>No rule change will be made.</p> <p>The rule does not limit the patient record to what is in a paper folder or require that computer records, x-rays or other forms of documentation be maintained in hard copy. Therefore, not all of the patient record will necessarily be maintained in the hard-copy file.</p>

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<p>The rule needs more specificity/verification that a diagnostic record will be sufficient to fulfill the requirement. The profession is concerned that billing will be disclosed to third parties or other physicians. However, it is admitted that a patient should be able to obtain the patient's billing information.</p> <p>It cannot be assumed that the party requesting a record wants the full record. A change to "any or all" or "all requested" records would be preferable.</p> <p>A comment was received regarding the concern that a physician cannot charge for records or copies of x-rays.</p>	<p>R4-7-902(7)</p>	<p>A minor change to the rule was made based on public comment.</p> <p>R4-7-902(7)(a) and (b) do provide specificity regarding the release of billing records. R4-7-902(2)(a) specifies that the Section does not require the release of a patient's billing record to another licensed physician. R4-7-902(7)(b) only requires the release of the billing record to the patient or the patient's authorized agent. Neither the Board nor the profession can dictate what a patient may do with the patient's record once in the patient's possession. It can also be noted that patients and patients' authorized agents will already have access to their billing records at some point. This rule only differs in that it requires that the billing information be released to a patient within a specified time. A frequent complaint of patients that is filed with the Board pertains to the difficulty in obtaining their billing record so that they can make an informed choice when deciding to continue care and so they can expedite payment of services through a third-party payor.</p> <p>A change was made to R4-7-902(2)(a) to require a licensee to release a copy of all requested patient records, rather than any or all patient records.</p> <p>The Board also commented that HIPPA requires that requests for release of records must now specify those records which are being requested.</p> <p>R4-7-902(7)(e) references A.R.S. § 12-2295(B) which precludes a physician, including a chiropractic physician, from charging a fee for records under specific circumstances.</p>
<p>Does the rule preclude billing under a business name?</p>	<p>R4-7-902(10)</p>	<p>No rule change will be made.</p> <p>The rule clarifies that a doctor of chiropractic may bill under a business name if the doctor first notifies the Board in writing.</p>
<p>The first part of the rule is fine.</p> <p>However, the Section regarding the viewing of a disrobed patient is subject to abuse. The profession feels the Board could not reasonably determine if the viewing is or is not related to the patient's complaint, diagnosis or treatment under current practice standards.</p>	<p>R4-7-902(12)</p>	<p>No rule change will be made.</p> <p>Three of the five Board members are licensed doctors of chiropractic in the state of Arizona. As such, they are qualified to analyze the facts and determine if any clinical cause can be established that would support the need to view a disrobed patient. In addition, the Board maintains contracts with qualified licensed doctors of chiropractic who can assist in an investigation of a complaint regarding alleged misconduct.</p>

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<p>The language regarding the viewing of a disrobed patient is not arbitrary. An example would be a case before the Board in which the doctor of chiropractic had the patient put on a gown, remove underwear and then told the patient to lift the gown up to the level of her waist while he took x-rays.</p>	<p>R4-7-902(12) continued</p>	<p>The Board agrees with this comment. The need for the rule has been established by the filing of and investigation of complaints by patients regarding misconduct of chiropractic physicians related to the inappropriate viewing of disrobed patients. In addition, the language for this rule is taken from the laws governing the medical, osteopathic, physicians assistant and physical therapy professions, establishing that the law has been found to be reasonable and necessary in the regulation of physicians.</p>
<p>The rule should specify improper billing as being intentional.</p>	<p>R4-7-902(13)(a) and (b)</p>	<p>A minor rule change was made to insert the word “intentional” before the word “charging” in R4-7-902(12)(a) and (b).</p>
<p>Requiring a chiropractic physician to provide written notice to the Board of employment of a chiropractic assistant within seven days of hire is an unreasonable burden due to constant turnover of staff. It was suggested that the licensee be required to maintain documentation of date of hire and make it available to the Board upon request.</p>	<p>R4-7-902(15)</p>	<p>No rule change will be made. The requirement that a doctor of chiropractic inform the Board, in writing, that the chiropractor has employed a chiropractic assistant within seven days of hiring the C.A. is already required by A.A.C. R4-7-1102(C). This rule further clarifies that violation of A.A.C. R4-7-1102(C) may constitute unprofessional conduct. Each notification would require approximately one minute to complete the one page form and to fax it or place it in the mail. Please refer to the economic impact statement. In addition, A.A.C. R4-7-1102 establishes that a chiropractic physician is required to begin the training for a chiropractic assistant within three months of hire and complete the training within one year. The Board has encountered obstacles in monitoring and enforcing this law without the ability to establish the date of hire for the chiropractic assistant.</p>
<p>The rule is generally well written but should specify “prescription only” drugs because “drug” could apply to over-the-counter drugs.</p>	<p>R4-7-902(18)</p>	<p>No rule change will be made. The rule is consistent with A.R.S. § 32-925(B).</p>
<p>Manipulation under anesthesia should be defined as not being surgery.</p>	<p>R4-7-902(19)</p>	<p>No rule change will be made. The rule is consistent with A.R.S. § 32-925(B).</p>
<p>Would the rule apply to prostatic massage?</p>	<p>R4-7-902(21)</p>	<p>No rule change will be made. Prostatic massage is not a modality/equipment as per the rule. It is rendered digitally as a physical technique and would not fall under this rule.</p>

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<p>The rule is too vague and subject to unreasonable interpretation. What is reasonable or abusive to one person may not be to another. The concern is already addressed in law.</p>	<p>R4-7-902(27)</p>	<p>No rule change will be made.</p> <p>The rule is based on a law applied to the osteopathic profession. As such, it has been deemed to be reasonable and reasonably interpreted and enforced. The initial language included behavior in a professional setting but was changed to a clinical setting based on public comment received at a May 9, 2007 oral hearing.</p> <p>It is the role of a regulatory board to review facts, testimony and evidence when determining if a licensee's behavior is disruptive or abusive. As noted in the comment, the Board does have the authority to make this finding under current statute. However, the Board has received requests from the profession to provide more specificity. The rule provides notice to the profession and the public that the Board can and does adjudicate cases regarding disruptive or abusive behaviors in a clinical setting. The need for the rule is also in response to complaints and investigations based on patient experiences with practitioners who engage in behavior that was alarming, threatening or obstructed the patient's access to continued care.</p>
<p>This concern is covered by existing rule.</p>	<p>R4-7-902(28)</p>	<p>No rule change will be made.</p> <p>The comment may actually refer to A.R.S. § 32-924(A)(15), which is one of the statutes that establishes the Board's authority to promulgate this rule. The necessity for the rule is based on complaints and investigations such as those in which chiropractic physicians, as portal to healthcare providers, failed to recognize and respond to neurological symptoms consistent with stroke or neurological damage, or a mass viewed in a x-ray as consistent with cancer.</p> <p>The language for this rule is largely consistent with laws governing the practice of physical therapy.</p>

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<p>The rule unduly hinders a chiropractor from engaging in a plea agreement and would keep a chiropractor from engaging in negotiations in criminal and civil matters.</p>	<p>R4-7-902(32)</p>	<p>No rule change will be made.</p> <p>Conviction by a court of competent jurisdiction or a plea of no contest <u>is</u> conclusive evidence of the commission, regardless of whether it appears in this rule. The rule provides both the profession and the public with accurate notice in regard to criminal matters. Civil law is not applicable.</p> <p>The medical, osteopathic, physician’s assistants, naturopathic physicians and physical therapist professions have this language in their practice acts. There appears to be no support to the argument that the law as stated in this rule prevents members of those professions from engaging in a plea agreement or keeps them from engaging in negotiations in criminal matters.</p>
<p>The rule only allows fees to be divided for operating expenses. It would not allow equal distribution of profit and fails to address multi-disciplinary practices.</p>	<p>R4-7-902(34)</p>	<p>Minor changes were made to the rule based on public comment.</p> <p>The rule only applies to fees, and does not apply to profit. It does address the concern of multi-disciplinary entities by incorporating entities or institutions.</p> <p>The rule was changed to remove the words “and comprised of chiropractic physicians” and the last sentence was terminated after “necessary” by eliminating “to defray their joint operating expense.”</p> <p>The language in this rule is largely consistent with the laws governing the medical, osteopathic, naturopathic, pharmacy and physical therapy professions.</p>

Oral Comment of a General Nature:

Comment	General	Agency response
<p>The Arizona Association of Chiropractic, through its lobbyist, expressed that unprofessional conduct is generally defined in statute by other health care professions and that it is the A.A.C.’s belief that the proposed rules should be addressed in statute rather than rule. He added that the A.A.C. believes the chiropractic profession should be on an “even playing field” with other health professions.</p>	<p>General Comment</p>	<p>It is a fact that unprofessional conduct under other practice acts is generally defined in statute. However, that is not true of the chiropractic profession. Unprofessional conduct is; however, listed in the Chiropractic Act under A.R.S. § 32-924(A)(5), which prohibits unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession. It is this statute that established the Board’s authority to define unprofessional conduct in rule. The Board initially promulgated R4-7-902 Unprofessional or Dishonorable Conduct Activities in 1997 after receiving requests from members of the profession to define unprofessional conduct. The Board’s statutory authority to define unprofessional conduct in rule was established with that rulemaking.</p>

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	General comment continued	<p>The Board also held discussions with Representative Weiers during this period of time in which Representative Weiers agreed that that unprofessional conduct could be defined in rule rather than requiring a statutory amendment to do so.</p> <p>In addressing this comment, the Board obtained legal counsel from the Assistant Attorney General present that unprofessional conduct can be defined either in rule or statute, and that either would be equally effective. This is consistent with the advice that the Board received from a different Assistant Attorney General in 1997. The Board also noted that the promulgation of this rule does create the even playing field as desired by the A.A.C. Doctors of chiropractic do not currently have the same level of definition of unprofessional conduct as other health care professionals. The promulgation of this rule will provide the same level of definition. In addition, much of the rule is consistent with the unprofessional conduct definitions that apply to other health care professionals in Arizona.</p>
<p>A former Board member and practicing chiropractic physician stated that the rule as proposed is not arbitrary. The language is based on complaints that have been heard by the Board and on the negative consequences that were or may be experienced by the public when a physician engages in unprofessional conduct. Further, those amendments addressed in the rulemaking are based on requests or comments from members of the profession, attorneys who represent members of the profession, and inquiries from the public for further definition of law.</p>	General Comment	The Board agreed with the comment.
<p>A representative from the National Insurance Crime Bureau stated that representatives from the insurance industry have expressed that the Board is moving in the right direction in promulgating the rules. He noted that the Board is being proactive in addressing unprofessional conduct and its impact on the public and profession. He noted that other states have been driven to institute laws to combat the consequences of unprofessional conduct to an extreme level. When that happens, those practitioners that were engaging in the unprofessional conduct jump to other states with less stringent laws, and that is what is occurring in Arizona. He concluded that laws that encourage professional conduct create a positive environment for doctors of chiropractic to practice in the state of Arizona.</p>	General Comment	The Board acknowledged the comment.

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Written Comment Received September 20, 2007

Comment	Rule Addressed	Agency Response
<p>The language “repeated irregularities in billing” should be deleted. No one knows exactly what that means. Everyone knows what billing for services not rendered means, but repeated irregularities in billing are in the eye of the beholder. What is seen as an irregularity by a board member may be seen as a regularity in the eyes of 10 random D.C.s</p>	<p>R4-7-902(13)(d)</p>	<p>A minor change was made to the rule. The rule was restructured and terminology changed to clarify that improper billing is defined by this subsection.</p> <p>Further, chiropractic is a licensed and regulated profession, which means it does have established and generally accepted standards and practices. Generally accepted billing practices are very well defined in the CPT codes, which are used for any insurance billing and easily transferred to a cash-only practice.</p> <p>In applying the law, the Board looks to generally accepted practices. It bases its interpretation of generally accepted billing practices on professional standards and guides such as the CPT billing code. The last item in this subsection (f), clarifies that the Board also needs to determine whether improper billing is an error, or whether it is due to intent or negligence. A single occurrence would indicate an error that does not rise to the level of a violation of law. Repeated billing improprieties provides a measure of intent. The individual who offered this comment has alleged in publications that the Board has imposed disciplinary action against a licensee for a single billing or recordkeeping error. While that is not true, this rule addresses that concern by establishing repetition of a billing impropriety is a consideration when determining intent or negligence.</p>
<p>The Board’s subpoena requirement should be more narrow and pertain to the complaint that was made. It should not pave the way for a “fishing expedition.”</p>	<p>R4-7-902(14)</p>	<p>No rule change will be made.</p> <p>The rule pertains to unprofessional conduct due to failure to timely comply with a Board subpoena. It does not pertain to the Board’s authority to issue a subpoena or investigate a complaint. The rule also references the authorizing statute.</p>

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<p>The language “regardless of whether actual injury to the patient is established” is a complete disconnect from reality. The line should read: “although whether actual injury occurred will be the primary factor in determining discipline.” The mission of the Board is to protect the health, welfare and safety of the public. If there is no injury to the patient, shouldn’t that be of prime concern to the Board when determining level of discipline? If not, why not? From observation, A.C.S. has determined that other health care regulatory Board’s base discipline on whether or not the patient was actually injured, and the extent of the injury. The Chiropractic Board should do the same.</p>	<p>R4-7-902(28)</p>	<p>No rule change will be made.</p> <p>The comment does not appear to object to the language in regard to unprofessional conduct, but rather, in relation to the imposition of disciplinary action if the allegation of unprofessional conduct is found to be true. This rule is specific to a definition of unprofessional conduct. It does not pertain to the nature of disciplinary action. Nor is there any cause to infer that the Board would not consider the full set of facts when deciding on a sanction.</p> <p>If the intent of the comment is to object to the rule, the following will apply. The mission of the Board of Chiropractic Examiners is to protect the health, welfare, and safety of the public. This does include preventing harm, rather than waiting for harm to occur. As an example, if the Board becomes aware that a licensee is unable to recognize the symptoms of stroke following an adjustment or fails to take appropriate emergency action when recognizing symptoms consistent with stroke, the Board would have the duty to take action to assure the licensee becomes familiar with proper recognition and response regardless of whether or not the patient in the current investigation suffered irreparable harm.</p> <p>This rule is consistent with laws regulating the physical therapy profession.</p>
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12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporation by reference and their location in the rules:

Not applicable

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

No

15. The full text of the rules as follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 1. ~~BOARD OF CHIROPRACTIC EXAMINERS~~ DEFINITIONS; MEETINGS

Section

R4-7-101. Definitions

ARTICLE 9. UNPROFESSIONAL CONDUCT

Section

R4-7-902. Unprofessional or Dishonorable Conduct Activities

ARTICLE 1. ~~BOARD OF CHIROPRACTIC EXAMINERS~~ DEFINITIONS; MEETINGS

R4-7-101. Definitions

In addition to the definitions in A.R.S. § 32-900, unless otherwise specified, the following terms have the following meanings:

1. "Adequate patient records" means legible chiropractic records containing, at the minimum, sufficient information to identify the patient and physician, support the diagnosis, identify the specific elements of the chiropractic service performed, indicate special circumstances or instruction provided to the patient, if any, identify a treatment plan, and provide sufficient information for another practitioner to assume continuity of patient care.
- ~~1-2.~~ "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. except for state recognized holidays.
- ~~2-3.~~ "C.A." means a chiropractic assistant under A.R.S. § 32-900.
- ~~3-4.~~ "Certification" means approval to practice chiropractic specialties under A.R.S. § 32-922.02.
- ~~4-5.~~ "Chiropractor" means doctor of chiropractic or chiropractic physician or the abbreviation "D.C." pursuant to A.R.S. §§ 32-925(A), 32-926(A) and (B) and may be designated by the abbreviation "D.C."
6. "Controlled substance" means a drug or substance identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.
7. "Device" has the same meaning as prescribed in A.R.S. § 32-1901.
- ~~5-8.~~ "Diagnosis" means the physical, clinical, and laboratory examination of the a patient and the use of x-ray for diagnostic purposes, as taught in accredited chiropractic colleges. determination of the nature of a condition or illness under A.R.S. §§ 32-925(A) and (B).
9. "Dispense" means to deliver to an ultimate user under A.R.S. §§ 32-925(A) and (B).
- ~~6-10.~~ "Extern" means a student of a Board-approved chiropractic college who participates in the preceptorship training program.
- ~~7-11.~~ "License" means a document issued by the Board to practice chiropractic.
12. "Non-prescription drug" or "over-the-counter drug" has the same meaning as prescribed in A.R.S. § 32-1901. Drug has the same meaning as prescribed in A.R.S. § 32-1901, but does not include those substances referenced in subsection (13).
13. "Nutrition" includes, but is not limited to, vitamins, minerals, water, enzymes, botanicals, homeopathic preparations, phytonutrients, glandular extracts, and natural hormones.
- ~~8-14.~~ "Preceptor" means a supervising chiropractor approved by the Board to supervise a student in a Board-approved preceptorship training program.
- ~~9-15.~~ "Preceptorship training program" means a Board-approved program by which a student may practice chiropractic under the supervision of a preceptor.
16. "Prescribe" means to order or recommend a treatment or device.
17. "Prescription drug" has the same meaning as prescribed in A.R.S. § 32-1901.
- ~~10-18.~~ "Supervision" means a licensed chiropractor is present in the office, sees a patient, and assigns the work to be done regarding the patient. The chiropractor and is available to check the work of the supervised individual as it progresses and approves the completed work.

ARTICLE 9. UNPROFESSIONAL CONDUCT

R4-7-902. Unprofessional or Dishonorable Conduct Activities

Unprofessional or dishonorable conduct, as used in A.R.S. § ~~32-924(B)(5)~~ 32-924(A)(5), means:

- ~~1.~~ Referring a patient to a diagnostic or treatment facility or prescribing goods and services to be purchased from a facility in which the chiropractic physician has any pecuniary interest, without first disclosing in writing to the patient and any third party payor, the chiropractic physician's interest.
1. Failing to disclose, in writing, to a patient or a third-party payor that the licensee has a financial interest in a diagnostic or treatment facility, test, good, or service when referring a patient for a prescribed diagnostic test, treatment, good, or service and that the diagnostic test, treatment, good or service is available on a competitive basis from another provider. This subsection does not apply to a referral by one licensee to another within a group of licensees who practice together. This subsection applies regardless of whether the referred service is provided at the licensee's place of practice or at another location.
2. Knowingly making a false or misleading statement to the Board, its investigators or representatives, a patient, or a third-party payor.
3. Knowingly making a false or misleading statement, providing false or misleading information, or omitting material information in any oral or written communication, including attachments, to the Board, Board staff, or a Board representative or on any form required by the Board.
4. Knowingly filing with the Board an application or other document that contains false or misleading information.
- ~~3-5.~~ Failing to create and maintain an adequate patient record that includes the patient's health history, clinical impression, examination findings, diagnostic results, x-ray films if taken, x-ray reports, treatment plan, and notes for each patient visit, and a billing record. The notes for each patient visit shall include the patient's name, the date of service, the chiropractic physician's findings, all services rendered, and the name or initials of the chiropractic physician who provided services to the patient.
- ~~4-6.~~ Failing to maintain a patient's record, including x-rays and the information required by subsection (5) for a patient, for at least five six years after the last treatment date, or for a minor, six years after the minor's 18th birthday, or fail-

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ing to provide written notice to the Board about how to access the patient records of a chiropractic practice that is closed by providing, at a minimum, the physical address, telephone number and full name of a person who can be contacted regarding where the records are maintained, for at least five six years after each patient's last treatment date or 18th birthday. The patient records of minors shall be maintained for five years beyond the minor's 18th birthday.

- ~~5-7.~~ Failing to:
- a. Release a copy of all requested of a patient's record patient records under subsection (5), including the original or diagnostic quality radiographic copy x-rays, or both to another licensed physician, the patient, or the authorized agent of the patient, within 10 business days of receiving a written the receipt of a written request to do so, or. This subsection does not require the release of a patient's billing record to another licensed physician.
 - b. Release a copy of any specified portion or all of a patient's billing record to the patient or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so.
 - c. In the case of a patient or a patient's authorized agent who has verbally requested the patient record:
 - i. Provide the patient record, or
 - ii. Inform the patient or patient's authorized agent that the record must be provided if a written request is made under subsection (7)(a) or (b).
 - d. ~~failing to return~~ Return original x-rays to a licensed physician within 10 business days of a written request to do so.
 - e. Provide free of charge, copies of patient records to another licensed physician, the patient, or the authorized agent of the patient in violation of A.R.S. Title 12, Chapter 13, Article 7.1.
- ~~6-8.~~ Representing that the licensee is certified by this Board in a specialty area in which the licensee is not certified; or has academic or professional credentials that the licensee does not have.
9. Failing to provide to a patient upon request documentation of being certified by the Board in a specialty area or the licensee's academic certification, degree, or professional credentials.
- ~~7-10.~~ Practicing ~~under,~~ or billing for services under any name other than the name by which the chiropractic physician is licensed by the Board, including corporate, business, or other licensed health care providers' names, without first notifying the Board in writing.
- ~~8-11.~~ Suggesting, or having sexual contact, as defined in A.R.S. § 13-1401, in the course of patient treatment or within three months of the last chiropractic examination, treatment, or consultation with an individual with whom a consensual sexual relationship did not exist prior to a chiropractic/patient relationship being established in the course of patient treatment (other than with an individual with whom a current consensual personal relationship exists before a chiropractor/patient relationship was established).
12. Intentionally viewing a completely or partially disrobed patient in the course of an examination or treatment if the viewing is not related to the patient's complaint, diagnoses, or treatment under current practice standards.
- ~~9-13.~~ ~~Charging a fee for services not rendered.~~ Improper billing. Improper billing means:
- a. Knowingly charging a fee for services not rendered;
 - b. Knowingly charging a fee for services not documented in the patient record as being provided;
 - c. Charging a fee by fraud or misrepresentation, or willfully and intentionally filing a fraudulent claim with a third-party payor;
 - d. Misrepresenting the service provided for the purpose of obtaining payment; and
 - e. Charging a fee for a service provided by an unlicensed person who is not a chiropractic assistant under A.R.S. § 32-900 or for services provided by an unsupervised chiropractic assistant; and
 - f. Repeatedly billing for services not rendered or not documented as rendered or repeatedly engaging in acts prohibited under subsections (13)(c) through (e).
- ~~10-14.~~ Failing to timely comply with a board subpoena pursuant to A.R.S. § 32-929 that allow properly authorized authorizes Board personnel to have, ~~on demand by subpoena,~~ access to any document, report, or record maintained by the chiropractic physician relating to the chiropractic physician's practice or professional activities.
- ~~11-15.~~ Failing to notify the Board of hiring a chiropractic assistant or to register a chiropractic assistant under R4-7-1102 or failing to supervise properly a chiropractic assistant, under A.R.S. § 32-900 that is supervised or employed by the chiropractic physician.
16. Allowing or directing a person who is not a chiropractic assistant and who is not licensed to practice a health care profession to provide patient services, other than clerical duties.
17. Intentionally misrepresenting the effectiveness of a treatment, diagnostic test, or device.
18. Administering, prescribing, or dispensing prescription-only medicine, or prescription-only drugs, or a prescription-only device as defined in A.R.S. § 32-1901 and pursuant to A.R.S. § 32-925(B). This subsection does not apply to those substances identified under R4-7-101(13).
19. Performing surgery or practicing obstetrics in violation of A.R.S. § 32-925(B).
20. Performing or providing colonic irrigation.
21. Penetration of the rectum by a rectal probe or device for the administration of ultrasound, diathermy, or other modalities.

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- 22. Use of ionizing radiation in violation of A.R.S. § 32-2811.
- 23. Promoting or using diagnostic testing or treatment for research or experimental purposes:
 - a. Without obtaining informed consent from the patient, in writing, before the diagnostic test or treatment. Informed consent includes disclosure to the patient of the research protocols, contracts the licensee has with researchers, if applicable, and information on the institutional review committee used to establish patient protection.
 - b. Without conforming to generally accepted research or experimental criteria, including following protocols, maintaining detailed records, periodic analysis of results, and periodic review by a peer review committee; or
 - c. For the financial benefit of the licensee.
- 24. Having professional connection with, lending one's name to, or billing on behalf of an illegal practitioner of chiropractic or an illegal practitioner of any healing art.
- 25. Holding oneself out to be a current or past Board member, Board staff member or a Board chiropractic consultant if this is not true.
- 26. Claiming professional superiority in the practice of chiropractic under A.R.S. § 32-925.
- 27. Engaging in disruptive or abusive behavior in a clinical setting.
- 28. Providing substandard care due to an intentional or negligent act or failure to act regardless of whether actual injury to the patient is established.
- 29. Intentionally disposing of confidential patient information or records without first redacting all personal identifying patient information or by any means other than shredding or incinerating the information or record.
- 30. Intentionally disclosing a privileged communication or document, or confidential patient information except as otherwise required or allowed by law.
- 31. Having been diagnosed by a physician whom the Board determines is qualified to render the diagnosis as habitually using or having habitually used alcohol, narcotics, or stimulants to the extent of incapacitating the licensee for the performance of professional duties.
- 32. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- 33. Having an action taken against a professional license in another jurisdiction, any limitation or restriction of the license, probation, suspension, revocation, surrender of the license as a disciplinary measure or denial of a license application or license renewal for a reason related to unprofessional conduct.
- 34. Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between providers and institutions or entering into a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law from dividing fees received for professional services among themselves as they determine necessary.
- ~~42-35.~~ Failing to report in writing to the Board any information based upon personal knowledge that a chiropractic physician may be grossly incompetent, guilty of unprofessional or dishonorable conduct, or mentally or physically unable to provide chiropractic services safely. Any person who reports or provides information to the Board in good faith is not subjected to civil damages as a result of that action reporting or providing the information. If the informant requests that the informant's name not be disclosed, the Board shall not disclose the informant's name unless ~~it~~ disclosure is essential to the disciplinary proceedings conducted under this Section A.R.S. § 32-924 or required under A.R.S. § 41-1010.
- ~~43-36.~~ Violating any federal or state law statute, rule, or regulation applicable to the practice of chiropractic.
- 37. Any act or omission identified in A.R.S. § 32-924(A).

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

[R08-41]

PREAMBLE

1. Sections Affected

R4-33-101
R4-33-102
R4-33-109
R4-33-201
R4-33-202

Rulemaking Action

Amend
Amend
New Section
Amend
Amend

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R4-33-204	Amend
R4-33-206	Amend
Article 3	Amend
R4-33-301	Repeal
R4-33-301	New Section
R4-33-302	Repeal
R4-33-302	New Section
R4-33-303	Repeal
R4-33-401	Amend
R4-33-403	Amend
R4-33-405	Amend
R4-33-409	New Section
R4-33-410	New Section

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. § 36-446.03

Implementing statute: A.R.S. § 36-446.04

3. The effective date for the rules:

April 5, 2008

4. List of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 3156, September 14, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 3568, October 26, 2007

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

Name: Allen Imig
Address: NCIA Board
1400 W. Washington St., Suite B8
Phoenix, AZ 85007
Telephone: (602) 364-2273
Fax: (602) 542-8316
E-mail: allen.imig@nciabd.state.az.us

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

During its 2007 session, the legislature amended A.R.S. § 36-446.04 to require that an administrator or manager have a valid fingerprint clearance card. The Board is amending its rules to address this requirement. The Board is adding Sections regarding certification following revocation and notice of manager appointment that mirror Sections applicable to administrators. The Board is deleting the provision that allows an applicant for manager certification to substitute 36 contact hours of training at a college or university for the Department-approved course. The Board is doing this because it determined that 36 contact hours of training is not equivalent to the Department-approved course. In place of the 36 contact hours, the Board is allowing licensure as a doctor, nurse, or nursing care institution administrator to substitute for the Department-approved course. The Board is also amending the rules dealing with the administrator-in-training program to complete the actions planned in a five-year-review report approved by Council on March 4, 2003.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 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

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

The rulemaking will have minimal economic impact. Licensees and certificate holders will incur the cost of obtaining and maintaining a valid fingerprint clearance card but this cost results from legislative action rather than this rulemaking.

A provider of an administrator-in-training program will incur the cost of obtaining the Board's approval of the provider's program. However, this is a cost of doing business that the provider will assume in anticipation of the benefits resulting from an approved program.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if appli-

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cable):

In addition to minor, non-substantive changes to the rules, the Board added the requirement that an applicant for a license or certificate or for renewal of a license or certificate complete an Arizona Statement of Citizenship and Alien Status for Public Benefits. This change is necessary to make the rules consistent with A.R.S. § 1-501, which was added during the 2007 legislative session. According to the Arizona Attorney General's office, A.R.S. § 1-501 clarifies that Arizona law is consistent with federal law (see 8 U.S.C. 1621) regarding public benefits for individuals who are not lawfully present in the U.S. Under federal law, "public benefit" means "... professional license or commercial license provided by an agency of a state or local government..." This change is not substantial because it simply makes the rule consistent with law.

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

The Board held an oral proceeding on December 3, 2007. Two members of the Arizona Assisted Living Federation of America attended and voiced support for the rulemaking. The Board received no other comments regarding the rules.

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 rule:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

**CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS
AND ASSISTED LIVING FACILITY MANAGERS**

ARTICLE 1. GENERAL

Section

- R4-33-101. Definitions
- R4-33-102. Board Officers
- R4-33-109. ~~Reserved~~ Fingerprint Clearance Card Requirement

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section

- R4-33-201. Requirements for Initial License by Examination
- R4-33-202. Requirements for Initial License by Reciprocity
- R4-33-204. Initial Application
- R4-33-206. Renewal Application

ARTICLE 3. ADMINISTRATOR-IN-TRAINING PROGRAM

Section

- R4-33-301. ~~Administrator in Training~~ Approval of an AIT Program Requirements
- R4-33-302. ~~Preceptor Qualifications and Responsibilities~~ Standards for an AIT Program
- R4-33-303. ~~Administrator in Training~~ Repealed

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

Section

- R4-33-401. Requirements for Initial Certification by Examination
- R4-33-403. Initial Application
- R4-33-405. Renewal Application
- R4-33-409. ~~Repealed~~ Certification following Revocation
- R4-33-410. ~~Renumbered~~ Notice of Appointment

ARTICLE 1. GENERAL

R4-33-101. Definitions

The definitions in A.R.S. § 36-446 apply to this Chapter. Additionally, in this Chapter, unless otherwise specified:

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“Accredited” means approved by the North Central Association of Colleges and Secondary Schools, New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges.

“ACHCA certified” means written evidence of completing the Professional Certification Program administered by the American College of Health Care Administrators.

“Administrator” has the meaning prescribed at A.R.S. § 36-446 and means an individual licensed under this Chapter.

“Administrator in training” or “AIT” means an individual who is taking an AIT program to be licensed as an administrator for a nursing care institution.

“AIT program” means ~~an NAB-approved a training lasting not less than 20 weeks nor more than 52 weeks, at 40 hours per week, conducted as an educational experience in a licensed nursing care institution that the Board approves after determining that the training meets the standards at R4-33-302.~~

“Applicant” means an individual who applies to the Board to be licensed as an administrator of a nursing care institution, to be certified as a manager of an assisted living facility, or for approval of a continuing education.

“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.

“Arizona examination” means a measure of an applicant’s knowledge of Arizona statutes and rules regarding nursing care institution administration or assisted living facility management.

“Biennial period” means July 1 of an even-numbered year through June 30 of the next even-numbered year for an administrator and July 1 of an odd-numbered year through June 30 of the next odd-numbered year for a manager.

“Contact hour” means an hour during which an administrator or manager is physically present at a continuing education or a manager is physically present at a required initial training.

“Continuing education” means a planned educational course or program that the Board approves under R4-33-502.

“Good standing” means that ~~a nursing care institution administrator is the holder of a current and valid license, an individual licensed by the state is~~ not subject to any disciplinary action or consent order, and not currently under investigation for alleged unprofessional conduct.

“Health care institution” means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in A.R.S. § 36-151 and hospice services agencies. A.R.S. § 36-401.

“Manager” means an assisted living facility manager, as defined at A.R.S. § 36-446, who is certified under this Chapter.

“NAB” means the National Association of Board of Examiners for Nursing Home Administrators.

“Party” has the same meaning as prescribed in A.R.S. § 41-1001.

“Preceptor” means a practicing nursing care institution administrator who ~~has taken a board-approved preceptor training course and~~ helps to develop a new professional in the field of long-term care administration by tutoring the new professional.

~~“Program Advisory Committee” means the group of practicing nursing care administrators that provides oversight to AITs and ensures the application of uniform training standards and guidelines outlined in the AIT program.~~

“Qualified instructor” means a person who meets one or more of the following criteria:

A registered nurse, licensed under A.R.S. Title 32, Chapter 15;

An instructor employed by an accredited college or university, or health care institution to teach a health-care related course; or

A person or entity that has sufficient education and training to be qualified to teach a health-care related course.

“Work experience in a health-related field” means employment in a health care institution or in the professional fields of medicine, nursing, social work, gerontology, or other closely related field.

R4-33-102. Board Officers

A. At its first annual meeting, the Board shall elect a president and vice-president.

B. The functions, duties, and limitations of these officers are as follows:

1. President. The president shall call and preside at all Board meetings. The president shall act as chief officer of the Board, appoint committees, and delegate authority to other members of the Board as needed.
2. Vice-president. The vice-president shall preside at Board meetings in the absence of the president and may exercise all the powers and duties of the president in the absence of the president.

C. Board officers serve for one year. A Board officer shall not serve more than two consecutive years in the same position.

R4-33-109. ~~Reserved~~ Fingerprint Clearance Card Requirement

Under A.R.S. § 36-446.04, an administrator or manager is required to maintain a valid fingerprint clearance card during the biennial period. Within 10 days after the referenced action, an administrator or manager shall:

1. Submit to the Board a photocopy of the front and back of a new fingerprint clearance card issued to the administrator or manager during the biennial period, or
2. Provide written notice to the Board if:
 - a. The fingerprint clearance card of the administrator or manager is suspended or revoked, or
 - b. The administrator or manager is denied a new fingerprint clearance card.

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

R4-33-201. Requirements for Initial License by Examination

To be eligible to receive an initial license by examination as a nursing care institution administrator, an individual shall:

1. Education and training.
 - a. Hold a minimum of a baccalaureate degree from an accredited college or university and successfully complete an AIT program;
 - b. Hold a minimum of a masters degree in a health-related field from an accredited college or university; or
 - c. Hold a minimum of an associate of arts degree in nursing from an accredited college or university and:
 - i. Be currently licensed as a registered nurse under A.R.S. § 32-1632,
 - ii. Have worked as a registered nurse for five of the last seven years, and
 - iii. Successfully complete an AIT program.
2. Examination.
 - a. Obtain the scaled passing score on the NAB examination, and
 - b. Obtain a score of at least 80 percent on the Arizona examination; ~~and~~
3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
- ~~3-4.~~ Application. Submit all applicable information required under R4-33-204.

R4-33-202. Requirements for Initial License by Reciprocity

To be eligible for an initial license by reciprocity as a nursing care institution administrator, an individual shall:

1. Substantially equivalent educational requirement.
 - a. Meet the education and training requirement described in R4-33-201(1), or
 - b. Hold ACHCA certification;
2. Substantially equivalent examination requirement.
 - a. Hold a valid and current license as a nursing care institution administrator issued by a state or territory, which was obtained by passing the NAB examination; and
 - b. Obtain a score of at least 80 percent on the Arizona examination; ~~and~~
3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
- ~~3-4.~~ Application.
 - a. Submit all applicable information required under R4-33-204,
 - b. Have submitted directly to the Board a certified copy of the valid and current license issued by a state or territory, and
 - c. Have submitted directly to the Board the score that the applicant obtained on the NAB examination.

R4-33-204. Initial Application

A. An individual who desires to be licensed as a nursing care institution administrator shall submit the following information to the Board on an application form, which is available from the Board:

1. Full name of the applicant;
2. Other names that the applicant has used;
3. Mailing address of the applicant;
4. Home, work, and mobile telephone numbers of the applicant;
5. Applicant's date and place of birth;
6. Applicant's Social Security number;
- ~~7. Whether the applicant is a U.S. citizen and if not, evidence of authorization to work in the United States;~~
- ~~8-7.~~ Address of every residence at which the applicant has lived in the last five years;
- ~~9-8.~~ Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate received;
- ~~10-9.~~ Information regarding professional licenses or certifications currently or previously held by the applicant, including:

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- a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
- 11-10. Information regarding the applicant's employment record for the last five years, including:
- a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment; and
 - e. Reason for employment termination;
- 12-11. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied, licensing authority making the denial, and date;
- 13-12. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
- 14-13. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
- 15-14. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
- 16-15. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for the suspension or revocation;
- 17-16. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
- 18-17. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or nursing care institution and if so, the nature of and where the complaint is pending;
- 19-18. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
- 20-19. Whether the applicant ever was pardoned from or had expunged the record of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
1. Official transcript submitted directly to the Board by each accredited college or university attended by the applicant;
 2. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
 3. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 4. If the applicant is certified by ACHCA, verification of certification submitted directly to the Board by ACHCA;
 5. If the applicant completed an AIT program, a photocopy of the certificate issued upon completion;
 6. For every felony or misdemeanor charge listed under subsection ~~(A)(19)~~ (A)(18), a copy of documents from the appropriate court showing the disposition of each charge;
 7. For every felony or misdemeanor conviction listed under subsection ~~(A)(19)~~ (A)(18), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 8. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
 9. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card.
 - b. Proof of submission of an application for a fingerprint clearance card, or
 - c. If denied a fingerprint clearance card, proof that the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
 10. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
 - 9-11. Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
 - 10-12. Fees required under R4-33-104(A)(1) and (A)(2).
- C.** If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- D.** When the information required under subsections (A) and (B) is received and following an appearance before the Board

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required under subsection (C), the Board shall provide notice regarding whether the applicant may take the licensing examinations required under R4-33-201 or R4-33-202.

- E. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

R4-33-206. Renewal Application

- A. The Board shall provide a licensee with notice of the need for license renewal. Failure to receive notice of the need for license renewal does not excuse a licensee's failure to renew timely.
- B. An administrator license expires at midnight on June 30 of each even-numbered year.
- C. To renew an administrator license, the licensee shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
 - 1. Current address;
 - 2. Current home and business telephone numbers;
 - 3. Whether within the last 24 months the licensee was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 - 4. Whether within the last 24 months the licensee was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 - 5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed; and
 - 6. The licensee's dated and notarized signature affirming that the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a licensee shall submit:
 - 1. A photocopy of the front and back of the licensee's fingerprint clearance card;
 - 2. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and
 - 3. ~~the~~ The license renewal fee required under R4-33-104.
- E. An individual whose license expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
 - 1. The individual complies with subsections (C) and (D) on or before July 31~~½~~;
 - 2. The individual pays the penalty prescribed under R4-33-104~~½~~; and
 - 3. The individual affirms that the individual has not acted as a nursing care institution administrator since the license expired.
- F. An individual whose license expires because of failure to renew timely and who does not comply with subsection (E) may become licensed as a nursing care institution administrator only by complying with R4-33-201 or R4-33-202.

ARTICLE 3. ADMINISTRATOR-IN-TRAINING PROGRAM

R4-33-301. ~~Administrator in Training~~ Approval of an AIT Program Requirements

- ~~A. An AIT program shall have a program advisory committee that is responsible for all aspects of the training program. The committee shall conduct at least two on-site visits during each training period. For 20 to 52-week approved training periods, the two site visits shall be conducted upon completion of 30 and 80% of the program requirements. Additional site visits may be conducted upon request of the AIT, the preceptor or the committee.~~
- A. The Board approves an AIT internship provided at an educational institution with a NAB-accredited program.
- ~~B. The program advisory committee shall endorse a preceptor for each AIT. A preceptor shall provide training to no more than one AIT at a time.~~
- B. The provider of an AIT program that does not meet the standard in subsection (A) may apply to the Board for approval of the AIT program. To apply for approval of an AIT program, the provider of the program shall submit to the Board:
 - 1. A letter on official letterhead providing the following information:
 - a. Name, address, and telephone and fax numbers of the provider; and
 - b. Name and telephone number of an individual who can be contacted regarding the information provided;
 - 2. A description of the procedure required under R4-33-302(2)(d) to measure the success of an AIT and a copy of any materials used to measure the success of an AIT;
 - 3. A copy of the AIT program monitoring procedure required under R4-33-302(3) and any forms that are used in the monitoring;
 - 4. A copy of the certificate of completion required under R4-33-302(2)(e);
 - 5. A detailed outline of the training course required under R4-33-302(4)(d);
 - 6. A copy of the policy and procedures manual required under R4-33-302(5); and
 - 7. The signature of an authorized representative of the provider:
 - a. Affirming that the information provided is true and complete, and
 - b. Authorizing the Board to monitor the program's compliance with the standards in R4-33-302.

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- ~~C.~~ The program advisory committee shall appoint a site evaluator for each preceptor/administrator training relationship who shall conduct the site visits. A site visit check list shall be completed by the site evaluator during each site visit and reviewed with the preceptor and the AIT if program discrepancies or concerns are identified.
- C. The Board shall approve an AIT program that the Board determines meets the standards in R4-33-302. The Board's approval of an AIT program is valid for one year if the program remains in compliance with the standards in R4-33-302.
- D. A site evaluator shall: To maintain approval of an AIT program, the provider of the AIT program shall, before the approval expires, submit:
1. The information required under subsection (B), or
 2. The letter required under subsection (B)(1) and the signature of an authorized representative of the provider affirming that the materials previously submitted under subsections (B)(2) through (B)(6) continue to be true and complete and authorizing the Board to monitor the program's compliance with the standards in R4-33-302.
1. Review the AIT application as approved by the program advisory committee;
 2. Review the individualized training programs as approved by the advisory committee;
 3. Make initial contact by telephone with the AIT and the preceptor to introduce the site evaluator, confirm receipt of the NAB AIT/preceptor domains of practice manual, answer any questions, and schedule the first site visit;
 4. Review all monthly reports, daily logs, and other information received from the AIT or preceptor before the first site visit;
 5. Tour the facility with the AIT, review the AIT's daily log, and interview the AIT and preceptor, both individually and together, during the site visit;
 6. Complete the site visit report and review the findings with the AIT and preceptor before leaving the facility. The site visit report shall address the following:
 - a. Whether the evaluator met with the AIT and preceptor, individually and together;
 - b. Whether the NAB AIT/preceptor domains of practice manual and instructions were reviewed with both the AIT and preceptor and any comments;
 - c. Whether the AIT and preceptor appeared to understand their respective roles and responsibilities as outlined in the NAB AIT/preceptor domains of practice manual;
 - d. Whether the facility was toured with the AIT and preceptor, and any comments;
 - e. Examples of staff and resident interaction with the AIT, the apparent position occupied by the AIT in the facility, and whether the AIT appeared to know and recognize staff and residents;
 - f. Whether the evaluator met with any departments with which the AIT had worked and any comments made by department heads regarding AIT's learning experience;
 - g. Which written reports, time logs, and other program materials were reviewed, whether the monthly reports were timely and complete, and what other reports, tests, and workshops had been completed by the AIT;
 - h. Which approved AIT training program is being used as a primary resource and what supplementary texts or other materials are being used;
 - i. What concerns were expressed or questions asked during the interview with the AIT and preceptor;
 - j. The frequency and duration of meeting between the AIT and preceptor, scheduled or unscheduled;
 - k. The locations outside the facility where AIT has been assigned or visited, and the purpose, length and supervision provided;
 - l. The community meetings or events attended by the AIT as part of the program, including any AzACHCA meeting or peer group sessions;
 - m. How closely the actual training program has adhered to the proposed training schedule, any variations and whether the variations have negatively affected the program;
 - n. An overall assessment of the training program and its progress and whether there are any apparent problems that may prevent the AIT from completing the program as planned; and,
 - o. Any additional comments;
 7. Schedule additional site visits if a significant change occurs in the program outline, if there is a change in either the AIT or preceptor, or upon request of the AIT, preceptor, or program advisory committee; and
 8. Conduct telephone interviews with the AIT upon receipt of the monthly progress report to validate the learning experience and respond to any questions or concerns.
- E. A site program evaluator shall maintain a file on each assigned AIT that includes the following:
1. The AIT application and attachments reviewed by the advisory committee;
 2. A copy of each monthly report and daily log;
 3. A copy of each site visit report;
 4. Copies of any correspondence and interim reports; and,
 5. Copy of the program completion from the NAB AIT/preceptor domains of practice manual, completed by the preceptor and co-signed by the AIT when the training program is finished.
- F. An individualized training plan shall be prepared at the beginning of the training by the preceptor and the AIT. Any changes to the training plan shall be submitted, in writing, to the program evaluator, for review by the advisory committee.

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- ~~G. A training program shall not permit the following:~~
 - ~~1. A preceptor to train the preceptor's employer or supervisor; or~~
 - ~~2. A preceptor to train the preceptor's spouse, child, parent, brother, sister, first or second cousin, niece, nephew, uncle, or aunt.~~
- ~~H. A program advisory committee shall provide semiannual reports in June and December to the Board which include the names of preceptors trained, number of administrators in training, number of administrators in training who have completed training, and the names of facilities where training is being provided.~~
- ~~I. If a preceptor is no longer able or willing to be a preceptor or the AIT chooses to change location or preceptor, the AIT program ceases and the following shall occur:~~
 - ~~1. The original preceptor and AIT shall write a letter to the program advisory committee stating the reasons for the change and the last date of training. The letter shall be signed by both the AIT and original preceptor. The AIT shall complete and sign the last monthly report.~~
 - ~~2. The AIT and new preceptor shall submit a letter of application for continuance to the program advisory committee stating that the preceptor or training location has changed. The new preceptor shall complete and submit the preceptor portion of the application form, including the preceptor's credentials.~~
 - ~~3. At the next meeting of the program advisory committee following receipt of the letter, the committee shall review the documentation and send written notification to the AIT and the preceptor of the committee's decision and program continuance date within five working days after the meeting.~~
 - ~~4. Change requests may be completed in advance to allow for a smooth and timely transition.~~

R4-33-302. Preceptor Qualifications and Responsibilities Standards for an AIT Program

- ~~A. A preceptor shall have the following qualifications:~~
 - ~~1. Be an administrator of record with a current nursing care institution administrator's license in good standing in Arizona with no disciplinary actions taken against the preceptor's license in the last three years, excluding letters of concern~~

For an AIT program to be approved by the Board, the provider of the AIT program:

- 1. Shall be:
 - a. An accredited college or university.
 - b. An institution licensed by the Board of Private Postsecondary Education under A.R.S. § 32-3001 et seq.
 - c. ACHCA or the Arizona chapter of ACHCA, or
 - d. Another nationally recognized organization of long-term care administrators;
- 2. Be a full-time practicing nursing care institution administrator with a minimum of two years of experience as an administrator within the last three years;
- 2. Shall ensure that the AIT program:
 - a. Provides at least 1,000 hours of full-time educational experience to the AIT in not less than six months and not more than 12 months in the following subject areas:
 - i. Federal and state law regarding nursing care institutions.
 - ii. Nursing care institution administration and policy.
 - iii. Health care quality assurance.
 - iv. Communications skills.
 - v. Health economics.
 - vi. Financial management of a nursing care institution.
 - vii. Personnel management.
 - viii. Resident care.
 - ix. Facility operation and management.
 - x. Safety and environmental management, and
 - xi. Community resources;
 - b. Allows the AIT to work only with a preceptor who meets the standards in subsection (4) and is responsible for supervising the AIT while the AIT participates in the program.
 - c. Is implemented at the nursing care institution of which the preceptor is administrator.
 - d. Measures the AIT's success in acquiring the knowledge and skills necessary to be a competent nursing care institution administrator, and
 - e. Provides the AIT with a certificate of completion that indicates:
 - i. The AIT's name.
 - ii. The preceptor's name and license number.
 - iii. The name and address of the facility at which the AIT program was implemented.
 - iv. The beginning and ending dates of the AIT program, and
 - v. The preceptor's signature affirming that the AIT successfully completed the AIT program;
- 3. Comply with all required continuing education in the long-term care field; and

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3. Shall develop a procedure to monitor the AIT program, assess the AIT's progress through the AIT program, and make adjustments necessary to ensure that the AIT acquires the knowledge and skills necessary to be a competent nursing care institution administrator;
 4. ~~Complete a preparatory educational seminar approved by the Board.~~
 4. Shall ensure that an individual who serves as an AIT preceptor:
 - a. Has been licensed by the Board for at least two years,
 - b. Is employed full-time as a nursing care institution administrator at a facility that the Department determines is in compliance with applicable standards,
 - c. Is in good standing and has no disciplinary actions against the individual's license in the last three years, and
 - d. Completes a training course regarding the role and responsibilities of a preceptor; and
 5. Shall develop a written policy and procedures manual that includes at least the following:
 - a. Procedure and forms required to apply to be an AIT;
 - b. Procedure and forms required to apply to be a preceptor;
 - c. Procedure for matching an AIT applicant with a preceptor;
 - d. Goals of the AIT program related to each of the subject areas listed in subsection (2)(a);
 - e. Learning experiences to achieve each goal;
 - f. Estimated time to accomplish each goal;
 - g. Responsibilities of a preceptor;
 - h. Responsibilities of an AIT;
 - i. Procedures for deviating from the goals of the AIT program, changing the facility at which the AIT program is implemented, changing preceptor, and extending the AIT program; and
 - j. Procedure for evaluating the preceptor.
- B.** ~~A preceptor shall~~
1. ~~Implement the AIT training program in a facility.~~
 2. ~~Interview a prospective AIT to ensure that the preceptor and AIT understand the required training plan, develop the AIT program experience, identify individual responsibilities, and assure compatibility between them. A proposed training program shall be prepared by the preceptor and AIT for submission to and approval by the program advisory committee. The training plan shall include the following:~~
 - a. ~~The name of the AIT;~~
 - b. ~~The date;~~
 - e. ~~The name of the training site, and its address and phone number;~~
 - d. ~~The number of weeks or hours to complete the program;~~
 - e. ~~The start, completion and examination dates of the program, including the hours in administration, human resources, nursing, rehabilitation, medical records, activities, social services, business office, dietary, housekeeping, laundry, maintenance, and other;~~
 - f. ~~The total assigned time in weeks or hours;~~
 - g. ~~Other comments; and~~
 - h. ~~The dated signatures of the AIT and preceptor.~~
 3. ~~Provide the AIT with an initial orientation to the facility, its philosophy, its staff and basic operation.~~
 4. ~~Alert the facility's staff to the presence of the AIT and the purpose of the clinical experience and solicit staff cooperation in providing information and encouragement to the AIT.~~
 5. ~~Meet with the AIT on at least a weekly basis to evaluate performance, apprise the AIT of areas of competency and weakness, identify problem areas, and modify the training plan to meet altered needs.~~
 6. ~~Provide information and guidance to the AIT in test-taking techniques to prepare for state licensure.~~
 7. ~~Provide follow up with the AIT's progress upon completion of the training program and provide information regarding job opportunities in the field of long-term care administration.~~
 8. ~~Report on a monthly basis to the program advisory committee any concerns or problems regarding the progress of the AIT, including comments on the professional competence of the AIT as well as the attitudes about long-term care and general suitability of the AIT for the field.~~
 9. ~~Modify the structure and content of the AIT program in response to feedback received from the AIT's evaluation of the preceptor.~~
 10. ~~Incorporate into the AIT program visits to other facilities to provide broader exposure to the field, and visits to relevant governmental and community agencies.~~
 11. ~~Upon completion of training, prepare a certification of program completion and provide it to the program advisory committee, which shall notify the Board that the AIT has successfully completed training. The certification of program completion shall provide the following information:~~
 - a. ~~The full name of the AIT;~~
 - b. ~~The place of training, including mailing and street address;~~
 - e. ~~The telephone number of the place of training;~~

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- d. The dates the AIT began and completed the program;
 - e. The number of weeks spent in administration, human resources, nursing department, rehabilitation department, medical/patient records, activities department, social services/admissions, business office, dietary department, housekeeping/laundry, environment/maintenance and other;
 - f. The total number of weeks in the AIT training program;
 - g. A certification that the AIT has satisfactorily completed the program under the preceptor's personal supervision;
 - h. A narrative evaluation of the suitability of the AIT for licensure as a nursing care institution administrator; and
 - i. The signatures of the AIT and preceptor, the date, and the preceptor's license number.
- C. A preceptor shall immediately inform the site evaluator when the preceptor is absent for more than 10 consecutive working days for any reason. The site evaluator may extend or suspend the program if the preceptor is absent for a cumulative total of 25 working days for any reason. An AIT may train at another facility under another preceptor who has no other AIT during the absence of the original preceptor.

R4-33-303. Administrator in Training Repealed

- A. An AIT shall comply with the standards of conduct applicable to nursing care institution administrators.
- B. An AIT shall serve an internship between the hours of 6:00 a.m. and 7:00 p.m., Monday through Friday, on a regular basis. An AIT may train on weekends and on second and third shifts for limited periods of time and for specific purposes.
- C. An AIT shall not serve in any capacity in a facility other than that of trainee during the training period.
- D. An AIT shall send a report at the end of the first calendar month and every month thereafter to the site evaluator. Each monthly report, together with daily logs, shall be completed for review and signature by the preceptor and submitted to the site evaluator. The report shall provide the following information:
 - 1. The full name of the AIT;
 - 2. The training facility name, address, and phone number;
 - 3. The date of the report;
 - 4. The dates covered by the report;
 - 5. The date the internship began and its expected completion date;
 - 6. A list of assignments and departments with time spent in each;
 - 7. A summary of learning experiences;
 - 8. A brief analysis of any problems observed, new experiences, and insights gained;
 - 9. A statement of any problems that arose during the training;
 - 10. A list of visits made outside the facility and educational conference attended;
 - 11. A certification that the information presented is true and accurate; and,
 - 12. The signatures of the AIT and preceptor.
- E. An AIT shall complete the training program in not less than 20 weeks nor more than 52 weeks after beginning training.
- F. Any consecutive absence of an AIT of more than five working days shall result in the suspension of the program effective with the first day of absence. The preceptor shall immediately notify the site evaluator. The program may resume upon the return of the AIT to the program schedule if reviewed by the site evaluator. The program shall be extended equivalent to the period of time lost. Absences of five consecutive working days or less shall be worked out between the preceptor and the AIT.
- G. An AIT shall develop professional competency and a personal code of ethics through the following:
 - 1. In collaboration with the preceptor, become involved in decisionmaking activities of increasing difficulty and their implementation.
 - 2. Increase knowledge and appreciation of the clinical aspects of delivering quality long term care services through observation and participation, including involvement with nursing, rehabilitative, and social services.
 - 3. Develop a familiarity with the patient population in the facility and with the unique problems associated with the delivery of multiple services to an aged, chronically ill, and disabled dependent population.
 - 4. Become familiar with all departments and services in the facility, including dietary, housekeeping, laundry, maintenance and others, to understand both their individual functions and how they interface with each other.
 - 5. Complete all projects and assignments made by the preceptor.
 - 6. Communicate openly with the preceptor at all times.
 - 7. Evaluate the preceptor's performance in the tutorial role.
 - 8. Apply the theories, concepts, principles, and techniques learned through formal academic preparation to practical situations in the facility.

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

R4-33-401. Requirements for Initial Certification by Examination

To be eligible to receive an initial certificate by examination as an assisted living facility manager, an individual shall:

- 1. Education:
 - a. Earn a high school diploma or G.E.D., and
 - b. Complete, within one year before the date of application for certification, a Department-approved training pro-

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- gram in personal, supervisory, and directed care and management of an assisted living facility that is:
- i. Approved by the Department under A.A.C. R9-10-724, and
 - ii. Provided by an institution licensed by the Board of Private Postsecondary Education under A.R.S. Title 32, Chapter 30 or exempt from licensing by the Board of Private Postsecondary Education, or
- e- ~~Complete at least 36 contact hours of instruction at an accredited university or college the following hours in the following subject areas:~~
- ~~i. Residents' rights, two contact hours;~~
 - ~~ii. Care of elderly or disabled adults, 10 contact hours;~~
 - ~~iii. Nutrition and food preparation, four contact hours;~~
 - ~~iv. Care of confused individuals, four contact hours;~~
 - ~~v. Pharmacology of commonly prescribed medications, four contact hours;~~
 - ~~vi. Care plan development, four contact hours;~~
 - ~~vii. Environmental and fire safety, four contact hours; and~~
 - ~~viii. Business practices and recordkeeping, four contact hours~~
- c. Hold a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;
2. Work experience. Complete at least 2,080 hours of paid work experience in a health-related field within the five years before application;
 3. Examination. Obtain a score of at least 75 percent on the Arizona examination;
 4. Training. Complete an adult cardiopulmonary resuscitation and basic first-aid training program; ~~and~~
 5. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
- 5-6. Submit all applicable information required under R4-33-403.

R4-33-403. Initial Application

- A. An individual who desires to be certified as a manager of an assisted living facility shall submit the following information to the Board on an application form, which is available from the Board:
1. Full name of the applicant;
 2. Other names that the applicant has used;
 3. Mailing address of the applicant;
 4. Home, work, and mobile telephone numbers of the applicant;
 5. Applicant's date and place of birth;
 6. Applicant's Social Security number;
 7. ~~Whether the applicant is a U.S. citizen and if not, evidence of authorization to work in the United States;~~
 - 8-7. Address of every residence at which the applicant has lived in the last five years;
 - 9-8. Education information regarding the applicant, including:
 - a. Name and location of last high school attended;
 - b. Date of high school graduation or date on which a G.E.D. was earned; and
 - c. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate earned;
 - 10-9. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
 - 11-10. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment;
 - e. Number of hours worked each week;
 - f. Whether the employment was full or part time; and
 - g. Reason for termination;
 - 12-11. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied; licensing authority making the denial, and date;
 - 13-12. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
 - 14-13. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;

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- 15-14. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
- 16-15. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for suspension or revocation;
- 17-16. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
- 18-17. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or assisted living facility and if so, the nature of and where the complaint is pending;
- 19-18. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
- 20-19. Whether the applicant ever was pardoned from or had the record expunged of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B. In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
1. Education:
 - a. Copy of the applicant's high school diploma or G.E.D., and
 - b. Certificate of completion issued within a year before the date of application from the ~~Department-approved~~ training course described under R4-33-401(1)(b), or
 - e. ~~Official transcript submitted directly to the Board by each accredited college or university attended by the applicant~~
 - c. Copy of the applicant's license issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;
 2. Documentation of 2,080 hours of paid work experience in a health-related field;
 3. Copy of current certification in adult cardiopulmonary resuscitation and first aid;
 4. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
 5. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 6. For every felony or misdemeanor charge listed under subsection ~~(A)(19)~~ (A)(18), a copy of documents from the appropriate court showing the disposition of each charge;
 7. For every felony or misdemeanor conviction listed under subsection ~~(A)(19)~~ (A)(18), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 8. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
 9. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card;
 - b. Proof of submission of an application for a fingerprint clearance card; or
 - c. If denied a fingerprint clearance card, proof that the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
 10. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
 - 9-11. Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
 - 10-12. Fees required under R4-33-104(B)(1) and (B)(2).
- C. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- D. When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the Arizona examination required under R4-33-401(3).
- E. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

R4-33-405. Renewal Application

- A. The Board shall provide a certificate holder with notice of the need for certificate renewal. Failure to receive notice of the need for certificate renewal does not excuse a certificate holder's failure to renew timely.
- B. A manager certificate expires at midnight on June 30 of each odd-numbered year.
- C. To renew a manager certificate, the certificate holder shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
 1. Current address;

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- 2. Current home and business telephone numbers;
 - 3. Whether within the last 24 months the certificate holder was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 - 4. Whether within the last 24 months the certificate holder was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 - 5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed;
 - 6. An affirmation that the certificate holder complies with the disclosure requirements under R4-33-408; and
 - 7. The certificate holder's dated and notarized signature affirming that the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a certificate holder shall submit:
- 1. A photocopy of the front and back of the certificate holder's fingerprint clearance card;
 - 2. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and
 - 3. ~~the~~The renewal fee required under R4-33-104.
- E. An individual whose certificate expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
- 1. The individual complies with subsections (C) and (D) on or before July 31;
 - 2. The individual pays the penalty prescribed under R4-33-104; and
 - 3. The individual affirms that the individual has not acted as an assisted living facility manager since the certificate expired.
- F. An individual whose certificate expires because of failure to renew timely and who does not comply with subsection (E) may obtain a manager certificate only by complying with R4-33-401.

R4-33-409. ~~Repeated~~ Certification Following Revocation

An individual who wishes to be certified after the individual's certificate as an assisted living facility manager is revoked shall:

- 1. Not apply for certification until at least 12 months have passed since the revocation, and
- 2. Apply for certification under R4-33-401.

R4-33-410. ~~Renumbered~~ Notice of Appointment

A. A manager shall provide written notice to the Board, within 30 days, of being appointed manager of an assisted living facility or terminating an appointment.

B. A manager shall include the following, as applicable, in a notice regarding the manager's appointment:

- 1. Manager's name,
- 2. Manager's certificate number,
- 3. Name and address of the assisted living facility to which the manager is appointed,
- 4. Date of appointment,
- 5. Name and address of the assisted living facility at which the manager's appointment is terminated, and
- 6. Date of termination.

NOTICE OF FINAL RULEMAKING

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

[R08-40]

PREAMBLE

1. Sections Affected

R5-4-101
R5-4-102
Article 2
R5-4-201
Article 3
R5-4-301
R5-4-302

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the

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rules are implementing (specific):

Authorizing statute: A.R.S. § 31-401(G)

Implementing statute: A.R.S. §§ 31-401, 31-402, and 38-431.01

3. The effective date for the rules:

April 5, 2008

4. List of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 3533, October 19, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 3760, November 9, 2007

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

Name: Duane Belcher, Executive Director

Address: Board of Executive Clemency
1645 W. Jefferson St., Ste. 101
Phoenix, AZ 85007

Telephone: (602) 542-5656

Fax: (602) 542-5680

E-mail: Duane.belcher@aboec.state.az.us

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

The Board is updating its rules to complete the plan of action contained in a five-year-review report approved by the Council in December 2006 and to make the rules more clear, concise, and understandable.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 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

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

No substantive changes are being made to the rules. As a result, the only economic impact is the Board's cost to complete the rulemaking.

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

Only minor, non-substantive changes were made between the proposed and final rules.

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

The Board received no comments regarding the rules.

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

Not applicable

13. Incorporations by reference and their location in the rule:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

ARTICLE 1. GENERAL PROVISIONS

Section

R5-4-101. Definitions

R5-4-102. ~~Public Comment at Board Hearings~~

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ARTICLE 2. EXECUTIVE CLEMENCY ACTIONS PARDON

Section
R5-4-201. Pardons Pardon

ARTICLE 3. RECISSION OR REVOCATION

Section
R5-4-301. Rescission Hearings
R5-4-302. Revocation Hearings

ARTICLE 1. GENERAL PROVISIONS

R5-4-101. Definitions

In this Chapter, unless otherwise specified:

1. "Applicant" means an individual who asks the governor to grant a pardon.
2. "Board" means the Arizona Board of Executive Clemency, as established by A.R.S. § 31-401(A). (formerly the Arizona Board of Pardons and Paroles).
3. "Department" means the Arizona Department of Corrections.
4. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
- 4-5. "Inmate" means an individual who is ~~in the custody or~~ under the jurisdiction of the Department, including an individual in custody or on parole, home arrest, work furlough, or community supervision.
- 5-6. "Pardon" means an action by the governor that absolves an applicant individual of the legal consequences of ~~the a~~ crime for which the applicant individual was convicted.
- 6-7. "Presiding Officer" means either the Chairperson of the Board or the Chairperson of a Board panel assigned to conduct a hearing.
8. "Release" means parole, home arrest, work furlough, or community supervision.
- 7-9. "Rescission" means an act of the Board that to void voids a previously made release decision that was previously granted by the Board before the inmate is released.
- 8-10. "Request to rescind" means a document asking the Board to void a decision to grant an inmate a release for a rescission.
- 9-11. "Revocation" means an act by the Board to terminate that terminates an inmate's release status because of a violation of a release condition.
- 10-12. "Street time" means from the time interval between when an inmate accepts is released on parole until and the time parole is revoked or completed.
- 11-13. "Warrant" means a document ~~of written allegations issued by the Department, initiated by the Department or Board or any member of the Board on an inmate who is alleged to have violated a condition or conditions of release that specifies an alleged violation of a condition of a release.~~
- 12-14. "Work day" means Monday through Friday of each week every day except federal Saturdays, Sundays, and state holidays listed at A.R.S. § 1-301.

R5-4-102. ~~Public Comment at Board Hearings~~

~~During any hearing conducted by the Board, the Presiding Officer may allow any person to provide oral or written information relevant to the hearing.~~

- A. The Board shall ensure that all hearings are open to the public as required by A.R.S. § 38-431 et seq.
- B. Unless otherwise provided by law, the Board shall conduct a hearing in an informal manner without adherence to the rules of evidence required in a judicial proceeding.
- C. The Board shall allow an inmate to be represented by counsel at a hearing.

ARTICLE 2. EXECUTIVE CLEMENCY ACTIONS PARDON

R5-4-201. Pardons Pardon

- A. Unless prohibited by law, an individual who ~~has been was~~ convicted of ~~a~~ an Arizona felony offense ~~in Arizona~~ may apply for a pardon ~~if the judgment of guilt or conviction has not been vacated or set aside by a court.~~
- B. To ~~request apply for~~ a pardon, an eligible individual ~~who is not an inmate~~ shall submit to the Board a completed ~~pardon application form~~ obtained from the Board. ~~The Board, at its discretion, may require the applicant to submit additional information and documents.~~
- C. In addition to the application form required under subsection (B), an applicant shall submit other information and documents that the Board requests to assist it in deciding whether to recommend a pardon.
- ~~C.D. To request a pardon, an inmate shall submit to the Department a completed pardon application obtained from the Board. The If an inmate applies for a pardon, the Board shall request that the Department shall review the application and verify whether the inmate is eligible to apply for a the pardon. The Board, at its discretion, may require the applicant to submit additional information and documents.~~

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- ~~D.E.~~ After receiving a complete application from an eligible applicant ~~has completed all application requirements~~, the Board shall schedule a hearing and ~~notify~~ provide advance written notice to the applicant ~~in writing~~ of the date and ~~time~~ location of the hearing.
- ~~E.F.~~ At the hearing, the Board shall take ~~+~~ one of the following actions:
1. Vote to deny ~~the request for recommending that the governor grant~~ a pardon and notify the applicant in writing of the Board's decision within 10 work days. ~~The applicant is not eligible to re-apply for a pardon for 3 years from the date that the pardon is denied.~~
 2. Vote to recommend ~~to that the Governor that governor grant~~ a pardon ~~be granted~~ and notify the applicant in writing of the Board's decision within 10 work days.
- ~~F.G.~~ If the Board votes to recommend a pardon, ~~Board members who voted in the affirmative~~ the Presiding Officer shall designate a Board member to prepare and send to the governor a letter of recommendation, ~~including~~ The letter of recommendation may include a statement of individual Board members' reasons for the Board's recommendation voting to recommend a pardon. ~~Letters Board members who voted not to recommend a pardon may prepare and send letters of dissent may be prepared by the dissenting Board members and sent to the governor.~~
- ~~G.H.~~ If the Board's recommendation is denied by the governor ~~denies a pardon~~, the Board shall notify the applicant ~~shall be notified in writing by the Board when the decision is known of the governor's decision within 10 work days after receiving notice of the governor's decision.~~ The applicant is not eligible to re-apply for a pardon for 3 years from the date that the pardon is denied.
- ~~I.~~ If the Board votes not to recommend a pardon for an applicant or if the governor denies a pardon, the applicant shall not apply again for a pardon for three years from the date of the Board's decision.

ARTICLE 3. RESCISSION OR REVOCATION

R5-4-301. Rescission Hearings

- A. ~~To initiate the rescission process, the~~ An officer of the Department, the Board, or any a member of the Board may initiate the rescission process by shall submit submitting to the Board a request to rescind ~~to the Board~~ a previously made release decision that:
1. ~~Alleges~~ A request to rescind may be submitted for:
 - 1.a. ~~Alleged violation of law by the~~ The inmate to be released has violated the law,
 - 2.b. ~~Alleged violation of discipline rules of the Department by the~~ The inmate to be released has violated a disciplinary rule of the Department,
 - 3.c. ~~Alleged inability of the~~ The inmate to be released is not able to meet a condition of release, or
 - 4.d. ~~The lack of accurate or complete information available to the Board~~ lacked accurate or complete information when the Board made the release decision was granted, and
 2. Includes a list of documents and items to be offered as evidence and witnesses who will be called to testify.
- B. After the Board ~~has receives~~ receives a completed request to rescind ~~that includes a list of all documents, items of evidence to be submitted, and witnesses who will be called to testify,~~ the board Board shall schedule a rescission hearing ~~unless a hearing officer designated by the Board to conduct a probable cause hearing determines there is no probable cause for the requested rescission, in which case, the request to rescind is deemed denied.~~ And The Board shall provide timely advance notice of the date and location of the rescission hearing to the inmate and the Department.
- C. The Board shall conduct the rescission hearing shall be conducted by the Board. Before the start of the rescission hearing, ~~the~~ The inmate may request that the hearing be continued for good cause. The Board may continue the hearing for good cause at any time. If the board finds that good cause exists, the board shall grant the request for continuance. Good cause includes but is not limited to:
1. ~~The inmate wants to obtain legal representation;~~
 2. ~~The inmate did not receive timely notification of the hearing; and~~
 3. ~~The inmate lacked opportunity to question adverse witnesses, supportive witnesses, or the parole officer or Department officer who initiated the request to rescind.~~
- D. At the close of the rescission hearing, the Board shall take ~~+~~ one of the following actions:
1. Find that the ~~allegations~~ allegation in the request to rescind ~~are is~~ not true, ~~and dismiss deny~~ the request to rescind, ~~The and allow to stand the~~ Board's previous decision to grant release to the inmate ~~will stand.~~
 2. Find that ~~+~~ one or more of the allegations in the request to rescind are true and void the Board's previous decision to grant release to the inmate. The Department shall continue to hold the inmate ~~shall be held in the secure custody of the Department as provided by law.~~
 3. Find that ~~+~~ one or more of the allegations in the request to rescind are true, ~~however, but allow to stand~~ the Board's previous decision to grant release to the inmate ~~to stand with or without additional conditions.~~

Notices of Final Rulemaking

R5-4-302. Revocation Hearings

- A. ~~To initiate the revocation process, An officer of the Department, the Board, or any a member of the Board shall request may initiate the revocation process by requesting that the Department issue to the Board a warrant alleging that:~~
- ~~1. Alleges an inmate violated a condition of the inmate's release; and~~
 - ~~2. Lists documents and items to be offered as evidence and witnesses who will be called to testify.~~
- B. ~~After the Department submits a executes the warrant that provides to the Board a list of all documents, items of evidence to be submitted, and witnesses who will be called to testify and it is determined there is probable cause to believe the inmate violated a condition of the inmate's release or the inmate waives a probable cause hearing, the Board shall schedule a revocation hearing. And The Board shall provide timely advance notice of the date and location of the revocation hearing to the inmate and the Department.~~
- C. ~~The Board shall conduct the revocation hearing shall be conducted by the Board. Before the start of a revocation hearing, the The inmate may request that the hearing be continued for good cause. The Board may continue the hearing for good cause at any time. If the Board finds that good cause exists, the Board shall grant the request for continuance. Good cause includes but is not limited to:~~
- ~~1. The inmate wants to obtain legal representation;~~
 - ~~2. The inmate did not receive timely notification of the hearing; and~~
 - ~~3. The inmate lacked opportunity to question adverse witnesses, supportive witnesses, or the parole officer who initiated the warrant of arrest.~~
- D. ~~At the close of the revocation hearing, the Board shall take + one of the following actions:~~
- ~~1. Find that the allegations each allegation in the warrant are is not true and direct, in writing, to that the Department that release the inmate be returned from secure custody to parole, home arrest, work furlough, or community supervision status.~~
 - ~~2. Find that one or more of the allegations in the warrant are true and revoke the inmate's release. The Department shall immediately place the inmate in secure custody and hold the inmate as provided by law.~~
 - ~~2-3. In the case of an inmate on parole, find that + one or more of the allegations in the warrant are true and revoke the inmate's release status parole but place the inmate on home arrest. The Department shall hold the inmate shall be held by the Department in secure custody pending the inmate's release on home arrest.~~
 - ~~3-4. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that + one or more of the allegations in the warrant are true but reinstate the inmate's release status with or without additional conditions.~~
 - ~~4. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that the allegations in the warrant are true and direct that the inmate's release status be revoked. The inmate shall revert immediately to secure custody and be held by the Department in that status as provided by law.~~
- E. ~~If the Board revokes an inmate's parole status under subsection (D)(2) or (D)(3) is revoked, the Board may require determine whether the circumstances merit the forfeiture of some or all street-time credits earned by the inmate while on release parole.~~