

Notices of Final Rulemaking

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

Not applicable

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

A recent statutory change provided the Board with flexibility to establish the threshold amount used to pay a Plan member's retirement benefit as a lump sum rather than a series of periodic payments. The rulemaking simply acknowledges the flexibility available to the Board. If the Board decides to increase the threshold amount, costs to the ASRS trust fund will be reduced and there will be no negative impact on the Plan member because the amount paid as a lump sum is determined using appropriate actuarial assumptions and the Plan member continues to be eligible for coverage under the ASRS health insurance program.

Currently, a Plan member receives a lump-sum payment if the periodic payment for which the member is eligible is less than \$20 per month. The \$20 threshold has been in place since 1970 when the Defined Benefit plan was created. If the \$20 threshold was adjusted for inflation since 1970, the threshold amount would be approximately \$110 today.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No changes were made between the proposed and final rule.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

No public comments were received. No one attended an oral proceeding on December 5, 2012.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law applies to retirement programs. However, there is no federal law specifically applicable to this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-126. Calculating Benefits

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-126. Calculating Benefits

A. No change

1. No change

Notices of Final Rulemaking

- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- B. No change
- C. No change
- D. No change
- E. ~~As~~ As authorized under A.R.S. § 38-764(F), if the life annuity of any Plan member is less than \$20 per month a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using ~~the~~ appropriate actuarial assumptions ~~in R2-8-123~~.
- F. No change
- G. No change
- H. No change

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 373.)

[R13-23]

PREAMBLE

1. **Article, Part, and Section Affected (as applicable)** **Rulemaking Action**

R4-11-101	Amend
R4-11-1501	Amend
R4-11-1502	Amend
R4-11-1503	Amend
R4-11-1504	Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 32-1207(A)(1), (3), (9), (10), and (11) and 32-1207(C)(2), (3), (4), and (5)

Implementing statute: A.R.S. §§ 32-1263, 32-1263.01, 32-1263.02, 32-1263.03 and 32-1299.26
3. **The effective date of the rule:**

April 6, 2013
4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 1147, May 18, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 1376, June 22, 2012

Notice of Supplemental Proposed Rulemaking: 18 A.A.R. 2595, October 19, 2012
5. **The agency's contact person who can answer questions about the rulemaking:**

Name:	Elaine Hugunin, Executive Director
Address:	State Board of Dental Examiners 4205 N. 7th Ave., Suite 300 Phoenix, AZ 85013
Telephone:	(602) 242-1492
Fax:	(602) 242-1445
E-mail:	elaine.hugunin@azdentalboard.us
Web site:	http://azdentalboard.us/
6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Notices of Final Rulemaking

HB 2554 enacted July 20, 2011, significantly changed the Arizona State Board of Dental Examiners complaint investigation process. A.R.S. § 32-1263.02 was repealed and replaced with a new section entitled *Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions*. The repeal of A.R.S. § 32-1263.02 did away with investigative interviews, informal interviews, mediation, and triage; those processes were replaced by investigation by an investigative team, utilizing outside dental consultants with the team making recommendations to the Board for non-disciplinary continuing education, non-disciplinary letters of concern, disciplinary consent agreements or formal interviews conducted by the Board. Since, by statute, the processes and terms of investigation changed, the Board finds it necessary to amend Article 15 to support the changes.

Further, HB 2233, also enacted July 20, 2011, added Article 8, *Mobile Dental Facilities*, to Title 32, Chapter 11. Complaints may be filed against Mobile Dental Facilities, therefore Mobile Dental Facilities will be added to appropriate sections of Article 15.

The rulemaking will amend R4-11-101, *Definitions*, to remove the definitions for “investigative interview,” “informal interview,” “representative,” and “triage,” that are no longer needed due to the statutory changes made by HB 2554.

The rulemaking will amend the title of R4-11-1502 to *Dental Consultant Qualifications* and make necessary changes to reflect the changes in statute that require the Board to use Dental Consultants instead of Complaint Investigators. The proposed changes to R4-11-1502 will require Dental Consultants be approved by the Board.

The rulemaking will amend R4-11-1503 to incorporate the statutory changes dealing with the complaint receipt and notification process and the clinical evaluation process in HB 2554.

The rulemaking will amend the title of R4-11-1504 to *Postponement of Formal Interview* and make necessary changes to reflect the changes in statute that require the Board to use a formal interview process. The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor’s Regulatory Review Council.

The Board believes that approval of these rules will benefit the public health and safety by clearly establishing the Board's complaint investigation process.

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 rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review or rely on any study relevant to the rule.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking 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 amended rules will impact the Board, licensees, certificate holders, business entities, mobile dental permit holders, and the public. The amended rules' impact on the Board will be the usual rulemaking-related costs, which are minimal.

The rulemaking will decrease established Board of Dental Examiner’s procedures and office-related costs. The impact on the Board is minimal. Paperwork and caseload will decrease, which may result in less preparation time and shorter Board meetings.

The impact on the licensees, certificate holders, business entities and mobile dental permit holders is also minimal. The statutory changes eliminated investigative interviews and triage, which may increase the licensee’s productivity as the rules eliminate some travel time and time at the Board. Licensees may be able to dedicate more time to seeing patients and practicing dentistry.

The impact on the consultants is also minimal. Their productivity will increase, as they will not be required to appear at the Board offices as often.

The impact of the rules to the public is minimal, both for attorneys and complainants. Time spent at the Board will be less.

The Board believes that approval of these rules will benefit the public health and safety by clearly establishing the Board's complaint investigation process.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

There are no substantial changes in the final rules from the proposed rules. There are minor changes to style, format, grammar, and punctuation requested by GRRC staff.

11. An agency’s summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

A public hearing on the Notice of Proposed Rulemaking was held July 9, 2012. No one attended the public hearing and no written or oral comments were received. A public hearing on the Notice of Supplemental Proposed Rulemak-

Notices of Final Rulemaking

ing was held on November 26, 2012. No one attended the public hearing and no written or oral comments were received.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

Section

R4-11-1501. Ex-parte Communication

R4-11-1502. ~~Complaint Investigator~~ Dental Consultant Qualifications

R4-11-1503. Initial Complaint Review

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

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

“Anxiolysis” means the reduction or elimination of anxiety.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(H).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

Notices of Final Rulemaking

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Combination inhalation and enteral conscious sedation” is conscious sedation induced by the administration of nitrous oxide and oxygen in combination with one or more enteral drugs or non-drug substances.

“Conscious sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a drug or non-drug method or a combination of both methods.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” has the same meaning as “semi-conscious sedation”.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(6).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

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

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

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

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

“Documentation of attendance” means documents that contain the following information:

- Name of sponsoring entity;
- Course title;
- Number of credit hours;
- Name of speaker; and
- Date, time, and location of the course.

“Drug” means:

- Articles recognized, or for which standards or specifications are prescribed, in the official compendium;
- Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
- Articles other than food intended to affect the structure of any function of the human body; or
- Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

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

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

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

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains

responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

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

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

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

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Nitrous oxide analgesia” means nitrous oxide (N₂O/O₂) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

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

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

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

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

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

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

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

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

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

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

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

Notices of Final Rulemaking

the consumer; or

Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "RX Only."
"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

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

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(17), recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or recognized denturist school as defined in A.R.S. § 32-1201(18), or sponsored by a national or state dental, dental hygiene, or denturist association, dental, dental hygiene, or denturist study club, governmental agency, or commercial dental supplier.

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

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and semi-conscious sedation under Article 13.

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

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

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

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

"Triage" means a review during which investigators examine a complaint, the licensee's response, and dental records to form a recommended disposition for presentation to the full Board.

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, ~~or business entity~~ or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

R4-11-1502. ~~Complaint Investigator~~ Dental Consultant Qualifications

A dentist, dental hygienist, or denturist ~~appointed~~ approved as a Board ~~investigator~~ dental consultant shall:

1. Possess a valid license, ~~restricted permit,~~ or certificate to practice in Arizona;
2. Have practiced at least five years ~~of practice~~ in Arizona; and
3. Not have been disciplined by the Board within the past ~~24 months~~ five years.

R4-11-1503. Initial Complaint Review

~~A. The president's designee shall initially review a complaint. If the designee determines that the Board has no jurisdiction, the designee shall forward the complaint to the Board for termination.~~

~~B.A. If the designee determines that the Board has jurisdiction~~ The Board's procedures for complaint notification are:

1. Board personnel shall notify the complainant and licensee, certificate holder, ~~or business entity~~ or mobile dental permit holder as follows:
 - a. ~~By regular U.S. Mail that the complaint has been received and whether a clinical evaluation will be scheduled;~~
and

Notices of Final Rulemaking

- b. ~~By~~ by certified U.S. Mail when the following occurs:
 - a. ~~of an informal~~ A formal interview is scheduled, investigative interview, or mediation, if the
 - b. ~~The complaint has been is~~ tabled or remanded,
 - c. ~~of a~~ A postponement or continuance is granted, and
 - d. ~~a~~ A subpoena, notice, or order is issued.
- 2. ~~The president's designee shall refer the complaint to an informal interview, investigative interview, triage or mediation. Where the allegations, if proven, may result in suspension or revocation of license or certificate, the complaint shall be referred to an informal interview. All other complaints shall be referred to investigative interview, triage, or mediation.~~
- 3. ~~The Board may subpoena a patient's treatment records from the licensee, certificate holder, business entity, or any other health care provider.~~
- 4.2. ~~Board personnel shall provide the licensee, certificate holder, or business entity,~~ or mobile dental permit holder with a copy of the complaint ~~upon receipt of the treatment records.~~
- 5.3. ~~If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.~~
- 6. ~~If during the course of investigating a complaint, but before triage, investigative interview or informal interview, it appears the evidence does not support the allegations contained in the complaint, the president's designee shall forward the complaint to the Board for termination.~~
- ~~C.B.~~ The Board's procedures for complaints referred to clinical evaluation are:
 - 1. Except as provided in subsection ~~(C)(B)~~(1)(a), the president's designee shall appoint one or more ~~dentists~~ dental consultants to perform a clinical evaluation. If there is more than one ~~clinical evaluator~~ dental consultant, the ~~clinical evaluators~~ dental consultants do not need to be present at the same time. ~~The Board shall approve each clinical evaluator.~~
 - a. If the complaint involves a dental hygienist, dentist, or dentist who is a recognized specialist in one of the areas listed in ~~R4-11-1101(B)~~ R4-11-1102(B), the president's designee shall appoint a ~~clinical evaluator~~ dental consultant from that area of practice or specialty.
 - b. The Board shall not disclose the identity of the licensee to a ~~clinical evaluator~~ dental consultant performing a clinical examination before the Board receives the ~~clinical evaluator's~~ dental consultant's report.
 - 2. The ~~clinical evaluator~~ dental consultant shall prepare and submit a clinical evaluation report ~~for the informal or investigative interview or Board meeting.~~ The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report ~~before the informal or investigative interview or Board meeting.~~
- ~~D.~~ The Board's procedures for investigative and informal interviews are as follows:
 - 1. ~~Board personnel shall provide the complainant and licensee, certificate holder, or business entity with written notice of the time and date of the investigative interview or informal interview. The notice shall include all allegations contained in the complaint and any allegation that arose during the Board's investigation before the notice date.~~
 - 2. ~~The Board's president or the president's designee may schedule an informal interview with a licensee, certificate holder, or business entity. The Board president or president's designee:~~
 - a. ~~May appoint one or more Board members to act as an informal interviewing officer; or~~
 - b. ~~May appoint a Board approved investigator to assist the informal interviewing officer; and~~
 - e. ~~If the licensee or certificate holder is a dental hygienist, dentist, or recognized dental specialist in one of the areas listed in R4-11-1102(B), shall appoint one investigator or Board member from the relevant area of practice or specialty to assist the informal interviewing officer.~~
 - 3. ~~If a complaint is referred for an investigative interview, the president's designee shall appoint an investigator or an investigative panel, consisting of at least one dentist and one public member to conduct the investigative interview. One panel member, who is not a public member, shall serve as the chairperson. If the licensee or certificate holder is a dental hygienist, dentist, or a recognized dental specialist in one of the areas listed in R4-11-1102(B), at least one investigator shall be from that area of practice or specialty.~~
 - 4. ~~The licensee or certificate holder may agree to waive the requirements in this Section regarding appointment of a licensee or certificate holder from a specific practice area or specialty. The complainant, licensee, certificate holder, or business entity may agree to waive the requirements in this Section regarding the appointment of a public member.~~
 - 5. ~~The complainant, licensee, certificate holder, or business entity and any witness present at the informal interview or investigative interview may be questioned by the informal interviewing officer, investigators, or investigative interview panel. The counsel representing the complainant, licensee, certificate holder, or business entity or the complainant, licensee, certificate holder or business entity shall direct questions to any other participant in the informal interview or investigative interview through the chairperson of the investigative interview panel or informal interviewing officer. Following the presentation of all testimony and evidence, the complainant, licensee, certificate holder, or business entity, or a representative may make a closing statement.~~
 - 6. ~~The informal interviewing officer, investigator, or investigative interview panel shall develop findings of fact, conclu-~~

Notices of Final Rulemaking

sions of law, and a recommendation for disposition of the complaint based on the treatment records, clinical evaluation observations and documentation, testimony of the complainant and licensee, certificate holder, or business entity, and any other witnesses or relevant documents.

7. Board personnel shall prepare a written report of the investigative or informal interview from the recording of the interview and the informal interviewing officer's or investigator's or investigative interview panel's written findings of fact, conclusions of law, and recommendation.

8. Board personnel shall record all informal and investigative interviews mechanically or stenographically.

E. The Board's procedures for triage are as follows:

1. Board personnel shall provide the licensee, certificate holder, or business entity an opportunity to respond to the complaint in writing.

2. If the complaint is forwarded for triage, the president's designee shall appoint investigators for triage consisting of at least one dentist and either one licensee or certificate holder to conduct a review of the complaint, written response from the licensee, certificate holder, or business entity, and records.

3. The triage panel may develop recommendations for termination for lack of supporting evidence, issuance of a letter of concern, further investigation, or discipline, in cases involving non-compliance with a subpoena or Board order.

4. Board personnel shall prepare a written report of the triage panel findings and recommendations and forward to the Board for action. A Board shall provide a copy by certified mail to the licensee, certificate holder, or business entity.

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

A. The ~~complainant, licensee, certificate holder, or business entity, or mobile dental permit holder~~ may request a postponement of ~~an investigative or informal~~ a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if:

1. ~~The complainant, the licensee, certificate holder, or business entity, or mobile dental permit holder~~ makes ~~an initial~~ a postponement request and the request:

~~a.1.~~ Is made in writing,

~~b.2.~~ States the reason for the postponement, and

~~e.3.~~ Is received by the Board ~~at least ten~~ within 15 calendar days ~~before~~ after the date ~~of the respondent received the~~ investigative or informal formal interview request, not including the day of the interview; and,

2. A subsequent postponement request:

a. ~~Complies with subsection(1)(a),(b), and (c); and~~

b. ~~Demonstrates good cause for the postponement.~~

B. Within ~~24~~ 48 hours of receipt of a request for postponement of ~~an investigative or informal~~ a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and

2. Notify in writing the complainant and licensee, certificate holder, ~~or business entity, or mobile dental permit holder~~ of the decision to either deny or approve the request for postponement.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 373.)

[R13-26]

PREAMBLE

1. Articles, Parts, or Sections Affected (as applicable)

Rulemaking Action

R4-11-101

Amend

R4-11-1301

Amend

R4-11-1302

Amend

R4-11-1303

Amend

R4-11-1304

Repeal

R4-11-1304

New Section

R4-11-1305

Repeal

R4-11-1305

New Section

R4-11-1306

Amend

R4-11-1307

New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the imple-

Notices of Final Rulemaking

menting statute (specific):

Authorizing statute: A.R.S. § 32-1207(A)(1) and (14)

Implementing statute: A.R.S. § 32-1207(B)(3)(b) and (E)

3. The effective date of the rule:

April 6, 2013

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 18 A.A.R. 1146, May 18, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2288, September 21, 2012

5. The agency's contact person who can answer questions about the rulemaking:

Name: Elaine Hugunin, Executive Director

Address: State Board of Dental Examiners
4205 N. 7th Ave., Suite 300
Phoenix, AZ 85013

Telephone: (602) 242-1492

Fax: (602) 242-1445

E-mail: elaine.hugunin@azdentalboard.us

Web site: www.azdentalboard.us

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

In October 2008 the Board reviewed the Draft Proposed Rules for Article 13 presented by the Anesthesia Committee. The Board voted to proceed with the rulemaking process through the Governor's Regulatory Review Council (GRRC). Before the docket could be opened with the Secretary of State, the Governor issued an Executive Order mandating a rulemaking moratorium. In 2011 a new Executive Order was issued and was interpreted to exempt 90/10 Agencies from the Order. Since the draft proposed rules were three years old, the Anesthesia Committee met to review the draft. The Board approved the staff to move forward with a docket opening on the draft proposed rules presented by the Anesthesia Committee.

The rulemaking includes the following changes to Article 1 and Article 13:

- Update definitions to be consistent with the American Dental Association, American Academy of Pediatric Dentistry and American Association of Oral and Maxillofacial Surgeons.
- Add oral examination over medical emergencies language, which was inadvertently left out of the original 2003 language.
- Add language to address onsite evaluation failures.
- Add language to define a mobile permit for Section 1301, 1302 and 1303.
- Add language to require a new infusion line and new fluid bag for each patient.
- Add language to require the utilization of supplemental oxygen and monitoring of the patient from the initiation of anesthesia until stabilization at all permit levels.
- Remove language from Section 1301 which allowed a general dentist to obtain a Section 1301 permit to work with a physician anesthesiologist and created a new permit level, Section 1304 specifically for those who want to employ a physician anesthesiologist or certified registered nurse anesthetist (CRNA). This new permit acts more like a facility permit.
- Amend language to allow current Section 1301, 1302, or 1303 permit holders to employ a certified registered nurse anesthetist (CRNA).
- Add language creating more education pathways for Section 1301, 1302 and 1303 applicants.
- Amend language to change the permit renewal period from three to five years.
- Amend language to change the number of evaluators to two evaluators for initial evaluations, one evaluator for renewal evaluations, two evaluators for subsequent evaluations and evaluation failures.

The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that approval of these rules will benefit the public health and safety by clarifying the anesthesia/sedation rules while continuing to ensure the education training, and monitoring of dental practitioners.

Notices of Final Rulemaking

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 agency did not review or rely on any study relevant to the rule.

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

Not applicable

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

The proposed rules will impact the Board, licensees, business entities, and the public.

The rule's impact on established Board of Dental Examiner's procedures and office-related costs is a decrease in costs. The current rules require Section 1302 and Section 1303 permit holders who employ a physician anesthesiologist to obtain a Section 1301 permit. The amended rules allow Section 1302 and Section 1303 permit holders to employ a physician anesthesiologist without obtaining a second permit. Currently there are 34 Section 1302 and Section 1303 permit holders who also hold a Section 1301 to employ a physician anesthesiologist. The rules will eliminate the requirement for a second permit, thus decreasing office related costs to the Board and decreasing revenue by \$3,060 (\$306 to the General Fund) annually. The rules increase the renewal period from three to five years without a fee increase. This decreases the cost to permit holders from \$100 per year to \$60 per year. The impact to the Board is a \$17,460 (\$1,746 to the General Fund) decrease in revenue each year. The rules net economic impact for the Board is moderate.

The rule's impact on the licensee will eliminate the requirement for a second permit, resulting in the elimination of the \$300 fee for the 34 licensees currently holding two permits. Further, the administrative cost and loss of productivity during the onsite evaluation will decrease for the licensee. The rules increase the renewal period from three to five years without a fee increase. This decreases the cost to permit holders from \$100 per year to \$60 per year. Over the years, the number of Anesthesia/Sedation permit holders has increased, which means onsite evaluations have increased. Manpower to complete onsite evaluations has become a problem. Most onsite evaluators volunteer their services; they take time away from their practices to perform the evaluations. The rules reduce the number of required evaluators to one evaluator for renewal onsite evaluations. This doubles the pool of evaluators, and reduces the number of evaluations completed by each evaluator thereby decreasing their loss of productivity. The rules place a new requirement for using a new infusion line and new fluid bag for each patient, which increases costs to those licensees who reuse infusion lines and fluid bags. Standard of care dictates these items are one-time use, disposable items. The licensee must absorb the cost. The rules net economic impact for the licensee is minimal.

The rule's impact on Business Entities will be the same as a licensee, if the business entity pays the fees on behalf of a licensee.

There will be no impact on physician anesthesiologists or certified registered nurse anesthetists (CRNA) employed by licensees.

The rule's impact on the public could be decreased cost for anesthesia/sedation services, because of the decreased permit costs to the licensee, if licensees pass the cost savings on to patients.

The Board, licensees, business entities, and the public benefit from rules that are clear, concise, and understandable. The rules benefit the public health and safety by clarifying the anesthesia/sedation rules while continuing to ensure the education, training, and monitoring of dental practitioners.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

There are no substantial changes in the final rules from the proposed rules. To reduce the duplicative language in Sections R4-11-1302(I), R4-11-1303(H), and R4-11-1304(A)(1), the language in those subsections was changed to site the language in R4-11-1301(I). Other changes to style, format, grammar, and punctuation were made as requested by GRRC staff.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

A public hearing was held October 22, 2012. The Board received one oral comment at the hearing from Jeff Mazzarella representing Valley Anesthesiology Consultants and three written comments from Rodney Moffett, President of the Arizona Association of Nurse Anesthetists, Donald R. Hoaglin, DDS, and Daniel J. Klemmedson, DDS, MD.

Mr. Mazzarella's oral comments, on October 22, 2012, concern Certified Registered Nurse Anesthetists (CRNAs) working under the direction of a dentist. Mr. Mazzarella feels that the concept of a proceduralist being able to supervise a CRNA is flawed in that it could distract from the actual procedure being performed. So, in the case of a dentist, performing a procedure on a pediatric patient, he believes it is a better model for the patient and the patient's family to have a board certified anesthesiologist, hopefully or preferably, even pediatric fellowship trained, be solely responsible for the administration of the anesthesia in the case. Furthermore, Mr. Mazzarella believes it is important that a registered nurse actually supervise the recovery of that patient, so they can go home safe.

The agency response by Executive Director, Elaine Hugunin stated that the agency understands that Valley Anesthesiology Consultants works under a supervised model, with, typically, one anesthesiologist to two or three CRNAs. At a meeting held on April 13, 2012, the Board approved Anesthesia Committee recommendations for Section 1303 and 1304 permit holders to employ CRNAs to provide services under the direction and in the presence of a physician anesthesiologist. The language was challenged by the CRNAs based on a conflict between the Nursing Board Statutes and the proposed rules. The Board, at its June 1, 2012 meeting, directed staff to meet with stakeholders to discuss the issue. A stakeholder meeting was held on July 18, 2012, and the issue came back before the Board at their August 3, 2012 meeting with suggested language changes, which the Board approved and are included in the proposed rules.

Rodney Moffett, President of The Arizona Association of Nurse Anesthetists sent written comments, dated August 9, 2012 and October 22, 2012, voicing support of the proposed rulemaking. The agency responded in both cases to thank Mr. Moffett for his comments.

Dr. Donald R. Hoaglin's comments, dated September 27, 2011, asked the Board to review and adapt the definition of "analgesia" in R4-11-101, because he believes the definition is incorrect. Dr. Hoaglin comments also state that he believes the 1304 permit should be eliminated. Dr. Hoaglin believes that a dentist should be trained in anesthesia and perform such anesthesia and not use an outside provider to perform anesthesia unless the dentist is also trained to perform such anesthesia. Dr. Hoaglin also believes that the Board should have a provision that requires the Board to refer any incidents of gross incompetence resulting in severe injury or death to the appropriate law enforcement authority for appropriate criminal investigation.

The agency response by Executive Director, Elaine Hugunin thanked Dr. Hoaglin for his comments. Regarding Dr. Hoaglin's comment about the definition of "analgesia" in R4-11-101, Ms. Hugunin states that R4-11-101 Definitions contains the definitions for every Article 1 through 18 in A.A.C. Title 4, Chapter 11. The word analgesia appears in A.A.C. R4-11-601(C), R4-11-601(C)(1)(j), R4-11-607(B)(2), R4-11-701(A)(10) and (11), and R4-11-1301(B)(2)(a)(i). The Anesthesia Committee recommended and the Board voted to delete R4-11-1301(B)(2)(a)(i) which deletes the only instance of the word analgesia in Article 13. The scope of the Anesthesia Committee was to review and make recommendations regarding Article 13 General Anesthesia and Sedation and related definitions in Article 1 Definitions. Since "analgesia" no longer appears in Article 13, but does appear in A.A.C. Title 4, Chapter 11 in five other instances in other articles in the chapter, it was not in the Anesthesia Committee's scope to recommend amendment of the definition of "analgesia." Dr. Hoaglin's comment on the definition of "analgesia" will be retained for consideration when the related Articles are opened for review.

Regarding Dr. Hoaglin's comments regarding Section 1304 permits, the proposed 1304 permit exists today in Section 1301. A general dentist may obtain a Section 1301 General Anesthesia Permit to employ or work with a physician anesthesiologist. The general dentist is not required to have anesthesia or sedation training. One of the problems the Anesthesia Committee identified with a non-educationally qualified dentist holding a Section 1301 permit is that once the permit is granted, the permit affords the dentist all aspects of Section 1301, which includes administering general anesthesia. Today and for many years, non-educationally qualified general dentists have obtained Section 1301 permits to employ a physician anesthesiologist, and once holding the permit work with CRNAs. The Board agreed with the Anesthesia Committee's recommendation to separate the non-educationally qualified permit holder from Section 1301 and create a Section 1304 permit specifically for the non-educationally qualified dentists. Remember that physicians are regulated by the Medical and Osteopathic Boards and CRNAs by the Nursing Board. Furthermore, there is nothing to prevent physician anesthesiologists or CRNAs from practicing in dental offices. The Anesthesia Committee recommended and the Board approved language to ensure the Board has regulatory authority over the dental offices where physician anesthesiologists and CRNAs are administering anesthesia or sedation.

With respect to Dr. Hoaglin's comments regarding hiring of "outside" anesthesia providers, on April 13, 2012 the Board voted to approve the Anesthesia Committee's recommended language to allow 1301 and 1302 permit holders to employ and work with physician anesthesiologists to administer general anesthesia, deep sedation, or parenteral sedation and CRNAs to administer to the level of the permit and with the 1303 and 1304 permit holders to work with physician anesthesiologists to administer any level of anesthesia or sedation and CRNAs working under the direction of a physician anesthesiologist. The language was challenged by CRNAs based on a conflict between the Nursing Board statutes and the proposed rules. At its June 1, 2012 meeting, the Board directed staff to meet with stakeholders to discuss the issue. A stakeholder meeting was held July 18, 2012, and the issue came back before the Board on August 3, 2012 with suggested language changes, which the Board adopted into the final rules.

With respect to Dr. Hoaglin's comments regarding adverse events. There is an existing rule in Chapter 11 regarding referral of cases in appropriate circumstances. A.A.C. R4-11-1501(B)(5) states, "If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency." Therefore, there is no need to add language to Article 13.

Dr. Daniel J. Klemmedson's comments, dated October 5, 2012, asked the Board to not require supplemental oxygen for all patients and all levels of anesthesia. Dr. Klemmedson believes there are many instances when oxygenation of a patient is contraindicated, and the provider should have the ability to choose not to oxygenate. Dr. Klemmedson further comments regarding the PALS requirement for all permits that treat pediatric patients, that he could find no definition for "pediatrics."

Notices of Final Rulemaking

The agency response by Executive Director, Elaine Hugunin thanked Dr. Klemmedson for his comments. With respect to comment 1) regarding the requirement to utilize supplemental oxygen and monitor the patient from initiation of anesthesia until stabilization at all permit levels, the Board has been working on the anesthesia rules since 2006. The Anesthesia Committee added the requirement of supplemental oxygen at one of its first meetings. The Anesthesia Committee first discussed adding supplemental oxygen to the list of properly operating equipment only, but was concerned that permit holders would only have the equipment and not use it. The Anesthesia Committee discussed and added the language as it exists in these final rules at a recent meeting, and at that meeting discussed supplemental oxygen delivery to challenging pediatric patients. The Anesthesia Committee and the Board agreed that if supplemental oxygen was immediately available, and if the provider documented why oxygen was not delivered, the requirement is met. With respect to comment 2) regarding the definition of "pediatric," the Anesthesia Committee had a lengthy discussion on how to define "pediatric" and concluded that the dictionary definition is sufficient. The addition of PALS was at the request of the Section 1303 permit holders. The current requirement is for basic CPR. Dentists with a pediatric specialty had completed PALS and asked for PALS to be an option instead of basic CPR. To be consistent, the Anesthesia Committee added an alternate pathway not only to Section 1301, but all permit levels. Please note the final language states in R4-1303(B)(5) "Provide confirmation of completing coursework within two years prior to submitting the permit application in one or more of the following." The courses are listed, including basic CPR and PALS. A permit holder will not be required to take more than one course.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

A general permit is not used. The rule requires a specific permit as established in A.R.S. § 32-1207(E). However, the permit required by statute arguably falls within the definition of general permit in A.R.S. section 41-1001.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

Section

R4-11-1301. General Anesthesia and ~~Semi-conscious~~ Deep Sedation

R4-11-1302. ~~Conscious~~ Parenteral Sedation

R4-11-1303. Oral ~~Conscious~~ Sedation

R4-11-1304. ~~Reports of Adverse Occurrences~~ Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

R4-11-1305. ~~Education~~ Reports of Adverse Occurrences

R4-11-1306. ~~Renewal of Permit~~ Education; Continued Competency

R4-11-1307. Renewal of Permit

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

~~“Anxiolysis” means the reduction or elimination of anxiety.~~

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(H).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

~~“Combination inhalation and enteral conscious sedation” is conscious sedation induced by the administration of nitrous oxide and oxygen in combination with one or more enteral drugs or non-drug substances.~~

~~“Conscious sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a drug or non-drug method or a combination of both methods.~~

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

~~“Deep sedation” has the same meaning as “semi-conscious sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.~~

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(6).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

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

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

“Documentation of attendance” means documents that contain the following information:

- Name of sponsoring entity;
- Course title;
- Number of credit hours;
- Name of speaker; and
- Date, time, and location of the course.

“Drug” means:

- Articles recognized, or for which standards or specifications are prescribed, in the official compendium;
- Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
- Articles other than food intended to affect the structure or any function of the human body; or
- Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

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

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice)

Notices of Final Rulemaking

along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

~~“General anesthesia” is a state of unconsciousness accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway and to respond appropriately to physical stimulation or verbal command, that is induced by a drug or non-drug method or a combination of both methods.~~ drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

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

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

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

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N₂O/O₂) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

~~“Nurse anesthetist” means a licensed nurse with special training in all phases of anesthesia.~~

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

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

~~“Oral conscious sedation” is conscious sedation induced by an enterally administered~~ the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance on an outpatient basis in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

- “Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- “Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.
- “Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.
- “Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.
- “Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.
- “Prescription-only device” means:
- Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
 - Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”
- “Prescription-only drug” does not include a controlled substance but does include:
- Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
 - Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;
 - Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
 - Any drug, other than a controlled substance, required by the federal act to bear on its label the legend “Rx Only.”
- “President's designee” means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.
- “Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.
- “Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.
- “Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.
- “Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(17), recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or recognized denturist school as defined in A.R.S. § 32-1201(18), or sponsored by a national or state dental, dental hygiene, or denturist association, dental, dental hygiene, or denturist study club, governmental agency, or commercial dental supplier.
- “Representative” means, for purposes of Article 15 only, a person recognized by the Board as authorized to act on behalf of a complainant or a party in proceedings governed by this Chapter.
- “Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.
- “Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.
- “Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.
- “Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.
- “Section 1301 permit” means a permit to administer general anesthesia and ~~semi-conscious deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA)~~ under Article 13.
- “Section 1302 permit” means a permit to administer ~~conscious parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA)~~ under Article 13.
- “Section 1303 permit” means a permit to administer oral ~~conscious sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA)~~ under Article 13.
- “Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.
- ~~“Semi-conscious sedation” means use of drug or non-drug methods, or a combination of the two methods, to induce a state of depressed consciousness accompanied by partial loss of protective reflexes, and the inability to continually maintain an airway independently or respond appropriately to physical stimulation or verbal command.~~
- “Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written

Notices of Final Rulemaking

course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

“Triage” means a review during which investigators examine a complaint, the licensee’s response, and dental records to form a recommended disposition for presentation to the full Board.

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and ~~Semi-conscious Deep~~ Sedation

A. Before ~~inducing~~ administering general anesthesia by any means, or ~~semi-conscious deep~~ sedation by ~~intravenous or intramuscular~~ any means, on an outpatient basis in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. ~~A~~ The dentist may renew a Section 1301 permit every three five years by complying with R4-11-1306 R4-11-1307.

B. To obtain or renew a Section 1301 permit, a dentist shall:

1. Submit a completed application on a form ~~supplied~~ provided by the Board office that, in addition to the requirements of subsections (B)(2) and ~~(B)(3) (3)~~, and ~~R4-11-1306 R4-11-1307~~, includes:

a. General information about the applicant such as:

- i. Name;
- ii. Home and office addresses and telephone numbers;
- iii. Limitations of practice;
- iv. Hospital affiliations;
- v. Denial, curtailment, revocation, or suspension of hospital privileges;
- vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
- vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that ~~a facility~~ any office or dental clinic where the dentist will administer general anesthesia or ~~semi-conscious deep~~ sedation:

a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:

- ~~i.~~ Anesthesia or analgesia machine;
- ~~ii.~~ Emergency drugs;
- ~~iii.~~ ii. Electrocardiograph monitor;
- ~~iv.~~ iii. Pulse oximeter;
- ~~v.~~ iv. Cardiac defibrillator or automated external defibrillator (AED);
- ~~vi.~~ v. Positive pressure oxygen and supplemental oxygen;
- ~~vii.~~ vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
- ~~viii.~~ vii. Laryngoscope, and multiple blades, backup batteries, and backup bulbs;
- ~~ix.~~ viii. Endotracheal tubes and appropriate connectors;
- ~~x.~~ ix. Magill forceps;
- ~~xi.~~ x. Oral Oropharyngeal and nasopharyngeal airways;
- xi. Auxiliary lighting;
- xii. Stethoscope; and
- xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or ~~semi-conscious deep~~ sedation shall hold a current ~~certificate~~ course completion confirmation in basic cardiopulmonary resuscitation (CPR) Health Care Provider Level;

3. Hold a valid license to practice dentistry in this state;

4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and

5. ~~Hold a current certificate from the American Heart Association or the American Red Cross in advanced cardiac life support (ACLS); and Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:~~

- a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
- b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
- c. A recognized continuing education course in advanced airway management.

Notices of Final Rulemaking

~~6.C.~~ Meet Initial applicants shall meet one or more of the following conditions:

- ~~a.1.~~ Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in ~~R4-11-1305(A)~~ R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
- ~~b.2.~~ Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, ~~or~~ a Fellow of the American Dental Society of Anesthesiology, ~~or eligible for examination by the American Dental Society of Anesthesiology~~ a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; ~~or~~
- ~~e.3.~~ Employ or work with a licensed allopathic or osteopathic physician who is a member of the anesthesiology staff of an accredited hospital in this state and ensure that the anesthesiologist remains on the dental facility premises until any patient given general anesthetic or semi-conscious sedation regains consciousness and is discharged. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
 - ~~a.~~ On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
 - ~~b.~~ A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and
 - ~~c.~~ On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

~~6.D.~~ After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the dentist applicant shall schedule an onsite evaluation by the Board during which the dentist applicant shall administer general anesthesia and or semi-conscious deep sedation. After a dentist the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the dentist a Section 1301 permit shall be issued to the applicant.

- 1. The onsite evaluation team shall consist of:
 - ~~a. two~~ Two dentists who are Board members, or Board designees for initial applications; or
 - ~~b. One dentist who is a Board member or Board designee for renewal applications.~~
- 2. The onsite ~~evaluation~~ team shall ~~look for~~ evaluate the following:
 - ~~a.~~ The availability of equipment and personnel as specified in subsection (B)(2);
 - ~~b.~~ Proper administration of general anesthesia or ~~parenteral semi-conscious~~ deep sedation to a patient by the dentist applicant in the presence of the evaluation team;
 - ~~c.~~ Successful responses by the dentist applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - ~~d.~~ Proper documentation of controlled substances, that includes a perpetual inventory log showing the ~~receiving receipt, administering administration,~~ dispensing, and ~~destroying~~ destruction of controlled substances; and
 - ~~e.~~ Proper recordkeeping as specified in subsection ~~(D)~~(E) by reviewing the records generated for the patient specified in subsection ~~(C)(1)(b); (D)(2)(b); and~~
 - ~~f.~~ For renewal applicants, records supporting continued competency as specified in R4-11-1306.
- ~~2.3.~~ The evaluation of a subsequent facility in which general anesthesia or semi-conscious sedation is administered by a dentist who possesses a Section 1301 permit may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (C)(1)(a) team shall recommend one of the following:
 - ~~a.~~ Pass. Successful completion of the onsite evaluation;
 - ~~b.~~ Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - ~~c.~~ Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - ~~d.~~ Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - ~~e.~~ Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
- 4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is

Notices of Final Rulemaking

administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
 - b. Compliance with subsection (B)(2)(b).

~~D.E.~~ A dentist Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia and semi-conscious deep sedation administered procedure that:

1. ~~Includes~~ includes the following entries:
 - a.1. Pre-operative and post-operative electrocardiograph reports documentation;
 - b.2. Pre-operative, post-operative, and intra-operative, and post-operative pulse oximeter readings documentation;
 - e.3. Pre-operative, and post-operative intra-operative, and post-operative blood pressure and vital signs sign documentation;
 - d. Intra-operative blood pressures; and
 - e.4. A list of all medications given, with dosage and time intervals, and route and site of administration; and
2. ~~May include the following entries:~~
 - a. ~~Route and site of administration;~~
 - b.5. Type of catheter or portal with gauge;
 - e.6. Indicate nothing by mouth or time of last intake of food or water;
 - d.7. Consent form; and
 - e.8. Time of discharge and status, including name of escort.

~~E.F.~~ A dentist who obtains a Section 1301 permit may employ a nurse anesthetist to administer general anesthesia or semi-conscious sedation under the dentist's direct supervision. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

~~F.G.~~ The Section 1301 permit holder A dentist who obtains a Section 1301 permit may also induce conscious sedation without obtaining a Section 1302 permit shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.

H. The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

R4-11-1302. Conscious Parenteral Sedation

~~A.~~ A dentist who possesses a Section 1301 permit may also induce conscious sedation. Before inducing administering conscious parenteral sedation by intravenous or intramuscular means on an outpatient basis in a dental office or dental clinic, a dentist who does not possess a Section 1301 permit shall possess a Section 1302 permit issued by the Board. A The dentist may renew a Section 1302 permit every three five years by complying with R4-11-1306 R4-11-1307.

1. A Section 1301 permit holder may also administer parenteral sedation.
2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:

1. Submit a completed application on a form supplied provided by the Board office that, in addition to the requirements of subsections (B)(2) and (B)(3) (3) and R4-11-1306 R4-11-1307, includes:
 - a. General information about the applicant such as:

Notices of Final Rulemaking

- i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that ~~a facility~~ any dental office or dental clinic where the dentist will administer ~~conscious parenteral~~ sedation by intravenous or intramuscular route:
 - a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):
 - i. Emergency drugs;
 - ii. Positive pressure oxygen and supplemental oxygen;
 - iii. Stethoscope;
 - iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - v. ~~Nasopharyngeal tubes~~ Oropharyngeal and nasopharyngeal airways;
 - vi. Pulse oximeter;
 - vii. ~~Oropharyngeal tubes~~ Auxiliary lighting; and
 - viii. Blood pressure monitoring device; and
 - ix. Cardiac defibrillator or automated external defibrillator (AED); and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current ~~certificate~~ course completion confirmation in ~~basic~~ cardiopulmonary resuscitation (CPR) health care provider level;
 - ii. Is present during the ~~conscious parenteral~~ sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 3. Hold a valid license to practice dentistry in this state;
 4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
 5. ~~Hold a current certificate from the American Heart Association or the American Red Cross in advanced cardiac life support (ACLS); Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:~~
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management; and
- ~~6.C. Participate in 60 clock hours of Board-approved undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that covers training in basic conscious sedation, including Initial applicants shall meet one of the following conditions:~~
- ~~a.1. Administration of parenteral sedative medications to at least 10 patients; Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:~~
 - a. Sixty (60) didactic hours of basic parenteral sedation to include:
 - ~~b.i.~~ Physical evaluation;
 - ~~e.ii.~~ Management of medical emergencies;
 - ~~d.iii.~~ The importance of and techniques for maintaining proper documentation; and
 - ~~e-iv.~~ Monitoring and the use of monitoring equipment; and
 - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
 2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

Notices of Final Rulemaking

- b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
- c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

~~C.D.~~ After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the ~~dentist applicant~~ shall schedule an onsite evaluation by the Board during which the ~~dentist applicant~~ shall administer ~~conscious parenteral~~ sedation. After a ~~dentist~~ the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue ~~the dentist~~ a Section 1302 permit to the applicant.

1. The onsite evaluation team shall consist of:
 - a. ~~two~~ Two dentists who are Board members, or Board designees for initial applications, or
 - b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite ~~evaluation~~ team shall ~~look for~~ evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of ~~conscious parenteral~~ sedation to a patient by the ~~dentist applicant~~ in the presence of the evaluation team;
 - c. Successful responses by the ~~dentist applicant~~ to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the ~~receiving receipt, administering administration,~~ dispensing, and ~~destroying destruction~~ of all controlled substances; ~~and~~
 - e. Proper recordkeeping as specified in subsection ~~(D)~~ (E) by reviewing the records generated for the patient receiving ~~conscious parenteral~~ sedation as specified in subsection ~~(C)(1)(b)~~ (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
- 2.3. The onsite evaluation of a subsequent facility in which ~~conscious~~ sedation is administered by a dentist who possesses a Section 1302 permit may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (C)(1)(a) team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
 - b. Compliance with R4-11-1302(B)(2)(b).

~~D.E.~~ A ~~dentist~~ Section 1302 permit holder shall keep ~~an anesthesia~~ a parenteral sedation record for each ~~conscious parenteral~~ sedation ~~administered procedure~~ that:

1. Includes the following entries:
 - a. ~~Pre-operative, post-operative, and intra-operative, and post-operative pulse oximeter readings documentation;~~
 - b. ~~Pre-operative, and post-operative intra-operative, and post-operative blood pressure and vital signs sign documentation;~~
 - e. ~~Intra-operative blood pressures; and~~
 - ~~d-c.~~ A list of all medications given, with dosage and time intervals and route and site of administration; ~~and~~
2. ~~May include the following entries:~~
 - a. ~~Pre-operative and post-operative electrocardiograph report;~~
 - b. ~~Route and site of administration;~~

Notices of Final Rulemaking

- e.d. Type of catheter or portal with gauge;
- ~~d.e.~~ Indicate nothing by mouth or time of last intake of food or water;
- e.f. Consent form; and
- f.g. Time of discharge and status, including name of escort; and

2. May include pre-operative and post-operative electrocardiograph report.

~~E.F.~~ A dentist The Section 1302 permit holder who obtains a Section 1302 permit may employ a nurse anesthetist to administer conscious sedation under the dentist's direct supervision shall establish intravenous access on each patient receiving par-
enteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the dura-
tion of the procedure.

H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until ter-
mination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302
permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored
recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

R4-11-1303. Oral Conscious Sedation

A. ~~Before inducing administering oral conscious sedation on an outpatient basis in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board, unless the dentist qualifies for a permit under subsection (E). A~~
The dentist may renew a Section 1303 permit every three five years by complying with R4-11-1306 R4-11-1307.

1. ~~A dentist Section 1301 permit holder or Section 1302 permit holder who possesses a Section 1301 or Section 1302~~
permit may also induce administer oral conscious sedation without obtaining a Section 1303 permit.

2. The administration of an anti-anxiety a single drug is not combination inhalation and enteral conscious sedation for
minimal sedation does not require a Section 1303 permit if:

a. ~~Only one dose of one anti-anxiety drug is administered; The administered dose is within the Food and Drug~~
Administration's (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored
home use;

i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not
exceed the maximum recommended dose; and

ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not
exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the
FDA maximum recommended dose on the date of treatment; and

b. ~~The intent of administering the anti-anxiety drug is anxiolysis only; and Nitrous oxide/oxygen may be adminis-~~
tered in addition to the oral drug as long as the combination does not exceed minimal sedation.

e. ~~The administered dose of anti-anxiety drug is within the current guidelines for anxiolysis dosage on the manufac-~~
turer's package insert or other recognized drug reference;

B. To obtain or renew a Section 1303 permit, a dentist shall:

1. Submit a completed application on a form supplied provided by the Board office that, in addition to the requirements
of subsections (B)(2) and (B)(3) (3) and R4-11-1306 R4-11-1307, includes:

a. General information about the applicant such as:

i. Name;

ii. Home and office addresses and telephone numbers;

iii. Limitations of practice;

iv. Hospital affiliations;

v. Denial, curtailment, revocation, or suspension of hospital privileges;

vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organiza-
tion; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body;
and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read
and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that a facility any dental office or den-
tal clinic where the dentist will administer oral conscious sedation:

a. Contains the following properly operating equipment and supplies during the provision of sedation:

i. Emergency drugs;

ii. Cardiac defibrillator or automated external defibrillator (AED);

~~iii.~~ Positive pressure oxygen and supplemental oxygen;

~~iv.~~ Precordial stethoscope Stethoscope;

~~v.~~ Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;

~~vi.~~ Pulse oximeter;

Notices of Final Rulemaking

- ~~vi-vii.~~ Blood pressure monitoring device; and
- ~~vii-viii.~~ Auxiliary lighting; and
- b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current certificate in ~~basic~~ cardiopulmonary resuscitation (CPR) Health Care Provider Level;
 - ii. Is present during the oral ~~conscious~~ sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
- 3. Hold a valid license to practice dentistry in this state;
- 4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
- 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application ~~from the American Heart Association or the American Red Cross~~ in ~~basic cardiopulmonary resuscitation (CPR)~~ in one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management; and
- ~~6.C. Meet~~ Initial applicants shall meet one or both of the following:
 - ~~a.1.~~ Complete a ~~Board-approved~~ ~~Board-recognized~~ post-doctoral residency program that includes documented training in oral ~~conscious~~ sedation within the last three years before submitting the permit application; or
 - 2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
 - ~~b.3. Participate~~ Provide proof of participation in 30 clock hours of ~~Board-approved~~ Board-recognized undergraduate, graduate, or post-graduate education in oral ~~conscious~~ sedation within the ~~five~~ three years before submitting the permit application; that ~~include~~ includes:
 - ~~i.a.~~ Training in basic oral ~~conscious~~ sedation,
 - ~~ii.~~ Administration or observation of the oral ~~conscious~~ sedation of at least five patients;
 - ~~iii.b.~~ Pharmacology,
 - ~~iv.c.~~ Physical evaluation,
 - ~~v.d.~~ Management of medical emergencies,
 - ~~vi.e.~~ The importance of and techniques for maintaining proper documentation, and
 - ~~vii.f.~~ Monitoring and the use of monitoring equipment.
- ~~6.D.~~ After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the ~~dentist~~ applicant shall schedule an onsite evaluation by the Board. After ~~a dentist~~ the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the ~~dentist~~ a Section 1303 permit to the applicant.
 - 1. The onsite evaluation team shall consist of:
 - a. For initial applications, two dentists who are Board members, or Board designees.
 - b. For renewal applications, one dentist who is a Board member, or Board designee.
 - 2. The onsite ~~evaluation~~ team shall ~~look for~~ evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receiving, administering, dispensing, and destroying of controlled substances; and Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - c. Proper recordkeeping as specified in subsection (D) by reviewing the forms that document the anesthesia record documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
 - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the oral sedation record; and
 - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

Notices of Final Rulemaking

- 2-3. ~~The evaluation of a subsequent facility in which oral conscious sedation is administered by a dentist who possesses a Section 1303 permit may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (C)(1)(a) team shall recommend one of the following:~~
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
- 4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is administered by a Section 1303 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
- 5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to dental offices or dental clinics to provide oral sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of oral sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place and in appropriate condition at the dental office or dental clinic where oral sedation is provided, and
 - b. Compliance with R4-11-1303(B)(2)(b).
- ~~**D.E.** A dentist who induces oral conscious sedation~~ Section 1303 permit holder shall keep an ~~anesthesia~~ oral sedation record for each oral ~~conscious~~ sedation procedure that:
 - 1. Includes the following entries:
 - a. ~~Pre-operative, intra-operative, and post-operative, and intra-operative~~ pulse oximeter oxygen saturation and pulse rate ~~readings~~ documentation;
 - b. ~~Pre-operative and post-respiratory rate;~~
 - e-b. ~~Pre-operative and post-operative blood pressure;~~
 - d-c. ~~Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;~~
 - e-d. ~~List of all medications given, including dosage and time intervals;~~
 - f-e. ~~Patient's weight;~~
 - g-f. ~~Consent form;~~
 - h-g. ~~Special notes, such as, nothing by mouth or last intake of food or water; and~~
 - i-h. ~~Time of discharge and status, including name of escort; and~~
 - 2. May include the following entries:
 - a. ~~Pre-operative and post-operative electrocardiograph report; and~~
 - b. ~~Intra-operative blood pressures.~~
- ~~**E.** To continue inducing oral conscious sedation after May 1, 2004, a dentist licensed in this state who has been inducing oral conscious sedation for at least three years before May 1, 2003 may obtain a Section 1303 permit without meeting the educational requirements of subsection (B)(6) by:~~
 - 1. ~~Applying for a Section 1303 permit on or before May 1, 2004;~~
 - 2. ~~Complying with subsections (B)(1) through (B)(5); and~~
 - 3. ~~Providing the Board with the following:~~
 - a. ~~Documentation of 12 oral conscious sedation cases per year for the previous three years;~~
 - b. ~~Documentation of 12 continuing education hours in oral conscious sedation in the previous three years; and~~
 - e. ~~Records from the last 10 consecutive oral conscious sedation cases with an affidavit attesting that the records are the licensee's last 10 consecutive cases.~~
- F.** The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.
- G.** The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.
- H.** A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
 - 1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
 - 2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit appli-

Notices of Final Rulemaking

cation in one or more of the following:

- a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
- b. PALS in a practice treating pediatric patients;
- c. A recognized continuing education course in advanced airway management;
3. The Section 1303 permit holder ensures that:
 - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
 - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
 - c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
 - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

R4-11-1304. Reports of Adverse Occurrences Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

If a death, or incident causing a patient temporary or permanent physical or mental injury or requiring medical intervention, occurs in an outpatient facility as a direct result of the administration of general anesthesia, semi-conscious sedation, conscious sedation, or oral conscious sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.

1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
 - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
 - i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental continuous flow oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;

Notices of Final Rulemaking

- procedures;
- d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
- e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
- 2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
- 3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301 (B)(6)(a).
- B.** To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302, a dentist shall:
 - 1. Participate in 12 clock hours of continuing education every three years in one or more of the following areas:
 - a. General anesthesia;
 - b. Conscious sedation;
 - e. Physical evaluation;
 - d. Medical emergencies;
 - e. Monitoring and use of monitoring equipment; or
 - f. Pharmacology of drugs and non-drug substances used in general anesthesia or conscious sedation; and
 - 2. Hold a current certificate from the American Heart Association or American Red Cross in advanced cardiac life support (ACLS).
- C.** To maintain a Section 1303 permit issued under R4-11-1303, a dentist shall:
 - 1. Participate in six clock hours of continuing education every three years in one or more of the following areas:
 - a. Oral conscious sedation;
 - b. Physical evaluation;
 - e. Medical emergencies;
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral conscious sedation drugs and non-drug substances, and
 - 2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

R4-11-1306. Renewal of Permit-Education; Continued Competency

- A.** To renew obtain a Section 1301, 1302, or 1303 permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall; successfully complete an advanced graduate or post-graduate education program in pain control.
 - 1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1305; The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
 - 2. Before December 31 of the year the permit expires, submit a completed application on a form supplied by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
 - 3. Not less than 90 days before the expiration of a dentist's current permit, arrange for a new onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
- B.** After a dentist successfully completes the evaluation and submits the required affidavits, the Board shall issue a renewal To maintain a Section 1301, or 1302, or 1303 permit: under R4-11-1301 or R4-11-1302 a permit holder shall:
 - 1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General anesthesia,
 - b. Parenteral sedation,
 - c. Physical evaluation,
 - d. Medical emergencies,

Notices of Final Rulemaking

- e. Monitoring and use of monitoring equipment, or
- f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
- 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management;
- 3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
- 4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).
- C. The Board may stagger due dates for renewal applications. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
 - 1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. Oral sedation,
 - b. Physical evaluation,
 - c. Medical emergencies,
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral sedation drugs and non-drug substances; and
 - 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - c. Pediatric advanced life support (PALS);
 - d. A recognized continuing education course in advanced airway management; and
 - 3. Complete at least 10 oral sedation cases a calendar year.

R4-11-1307. Renewal of Permit

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
 - 1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
 - 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
 - 3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
 - 4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
 - 1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
 - 2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 49. BOARD OF ATHLETIC TRAINING

Editor's Note: *Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 373.)*

[R13-25]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R4-49-101	Amend
R4-49-102	Amend
R4-49-103	Amend
R4-49-201	Amend
R4-49-202	Amend
R4-49-203	Amend
R4-49-204	Amend
R4-49-205	Amend
R4-49-207	New Section
R4-49-208	New Section
R4-49-302	Amend
R4-49-401	Amend
R4-49-403	Amend
R4-49-404	Amend
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 32-4103(A)(7)
Implementing statute: A.R.S. §§ 32-4103(B), (C), and (D) (1) and 32-4127(D)
- 3. The effective date of the rule:**

April 6, 2013
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 2469, December 9, 2011
Notice of Proposed Rulemaking: 18 A.A.R. 1947, August 17, 2012
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: J. Randy Frost
Address: 4205 N. 7th Ave., Suite 305
Phoenix, AZ 85013
Telephone: (602) 589-8353
Fax: (602) 589-8354
E-mail: randy.frost@otboard.az.gov
Web site: <http://www.at.az.gov>
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Arizona Board of Athletic Training is revising the majority of its rules for consistency. The rules in Articles 1 through 4 are not consistent with Arizona Revised Statutes, Title 32 (Professions and Occupations), and Chapter 41 Articles 1 through 3. Specifically, Senate Bill 1131 of the 47th Legislature was signed into law in 2005. The legislation adds A.R.S. § 32-4103(C), allowing the Board to adopt rules to prescribe continuing education requirements for license renewal and A.R.S. § 32-4127, allowing for the issuance of a temporary license.

In addition, Senate Bill 1326 and House Bill 2142 of the 49th Legislature were signed into law in 2010. These bills significantly revise the following statutes: A.R.S. § 32-4101 definitions; A.R.S. § 32-4103(C), requiring the Board to prescribe the appropriate education and training for an athletic trainer; A.R.S. § 32-4103(E), stating that a physician is not subject to civil liability under certain circumstances; A.R.S. § 32-4151(D), setting the limitation for treatment of

Notices of Final Rulemaking

persons participating in an athletic event; A.R.S. § 32-4103(C)(2), allowing for the appointment of advisory committees; A.R.S. § 32-4104(A), allowing the Board to jointly hire an Executive Director; A.R.S. § 32-4104(B), requiring the Board to hire staff; A.R.S. § 32-4105, establishing an athletic training fund; and A.R.S. § 32-4128, requiring an applicant to provide fingerprints for licensure.

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 rely on or review any study for this rulemaking.

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

Not applicable

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

The rules affect the Board, and each licensee, business that employs athletic trainers, provider of continuing education, applicant for a temporary licensee, and consumer of a licensee's services.

The Board should experience moderate costs to write and implement the rules, and related economic, small business, and consumer impact statement and mailing the new rules to interested persons. The Board should incur minimal costs for implementing the R4-49-207 for licensees who request temporary licensees. The Board will see an increase in revenue of \$25,000.00 from the 500 renewal licenses issued and an increase of \$5,000.00 from the 100 initial licenses issued. The general fund will receive 10% or \$3,000.00.

A licensee may incur minimal to moderate costs to complete 15 hours of continuing education during the one year period immediately preceding license renewal. A business that employs athletic trainers and chooses to pay for their continuing education may incur minimal to substantial costs. A provider of continuing education will benefit from the revenue it receives for providing continuing education to licensees. The amount could range from moderate to substantial, depending on the number of licensees who obtain the continuing education. A consumer of a licensee's services benefits from the requirement for continuing education because the requirement assures that a licensee is kept up-to-date on current athletic training practices and cautions.

Requiring an applicant to state on an application whether the applicant is requesting a temporary license should not result in any costs to an applicant.

Clarity in the rules benefits a licensee, provider of continuing education, applicant for a temporary licensee, and a consumer of a licensee's services by providing clear, concise, and understandable standards.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

R4-49-101(13), Added a definition for "contact hour".

R4-49-102(B), Revised to refer to the appropriate statute.

R4-49-102(D) and (E), Deleted the proposed language regarding debit cards to match language in the statute.

R4-49-201(A)(1), Removed "and".

R4-49-202(A)(15), Removed requirements for a notarized affidavit at the advice of our Assistant Attorney General.

R4-49-202(B)(5), Added the word "fingerprint" to refine "clearance card".

R4-49-203(B)(10), Revised proposed language from "citizenship and/or right to work" to "lawful presence" at the suggestion of GRRC staff.

R4-49-203(B)(11), Added "with an attestation regarding the truthfulness of the information provided" to accurately reflect the language from the application.

R4-49-205(D)(1), Put the original language back in to reflect the language in statute.

R4-49-205(D)(4)(c), Changed the word "application" to "license" for uniformity in the rule document.

R4-49-207(B), Added the phrase "one or more of the following apply" at the advice of GRRC staff.

R4-49-208(G), Deleted words from the proposed language to conform to the statutory language.

R4-49-302(F), (G), (I), Revised or removed at the advice of our Assistant Attorney General. The language contained in those sections conflicted with statute and therefore allowing it could be problematic.

Article 4, Revised to address the material incorporated by reference to provide for the accuracy for the identification of materials. Addresses, dates and organizational references were revised due to relocation, organizational name changes and revised publication dates.

Minor grammatical changes were made throughout the document at the request of GRRC staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response

Notices of Final Rulemaking

to the comments:

There were no public or stakeholder comments received.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Board issues and renews the licenses of athletic trainers. This license arguably is a type of general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

R4-49-401 - Athletic Training Educational Competencies (5th Edition), published in 2010 by the National Athletic Trainers Association, Inc. 2952, Stemmons Freeway #200, Dallas, TX 75247.

R4-49-403 - Board of Certification Standards of Professional Practice, dated January 1, 2006, and published by the Board of Certification, Inc., 1415 Harney Street, Suite 200, Omaha, Nebraska 68102.

R4-49-404 - The NATA Code of Ethics, dated September 28, 2005 and published by the National Athletic Trainers Association, Inc. 2952 Stemmons Freeway #200, Dallas, TX 75247, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or additions.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 49. BOARD OF ATHLETIC TRAINING

ARTICLE 1. GENERAL PROVISIONS

Section

R4-49-101. Definitions

R4-49-102. Fees

R4-49-103. Board Operations

ARTICLE 2. LICENSURE

Section

R4-49-201. Qualifications for Licensure

R4-49-202. Original License Application

R4-49-203. Renewal of License

R4-49-204. Expired License: Reinstatement

R4-49-205. License Application Review

R4-49-207. Temporary Licenses

R4-49-208. Continuing Education

Notices of Final Rulemaking

ARTICLE 3. HEARINGS

Section
R4-49-302. Rehearing or Review of Decision

ARTICLE 4. ATHLETIC TRAINING PRACTICE

Section
R4-49-401. Scope of Practice
R4-49-403. Standards of Practice
R4-49-404. Code of Ethics

ARTICLE 1. GENERAL PROVISIONS

R4-49-101. Definitions

In addition to the definitions at A.R.S. § 32-4101, in this Chapter:

1. "Accredited educational institution" means an educational institution accredited by the ~~North Central Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, Northwest Association of Schools and Colleges, Western Association of Schools and Colleges, or Southern Association of Colleges and Schools.~~ CAATE or its predecessors.
2. "Active pursuit of athletic training certification" means:
 - a. Current enrollment in an educational program to fulfill academic requirements for athletic training certification; or
 - b. Current participation in fieldwork experience to fulfill the fieldwork experience requirements for athletic training certification.
3. ~~"Administrative completeness review time frame" has the same meaning as in A.R.S. § 41-1072(1).~~
- 4.3. "Applicant" means an individual requesting an original license, a temporary license, a renewal license, or a reinstated license from the Board.
- 5.4. "Application packet" means the forms and documents the Board requires an applicant to submit or to be submitted on an applicant's behalf.
- 6.5. "Approved national athletic training certifying agency;" means the ~~National Athletic Trainers' Association Board of Certification, Inc.~~ BOC.
6. "Approved provider" means an educational provider approved by the BOC.
7. "Athlete" means:
 - a. A person participating in, or preparing for, a competitive team or individual sport; or
 - b. A member of a professional athletic team.
8. "Athletic training certification" means current athletic trainer certification provided by the ~~National Athletic Trainers' Association Board of Certification, Inc.~~ BOC.
9. "BOC" means the Board of Certification, Inc.
10. "CAATE" means the Commission on Accreditation of Athletic Training Education.
- 9.11. "Completed application" means an application packet that is correctly completed and includes the verified signature of the applicant, applicable fees, and all required documentation.
- 10.12. "Confidential record" means:
 - a. Minutes of executive sessions except as provided in A.R.S. § 38-431.03(B);
 - b. A record classified as confidential by another law, rule, or regulation applicable to the Board;
 - c. College or university grades, medical or mental health information, and professional references of an applicant except that the applicant who is the subject of the information may view or copy the record;
 - d. An applicant's driver license number, social security Social Security number, home address, and home phone number, personal e-mail address, place of birth, and birth date;
 - e. A record for which the Board determines that public disclosure will have a significant adverse effect on the Board's ability to perform its duties or will otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the record no longer exists, the Board shall make the record available for public inspection and copying; and
 - f. Information regarding a complaint under investigation except as provided in A.R.S. § 41-1010.
13. "Contact hour" means an actual clock hour spent in direct participation in a structured education format as a learner. One CEU is equivalent to one contact hour.
14. "Continuing education" means a structured learning process required of a licensee to maintain licensure that includes study in the areas of athletic training practice through an institute, seminar, lecture, conference, workshop, mediated

Notices of Final Rulemaking

instruction, programmed learning course, or postgraduate study in athletic training.

~~11-~~15. “Continuing education unit” or “CEU” means one contact hour of participation in a continuing education course.

~~11-~~16. “Day” means a calendar day.

~~12-~~17. In addition to A.R.S. § 32-4101(7), “Direct supervision” means:

- ~~a.~~ The athletic trainer is present in the facility or on the campus where the athletic training student is performing services;
- ~~b.~~ The athletic trainer is immediately available for consultation; and
- ~~a.~~ The athletic trainer can intervene on behalf of the patient, and
- ~~e.b.~~ The athletic trainer reviews the performance of the athletic training student every grading period.

~~13-~~18. “Facility of practice” means the principal location of an agency or organization where an athletic trainer provides athletic training services but excludes areas used predominantly for athletic sport or competition.

~~14-~~19. “Good moral character” means ~~an~~ the applicant; has not taken any action that is grounds for disciplinary action against a licensee under A.R.S. § 32-4153.

- ~~a.~~ Has not, within five years of application for licensure, been convicted of, plead guilty to, or plead nolo contendere to a felony or misdemeanor that is directly related to public health, athletic care, or education. This includes, but is not limited to:
 - ~~i.~~ Rape;
 - ~~ii.~~ Sexual abuse;
 - ~~iii.~~ Actual or threatened use of a weapon of violence; or
 - ~~iv.~~ The illegal use, sale, or distribution of a controlled substance.
- ~~b.~~ Has not, within five years of application for licensure, committed any act involving dishonesty, fraud, misrepresentation, gross negligence, or incompetence;
- ~~c.~~ Is not currently incarcerated in a penal institution;
- ~~d.~~ Has not had a professional license revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action;
- ~~e.~~ Has not had athletic training certification revoked or suspended for cause by an approved national athletic training certifying agency; or
- ~~f.~~ Has not practiced without the required licensure in this state or in another jurisdiction within the United States within the two years immediately preceding the filing of the application for licensure.

~~15-~~20. “Good standing” means that an athletic trainer: in this state or any other jurisdiction:

- ~~a.~~ Has a current license;
- ~~b.~~ Is not presently subject to any disciplinary action, consent order, or settlement agreement; and
- ~~c.~~ Has no disciplinary action, consent order, or settlement agreement pending before any licensure Board or court.

~~16-~~21. “Licensee” means a person licensed in Arizona as an athletic trainer.

~~17-~~ “NATA-BOC” means National Athletic Trainers’ Association Board of Certification, Inc.

~~18-~~22. “National examination” means the national athletic training certification examination provided by the ~~NATA-BOC~~ BOC.

~~19-~~ “Substantive review time frame” has the same meaning as in A.R.S. § 41-1072(3).

R4-49-102. Fees

- A.** An applicant shall pay the following fees:
 - 1. Application for original license fee: ~~\$250;~~ \$300;
 - 2. Renewal of license fee: ~~\$125;~~ \$175;
 - 3. Reinstatement of a license fee: ~~\$125;~~ \$200. This is in addition to the renewal license fee;
 - 4. Duplicate license fee: \$25.
- B.** The Board shall charge 25¢ per page for copies of records, documents, letters, minutes, applications, and files or appropriate charges prescribed in A.R.S. § 39-121.03(A).
- C.** All fees are nonrefundable except as provided in A.R.S. § 41-1077.
- D.** An applicant shall pay original license fees and returned or insufficient fund replacement checks in cash or by cashier’s check, ~~or~~ money order, or credit card.
- E.** An applicant shall pay renewal, reinstatement, and duplicate license fees in cash or by cashier’s check, money order, ~~or~~ personal check, or credit card.

R4-49-103. Board Operations

- A.** The Board shall meet annually in January ~~on or after the third Monday of the month.~~ The Board shall hold additional meetings as required by A.R.S. § 32-4103(A)(8) and as necessary to conduct the Board’s business. Meetings may be con-

Notices of Final Rulemaking

vened by the Chair, a majority vote of the Board members, or upon written request to the Chair from at least two Board members.

- B. All Board records shall be open to public inspection and copying, except confidential records. Records may be inspected at the Board Office Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays or other days in which the office is required to be closed.

ARTICLE 2. LICENSURE

R4-49-201. Qualifications for Licensure

~~A.~~ To qualify for an athletic trainer license a person shall:

- ~~1. Meet meet the requirements at in A.R.S. § 32-4122, and completing an athletic training education program, accredited by CAATE or its predecessors~~
- ~~2. Pass the national examination.~~

~~B.~~ An applicant who is certified as an Athletic Trainer by NATA-BOC and continuously maintains athletic training certification before January 1, 2004 and is otherwise qualified for licensure under this Chapter, is exempt from subsection (A)(2).

R4-49-202. Original License Application

A. An applicant for an athletic trainer license shall submit an original application that includes the following information:

1. Applicant's full name;
2. Applicant's name as it will appear on the license;
3. Other names used;
4. Social Security number;
5. Residence address and telephone number;
6. Date of birth;
7. Applicant's national athletic training certificate number and date of certification;
8. Post-secondary educational institutions attended;
9. Professional experience, field work, or both within the last five years;
10. Employer's name, address, and telephone number;
11. Current or previous athletic training or other professional license or certification numbers from other states and foreign countries and the status of each license or certification;
12. Current and previous arrest, criminal conviction, and disciplinary actions from any licensing agency or court;
13. E-mail address, if available;
14. Statement of citizenship or alien status and submittal of documents showing the individual's presence in the United States is authorized under federal law;
- ~~13-15. Affidavit of truth, Signature and date with an attestation regarding the truthfulness of the information provided, signed and notarized.~~

B. An applicant shall submit or cause to be submitted on the applicant's behalf the following:

1. Application fee,
2. Written verification from the ~~NATA-BOC~~ BOC of athletic training certification or a passing score on the national examination as required by R4-49-201,
3. Official academic transcripts from institutions listed on the application, ~~and~~
4. Two letters attesting to the applicant's good moral character from health care providers licensed ~~under 4 A.A.C. Title 49 pursuant to A.R.S § 32-4101 et seq. and~~
5. A readable fingerprint card and associated fee for submission to the Department of Public Safety or current fingerprint clearance card issued by the Department of Public Safety.

C. An original license shall expire one year from the date of issuance.

R4-49-203. Renewal of License

A. To renew a license, a licensee shall submit a renewal application and a renewal fee, ~~in compliance with the schedule in subsection (D).~~

B. A licensee shall sign the renewal application and include the following:

1. Applicant's full name;
2. Applicant's name as it will appear on the renewal license;
3. Residence address and telephone number;
4. Current Arizona Board of Athletic Training license number;
5. Arrest, criminal conviction, and disciplinary actions from any licensing agency or court since last license renewal;
6. Social Security number;
7. Employer's name, address, and telephone number;
8. Attestation of compliance with the continuing education requirements listed in R4-49-208;

Notices of Final Rulemaking

9. A readable fingerprint card and associated fee for submission to the Department of Public Safety or a current fingerprint clearance card issued by the Department of Public Safety if the previous submission is at least five years old or the Department of Public Safety clearance card will expire within the term of the renewed license;
 10. Statement of lawful presence in the United States or submittal of required documents showing lawful presence; and
 - 8-11. Signature and date; with an attestation regarding the truthfulness of the information provided.
- C. A licensee shall submit the renewal application and fees to the Board office ~~by the first day of the month, based on the following schedule; at least 14 days prior to the expiration date of the current license.~~
1. Last name begins with A-B: January;
 2. Last name begins with C-D: February;
 3. Last name begins with E-F: March;
 4. Last name begins with G-H: April;
 5. Last name begins with I-J: May;
 6. Last name begins with K-L: June;
 7. Last name begins with M-N: July;
 8. Last name begins with O-P-Q: August;
 9. Last name begins with R-S: September;
 10. Last name begins with T-U: October;
 11. Last name begins with V-W: November; and
 12. Last name begins with X-Y-Z: December.
- D. Renewal license fees for the year immediately following the issuance of an original license are based on the time between the issuance of the original license and the time of license renewal as follows:
1. Less than two months: No fee;
 2. Two months or more but less than four months: 20% of the renewal license fee;
 3. Four months or more but less than six months: 40% of the renewal license fee;
 4. Six months or more but less than eight months: 60% of the renewal license fee;
 5. Eight months or more but less than 10 months: 80% of the renewal license fee; and
 6. Ten months or more: 100% of the renewal license fee.

R4-49-204. Expired License: Reinstatement

- A. A license expires if it is not renewed on or before the renewal date.
- B. An expired license may be reinstated within three years of expiration of the license if:
 1. The former licensee has: ~~current certification from the NATA-BOC as an athletic trainer;~~
 - a. Current certification from the BOC as an athletic trainer, or
 - b. Proof of continuing education to meet the requirements for the time not licensed;
 2. A renewal application is submitted under R4-49-203; ~~and~~
 3. The license reinstatement fee and renewal fee are paid under R4-49-102; ~~and~~
 4. The former licensee attests, in writing, that the licensee has not practiced athletic training in Arizona during the time the license was expired.

R4-49-205. License Application Review

- A. For an original license, renewal license, or reinstated license as an athletic trainer the time-frames required by A.R.S. § 41-1072 et seq. are:
 1. Overall time-frame: 120 days
 2. Administrative completeness review time-frame: 60 days
 3. Substantive review time-frame: 60 days
- B. An administratively complete application for licensure consists of all the information and documents listed in:
 1. R4-49-202 for an original athletic training license; ~~and~~
 2. R4-49-203 for renewal of an athletic training license, and
 3. R4-49-204 for reinstatement of an athletic training license.
- C. The administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Board receives an application.
 1. If the application is not administratively complete when received, the Board shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
 2. The applicant shall submit to the Board the missing documents and information within 120 days from the ~~postmark~~ date of the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the ~~postmark~~ date of the deficiency notice until the date the Board receives the missing documents and information.

Notices of Final Rulemaking

3. If the applicant fails to provide the missing documents and information within the 120 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be licensed shall apply again under R4-49-202, R4-49-203, or R4-49-204.
 4. When the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
- D.** ~~The Substantive~~ substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the ~~postmark~~ date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information: but the Board may make supplemental requests for additional information by written agreement with the applicant.
 2. The applicant shall submit to the Board the additional information identified in the request for additional information within 60 days from the ~~postmark~~ date of the request for additional information. The time-frame for the Board to finish the substantive review of the application is suspended from the ~~postmark~~ date of the request for additional information until the Board receives the additional information.
 3. Unless an applicant requests that the Board deny a license within the 60-day period in subsection (D)(2), the Board shall close the file of an applicant who fails to submit the additional information within the 60 days provided. An applicant whose file is closed and who wants to be licensed shall apply again under R4-49-202, R4-49-203, or R4-49-204.
 4. When the substantive review is complete, the Board shall inform the applicant in writing of its decision to grant or deny a license to the applicant.
 - a. The Board shall deny a license if it determines that the applicant does not meet all substantive criteria for licensure required by statute and rule.
 - b. The Board shall grant a license if it determines that the applicant meets all substantive criteria for licensure required by statute and rule.
 - c. If the Board denies ~~an application~~ a license, the applicant may, within 30 days of service of the notice of denial, make a written request for a hearing to review the Board's decision. The hearing shall be conducted under A.R.S. Title 41, Chapter 6, Article 10.
 - d. In a hearing conducted on a denial of a license, the applicant has the burden of proof.

R4-49-207. Temporary Licenses

- A.** Subject to subsection (B), the executive director may issue a temporary license to an applicant for a license if the applicant meets the requirements of A.R.S. § 32-4127.
- B.** The executive director shall not issue a temporary license without prior Board approval if one or more of the following apply:
1. The applicant is the subject of a pending complaint before the Board or any other state health care regulatory entity.
 2. The applicant has had a license or certificate to practice a health care profession suspended or revoked by another state health care regulatory entity.
 3. The applicant has a criminal history or history of disciplinary action by a state health care regulatory entity.
 4. The applicant has previously been denied an application for an athletic training license.
- C.** A temporary licensee is subject to disciplinary action by the Board pursuant to A.R.S. § 32-4153.

R4-49-208. Continuing Education

- A.** As a prerequisite to renewal, a licensee shall complete at least 15 CEUs in the area of athletic training since the issuance of the previous license.
- B.** A licensee shall:
1. Maintain continuing education records that:
 - a. Verify the continuing education activities the licensee completed during the preceding two years, and
 - b. Consists of each statement of credit or certificate issued by an approved provider at the conclusion of a continuing education activity;
 2. At the time of licensure renewal, attest to the number of CEUs the licensee completed during the renewal on the renewal form; and
 3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- C.** Licensees may provide proof of continued BOC certification to meet the CEU requirements of this Section.
- D.** All licensees shall complete a course approved by the Board on the athletic training statutes and this Chapter within one year of obtaining an original license or license renewal. This course need only be taken one time.
- E.** In addition to the CEU requirements above, all licensees shall maintain current certification in cardiopulmonary resuscitation from a provider that is approved by the Board.
- F.** Upon written request to the Board 30 days prior to the license renewal date, the Board may waive a licensee's continuing

Notices of Final Rulemaking

education requirement in the case of extreme hardship including, but not limited to, mental or physical illness, disability, absence from the United States, service in the United States Armed Forces or other extraordinary circumstances as determined by the Board.

G. The Board may audit a licensee's continuing education records and suspend or revoke, according to A.R.S. §§ 32-4155 and 32-4156, the license of a licensee who fails to comply with continuing education completion, recording, or reporting requirements of this Section.

H. A licensee who is aggrieved by a decision of the Board concerning continuing education units may request an administrative hearing before the Board.

ARTICLE 3. HEARINGS

R4-49-302. Rehearing or Review of Decision

- A. ~~The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10. Any party in a contested case or appealable agency action before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon personal service or five days after the date the decision is mailed by certified mail to the party's last known address of record. The party shall attach a supporting memorandum specifying the grounds for the motion.~~
- B. A party is required to file a motion with the Board for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any ~~orders~~ order or abuse of discretion, that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the proceedings;
 7. Evidence that the Board's decision was a result of passion or prejudice; or
 8. Findings of fact or decision that was not justified by the evidence or was contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. ~~The Board may extend this period, for a maximum of 20 days, for good cause as described in subsection (D).~~
- G. Not later than 10 days after the date of a decision, ~~after giving parties notice and an opportunity to be heard,~~ the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.
- ~~I. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and:~~
- ~~1. A ruling on the motion will further administrative convenience, expedition, or economy; and~~
 - ~~2. A ruling on the motion will avoid undue prejudice to any party.~~

ARTICLE 4. ATHLETIC TRAINING PRACTICE

R4-49-401. Scope of Practice

A licensee shall work within the scope of practice for athletic trainers stated in the definition of "athletic training" at A.R.S. § 32-4101(3) 32-4101(4) and the domains, tasks, knowledge, and skills contained in National Athletic Trainers' Association Board of Certification Role Delineation Study: Athletic Training Profession (4th Edition), published in 1999 by the National Athletic Trainers' Association Board of Certification, Inc., 1512 S. 60th St., Omaha, NE 68106-2102, the competencies contained in the Athletic Training Educational Competencies (5th Edition), published in 2011 by the National Athletic Trainers' Association, Inc., 2952 Stemmons Freeway #200, Dallas, TX 75247, which is incorporated by reference and is on file with the

Notices of Final Rulemaking

Arizona Board of Athletic Training Office ~~and the Secretary of State's office~~. The material incorporated contains no future amendments or editions.

R4-49-403. Standards of Practice

A licensee shall ~~work within~~ comply with the standards of practice for athletic trainers stated in A.R.S. § 32-4101(3) and the standards of professional practice contained in ~~National Athletic Trainers' Association Board of Certification Standards of Professional Practice, Disciplinary Process, Requirements to Maintain Certification for the Certified Athletic Trainer, published in 2000 dated January 1, 2006 and published by the National Athletic Trainers Association Board of Certification, Inc., 1512 S. 60th St., Omaha, NE 68106-2102~~ 1415 Harney Street, Suite 200, Omaha, Nebraska 68102, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office ~~and the Secretary of State's office~~. The material incorporated contains no future amendments or editions.

R4-49-404. Code of Ethics

A licensee shall work within the code of ethics for athletic trainers as stated in A.R.S. § 32-4153(10) and the NATA Code of Ethics ~~of the National Athletic Trainers' Association, published in 1997 dated September 28, 2005 and published by the National Athletic Trainers' Association, 2952 Stemmons Freeway #200, Dallas, TX 75247~~, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office ~~and the Secretary of State's office~~. The material incorporated contains no future amendments or editions.