

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

Editor's Note: The following Notice of Supplemental Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 690.)

[R14-25]

PREAMBLE

1. Citations to the agency's Notice of Rulemaking Docket Opening, Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the Register as specified in R1-1-409(A). A list of any other related notices published in the Register as specified in R1-1-409(A):

Notice of Rulemaking Docket Opening: 19 A.A.R. 154, February 1, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 746, April 19, 2013

2. Article, Part, or Sections Affected (as applicable) Rulemaking Action

Article 14	New Article
R4-7-1401	New Section
R4-7-1402	New Section
R4-7-1403	New Section
R4-7-1404	New Section
R4-7-1405	New Section
R4-7-1406	New Section
R4-7-1407	New Section
R4-7-1408	New Section

3. 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. § 32-904(B)(2)

Implementing statute: A.R.S. § 32-934

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

Name: Pamela J. Paschal, Executive Director

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

Telephone: (602) 864-5088

Fax: (602) 864-5099

Email: Pamela.Paschal@azchiroboard.us

Web address: www.azchiroboard.us

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 An agency justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The legislature has established the Board's authority to regulate business entities that employ the services of a chiropractic physician but are not owned or operated by a health care professional or regulated under Title 46. This rulemaking is necessary in order to implement the regulation established by statute. The statute was established to protect both consumers and the chiropractic professional from business entities that engage in practices that violate the Chiropractic Practice Act. Prior to the establishment of Article 14, the Board had no means to prevent business entities from engaging in practices that are a threat to the health, safety and welfare of the public through services

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provided by a doctor of chiropractic. The Board's only option was to discipline the doctor of chiropractic. When that chiropractor left the business entity, it would hire another doctor of chiropractic and the violations would continue. Under the new law, the Board can impose any discipline on a business entity that it can impose on a doctor of chiropractic.

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

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

7. An explanation of the substantial change that resulted in the supplemental notice:

The Board removed the proposed issuance and application package fees; determined the initial application fee should be increased from \$200 to \$400; established the pro-rated fee for the first year registration; specified requirements for reporting a change to any owner, officer or director; and added that a business entity registration may be denied should any proposed owner, officer or director have had a license to practice any profession surrendered.

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:

Not applicable

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

A.R.S. § 41-1055(A)(1): In 2011, the legislature enacted statute that authorizes the Board to regulate business entities that offer chiropractic services but that are not owned and operated by a licensed health care professional or regulated under Title 46. The incident of business entities entering the market for chiropractic care is an emerging issue. Traditionally, chiropractic clinics have been owned and operated by doctors of chiropractic. However, private investors are now acquiring chiropractic businesses for the purpose of providing healthcare services.

A.R.S. § 41-1055(A)(2): The unprofessional conduct engaged in by business entities has an impact on both patients and on chiropractic licensees. Unprofessional activity of concern include failing to adequately protect confidential patient files, marketing through misleading advertising, billing for services not rendered and patient inability to obtain copies of their records for continued care or insurance coverage. Although the business entity and the licensee may share the responsibility for unprofessional conduct, remediation of the licensee alone is not sufficient to effect a reduction on the conduct of concern as long as the business entity can continue the conduct without consequences.

Based on research conducted during the last license renewal cycle for doctors of chiropractic, the Board anticipates that 20 business entities will need to register under A.R.S. § 32-934. Business entity registration will be self-funded by the fees paid in compliance with these rules and will be consistent with the nature of fees paid by chiropractic licensees. The proposed fees will include \$400 for application a \$200 annual renewal fee. These are fees that will be required in order for a business entity to obtain and retain registration. A business entity may also incur a fee of \$200 if it fails to renew its registration timely and additional smaller fees for duplicate registration and renewal certificate copies.

A.R.S. § 41-1055(A)(3): Not applicable.

10. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Pamela J. Paschal, Executive Director
Address: 5060 N. 19th Ave., Suite 416
Phoenix, AZ 85015-3210
Telephone: (602) 864-5088
Fax: (602) 864-5099
Email: Pamela.Paschal@azchiroboard.us
Web address: www.azchiroboard.us

11. The time, place, and nature of the proceedings to make, amend, renumber, repeal the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., Monday, April 14, 2014. An oral proceeding is scheduled for:

Date: April 14, 2014
Time: 10:00 a.m.
Location: 5060 N. 19 Ave., Suite 416
Phoenix, AZ 85015

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

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 rule itself does not require a permit. However, the registration required by statute and rule arguably falls within the definition of general permit in A.R.S. § 41-1001 because the registration is the agency's authorization for the facility to operate.

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:

Not applicable

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

Not applicable

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

Not applicable

14. The full text of the rules follows:

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ARTICLE 14. BUSINESS ENTITIES

Section

R4-7-1401. Application for Business Entity; qualification of applicant; fee; background investigations

R4-7-1402. Display of Registration

R4-7-1403. Procedures for Processing Initial Registration Applications

R4-7-1404. Business Entity Registration Renewal: Issuance, Reinstatement

R4-7-1405. Business Entity Registration: Denial

R4-7-1406. Reporting: Civil Penalty

R4-7-1407. Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct

R4-7-1408. Exemptions

ARTICLE 14. BUSINESS ENTITIES

R4-7-1401. Application for Business Entity; qualifications of applicant; fee; background investigations

A. A business entity that wishes to operate a clinic, franchise, business, club, or any other entity which uses the services of a licensed doctor of chiropractic to provide a service, supervise the provision of services, act as clinical director or otherwise perform any function under a person's chiropractic license (doctor of chiropractic) shall submit a complete application to the Board at least sixty days prior to the intended implementation of engaging the services of a licensed doctor of chiropractic. A business entity that uses the services of a doctor of chiropractic as defined in this subsection prior to the effective date of these rules shall submit a complete application to the Board no later than ten days from the effective date of these rules. A business entity shall not engage the services of a doctor of chiropractic as noted in this section until the Board has approved and issued the registration. The registration shall serve as a license for the purpose of compliance with this Chapter.

B. "Owner, officer or director" means any person with a fiscal or an administrative interest in the business entity, regardless of whether the business is a for-profit or non-profit affiliation.

C. To be eligible for business entity registration, the applicant owners, officers or directors shall:

1. Be of good character and reputation.

2. Have obtained a license or a permit to conduct a business under applicable law and jurisdiction.

D. The Board may deny registration to a business entity if:

1. The business entity fails to qualify for registration.

2. An owner, an officer or a director has had a license to practice any profession refused, revoked, suspended, surrendered or restricted by a regulatory entity in this or any other jurisdiction for any act that constitutes unprofessional conduct pursuant to this Chapter.

3. An owner, an officer or a director is currently under investigation by a regulatory entity in this or any other jurisdiction for an act that may constitute unprofessional conduct pursuant to this Chapter.

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4. An owner, an officer or a director has surrendered a license for an act that constitutes unprofessional conduct pursuant to this Chapter in this or any other jurisdiction.
 5. An owner, an officer or a director has been convicted of criminal conduct that constitutes grounds for disciplinary action pursuant to this Chapter.
 6. The business entity allows or has allowed any person to practice chiropractic without a license or fails or failed to confirm that a person that practices chiropractic is properly licensed.
 7. The business entity allows or has allowed a person who is not a licensed doctor of chiropractic and who is not a chiropractic assistant to provide patient services according to this Chapter.
- E.** The applicant shall pay to the Board a nonrefundable application fee of \$400.00.
- F.** In order to determine an applicant business entity's (applicant) eligibility for approval, the Board may require the business entity's owners, officers or directors to submit a full set of fingerprints to the Board. The Board shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section A.R.S. 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The Board shall charge each applicant a fee that is necessary to cover the cost of the investigation. The Board shall forward this fee to the department of public safety.

R4-7-1402. Display of Registration

A business entity shall, at all times, display the registration issued to the business entity by the Board in a conspicuous place at all locations where a doctor of chiropractic is employed, contracted or otherwise functions in any capacity under a chiropractic license, including mobile practices. The business entity shall, upon request of any person, immediately produce for inspection the annual renewal certificate for the current registration period and shall keep a renewal certificate issued by the Board present at all locations.

R4-7-1403. Procedures for Processing Initial Registration Applications

- A.** An applicant may obtain an application package at the Board Office on a business day, or by requesting that the Board send the application to an address specified by the applicant.
- B.** A completed business entity registration application package shall be submitted to the Board office on a business day. The Board shall deem the business entity application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.
- C.** To complete a business entity application package, an applicant shall provide the following information and documentation:
1. The full current name and any former names and title of any and all owners, officers or directors.
 2. The current home and all office addresses, current home and all office phone numbers, all current office fax numbers, and any previous home or office addresses for the past five years for each owner, officer or director.
 3. The business name and the current addresses, phone numbers and fax numbers for each office, clinic or other setting where any service is performed, supervised or directed by a licensed doctor of chiropractic according to R4-7-1401(A) and this Chapter.
 4. The non-refundable application fee of four hundred dollars.
 5. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity according to R4-7-1401(A) and this Chapter.
 6. A completed fingerprint card for each owner, officer or director.
 7. Copies of any and all contracts or any other agreement between the business entity and the doctor of chiropractic, to include employment or franchise contracts, agreements or equivalent.
 8. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or charge that has not been concluded.
 9. Any record of an owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against an owner, officer or director's license in this or any other jurisdiction.
 10. The social security number for each owner, officer, or director.
 11. A government issued photo identification confirming U.S. citizenship or legal presence in the United States for each owner, officer or director, or if those individuals reside outside of the United States, confirmation of legal authority to operate a business in the United States.
 12. A copy of the written protocol required by A.R.S. § 32-934(G).
 13. The name, phone number and address for a contact person.
 14. A notarized signature for each owner, officer or director attesting to the truthfulness of the information provided by the applicants. A stamped signature will not be accepted for the purposes of completing the application.
- D.** Within 25 business days of receiving a business entity registration application package, the Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing.
- E.** An applicant with an incomplete business entity registration application package shall supply the missing information

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within 30 calendar days from the date of the notice. An applicant who is unable to supply the missing information within 30 calendar days may submit a written request to the Board for an extension of time in which to provide a complete application package. The request for an extension of time shall be submitted to the Board office before the 30-day deadline for submission of a complete application package, and shall state the reason that the applicant is unable to comply with the 30-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 30-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.

- F.** If an applicant fails to submit a complete business entity registration application package within the time permitted, the Board shall close the applicant's file and send a notice to the applicant by U.S. Mail that the application file has been closed. An applicant whose file has been closed and who later wishes to become registered shall reapply pursuant to R4-7-1401 and R4-7-1403.
- G.** After timely receipt of all missing information as specified in subsection (E), the Board shall notify the applicant that the application package is complete.
- H.** The Board shall render a decision no later than 120 business days after receiving a completed registration application package. The Board shall deem a registration application package to be complete on the postmarked date of the notice advising the applicant that the package is complete.
- I.** The Board shall approve the registration for a business entity that meets all of the following requirements:
 - 1. Timely submits a complete application.
 - 2. The Board does not find grounds to deny the application under subsection (D).
 - 3. Pays the original business entity prorated renewal fee of seventeen dollars per month from the first day of the month the business entity is registered through May 31 plus \$25 for each duplicate license issued by the Board for the purpose of compliance with R4-7-1402.
- J.** An applicant shall reapply for registration if the applicant does not pay the prorated registration fee within three months after having been notified by the Board that the applicant is eligible to receive an approved registration.
- K.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for initial registration:
 - 1. Administrative completeness review time-frame: 25 business days.
 - 2. Substantive review time-frame: 120 business days.
 - 3. Overall time-frame: 145 business days.

R4-7-1404. Business Entity Registration Renewal: Issuance, Reinstatement

- A.** A business entity registration expires on May 31 of each year.
- B.** At least 30 days before a renewal application and renewal fee are due; the executive director of the Board shall send a business entity a renewal application and notice by first class mail to its address of record for the business entity contact person.
- C.** The business entity registration renewal application shall be returned to the Board office on a business day. The Board shall deem the business entity registration renewal application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.
- D.** To complete a registration renewal application, a business entity shall provide the following information and documentation:
 - 1. The name of the business entity.
 - 2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter.
 - 3. Notice of any change of owners, officers or directors, to include any additions and/or deletions with the date of the change for each individual, and notice of any change in home address, office address and phone numbers for owners, officers or directors with the date of the change for each individual.
 - 4. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity per Section R4-7-1401(A), to include any affiliation through a franchise.
 - 5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction within the last 12 months.
 - 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment within the last 12 months.
 - 7. A statement attesting that the contract or any other form of agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of any new or amended contract or agreement.
 - 8. Report any change in the status of the business entity's license or permit to own and operate a business in the State of Arizona.
 - 9. The renewal fee of \$200 plus a \$25 fee for each duplicate Board issued renewal certificate for the purpose of compliance with R4-7-1402. A business entity applying for renewal for the first time shall pay a prorated fee according to A.R.S. § 32-934(C).
 - 10. The name, address, phone number, fax number and email for a contact person.

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11. The original signature of the delegated contact person attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of the application. A stamped signature will not be accepted for the purpose of a complete application.
- E.** A business entity registration shall automatically expire if the business entity does not submit a completed application for renewal, the renewal fee and the fee for duplicate renewal certificates for the purpose of complying with R4-71402 before June 1 of each registration period. The Board shall send written notice to the business entity that its registration has expired on or before June 20. A business entity shall not use the services of a licensed doctor of chiropractic according to R4-7-1401(A) if the business entity's registration has expired.
- F.** The Board shall reinstate an expired business entity registration if the business entity pays the annual renewal fee, the additional fee for duplicate certificates for the purpose of compliance with R4-7-1402, pays an additional non-refundable late fee of \$200 as required by A.R.S. § 32-934(C), and submits a completed renewal application between June 1, and June 30 of the registration period for which the business entity registration renewal is made.
- G.** On or after July 1 of the registration period for which a renewal application was to be made, a business entity that wishes to have an expired registration reinstated shall apply in accordance with subsection (L).
- H.** If the business entity fails to timely submit a complete business entity reinstatement application within 6 months of the date the registration expired, the business entity's registration shall lapse. "Lapse" means that the business entity is no longer registered and cannot offer services per this Chapter.
- I.** A business entity that has had a registration lapse and that later wishes to become registered must apply as a new candidate pursuant to R4-7-1401 and R4-7-1403.
- J.** An application for reinstatement of business entity registration may be obtained from the Board office on business days or by requesting that the Board send one to an address specified by the applicant.
- K.** A completed application for reinstatement of a business entity registration shall be submitted to the Board office on a business day. The Board shall deem an application for reinstatement of a business entity registration received on the date that the Board stamps on the application as the date it is delivered to the Board office.
- L.** To complete an application for reinstatement of a registration, a business entity shall provide the following information and documentation:
 1. The business entity's name and expired registration number.
 2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter.
 3. The names, home addresses, office addresses and phone numbers for each owner, officer or director.
 4. The name and license number of each doctor of chiropractic employed with, contracted with or otherwise affiliated with the business entity according to R4-7-1401(A) and this Chapter, to include franchises.
 5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction.
 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment, or charge within the last 12 months, to include new owners, officers or directors.
 7. A statement attesting that the contract or other agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of the new or amended contract or agreement.
 8. Report any change in the status of the business entity's license or other permit to own and operate a business in the State of Arizona.
 9. The non-refundable renewal fee of \$200 and a \$25 fee for each Board issued duplicate renewal certificate for the purpose of compliance with R4-7-1402.
 10. The non-refundable late fee of \$200.
 11. The name, phone number, fax number and email for a contact person.
 12. The original signature of the delegated contact attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of on application. A stamped signature will not be accepted for the purpose of completing an application.
- M.** The Board shall process a business entity registration reinstatement application in accordance with R4-7-1403(D) through (G).
- N.** The Board shall reinstate or renew a business entity registration if:
 1. The business entity has timely submitted a complete application and paid all fees.
 2. The business entity has complied with the requirements of this Chapter and A.R.S. § 32-900 et seq.
 3. The Board does not find grounds to deny the application under subsection (D).
 4. The business holds a current business license or other permit to own and operate the business in the State of Arizona.
- O.** If the provisions of subsection (N) are satisfied, the Board shall issue a business registration renewal certificate. The renewal certificate shall serve as notice that the renewal application is complete and approved.
- P.** The Board shall make a decision no later than 70 business days after receiving all required documentation as specified in subsection (N). The Board shall deem required documentation received on the date that the Board stamps on the documentation as the date the documentation is delivered to the Board's office.

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Q. For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for registration renewal or reinstatement of registration:

1. Administrative completeness review time-frame: 25 business days.
2. Substantive review time-frame: 70 business days.
3. Overall time-frame: 95 business days.

R4-7-1405. Business Entity Registration: Denial

If the Board denies a business entity registration, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial;
3. The time periods for appealing the denial; and,
4. The right to request a settlement conference with the Board's authorized agent.

R4-7-1406. Reporting; Civil Penalty

A. A business entity that reports a change to any owner, officer or director pursuant to A.R.S. § 32-934 (D) (2) shall include the following:

1. Any record of the new owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or charge that has not been concluded.
2. Any record of a new owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against the new owner, officer or director's license in this or any other jurisdiction.

B. A business entity that fails to comply with A.R.S. § 32-934(D) shall pay to the Board a non-refundable civil penalty of one hundred dollars for each violation. If the business entity fails to pay the civil penalty within 30 days, the business entity shall within 15 days pay an increased civil penalty of \$150 for each violation.

R4-7-1407. Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct

A. Nothing in this Section shall be construed to exempt a licensed doctor of chiropractic from complying with this Chapter.

B. The following are grounds for disciplinary action under A.R.S. § 32-924(A) and R4-7-902 for a licensed doctor of chiropractic who:

1. Performs any service according to R4-7-1401(A) for a business entity in the State of Arizona that is not registered per this Chapter, and/or;
2. Enters into an agreement of any nature with a business entity to engage in any activity that violates A.R.S. § 32-924(A), R4-7-901 or R4-7-902 or any provision of this Chapter, and/or;
3. Fails to report in writing to the Board any knowledge of a business entity that fails to register with this Board under this Chapter or a business entity that violates any provisions of this Chapter.

R4-7-1408. Exemptions

A chiropractic assistant does not hold a license and is not exempt from A.R.S. § 32-934 or this Article.