

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Editor's Note: The following Notices of Final Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2270.)

[R14-120]

PREAMBLE

- | | |
|---|---------------------------------|
| 1. <u>Articles, Parts, and Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R2-8-120 | New Section |
- 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. § 38-714(E)(4)
Implementing statute: A.R.S. §§ 38-755, 38-760, and 38-776
- 3. The effective date for the rules:**
October 4, 2014
 - a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Not applicable
 - b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 20 A.A.R. 1008, May 2, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 995, May 2, 2014
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:	Patrick M. Klein, Assistant Director
Address:	ASRS 3300 N. Central Ave., Suite 1400 Phoenix, AZ 85012-0250
Telephone:	(602) 240-2044
Fax:	(602) 240-5303
E-mail:	PatK@azasrs.gov
Web site:	www.azasrs.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:**
Effective July 1, 2013, A.R.S. §§ 38-755 and 38-760 changed to require an ASRS member to name the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account and, at the time of retirement, to choose a joint and survivor annuity that names the current spouse as at least a 50 percent contingent

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annuitant. The statutes also provide a means for the current spouse to waive this right and consent to an alternative. This rulemaking implements the statutory change.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

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

The Board did not review or rely on a study in its evaluation of or justification for 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:**

R2-8-120 simply implements statute. It is the statute that has economic impact on members and their spouses by limiting the range of choice when designating a beneficiary.

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

In R2-8-120(B), language was added to track a change made to A.R.S. § 38-755 in 2014. In R2-8-120(I)(2), the word “documented” was inserted before the phrase “incapacitating mental or physical condition...” and the word “guardian” was changed to “conservator.” The first change protects a disabled spouse by clarifying that the disability must be documented. The second change makes the language consistent with Arizona law. None of these changes is substantial under the standards provided at A.R.S. § 41-1025(B).

An additional rule, R2-8-123, was included in the published notice of proposed rulemaking. It is not included in this final rulemaking. The Board intends to proceed with R2-8-123 in a supplemental proposed notice.

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

No comments were made by members of the public and no one attended the oral proceeding that occurred on June 3, 2014.

- 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, amended, or repealed 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

R2-8-120. ~~Repealed~~ Designating a Beneficiary; Spousal Consent to Designation

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-120. ~~Repealed~~ Designating a Beneficiary; Spousal Consent to Designation

- A.** In addition to the definitions at A.R.S. § 38-711, the following apply to this Section unless otherwise specified:
1. “Beneficiary” means a person designated to receive money or other benefits when someone dies.
 2. “Contingent annuitant” means the person that a member designates to receive continued annuity payments after the member dies.
 3. “Joint and survivor annuity” means an optional form of retirement benefits described at A.R.S. § 38-760(B).
 4. “Period certain and life annuity” means an optional form of retirement benefits described at A.R.S. § 38-760(B).
 5. “QDRO” means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.
 6. “Spouse” means the individual to whom a member is married under Arizona law.
- B.** Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member’s current spouse as primary beneficiary of at least 50 percent of the member’s retirement account unless:
 - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order;
or
 - b. The spouse consents to an alternate beneficiary; and
 2. Who retires shall choose a joint and survivor annuity and name the member’s current spouse as contingent annuitant of at least 50 percent of the member’s retirement benefit unless the spouse consents to an alternative.
- C.** Application of subsection (B).
1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
 2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
 3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- D.** Changing a beneficiary designation:
1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
 2. If a married member who retired before July 1, 2013, and:
 - a. Chose a straight-life annuity wishes to change the member’s beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
 - b. Chose a period certain or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).
- E.** Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:
1. Within 60 months of the member’s previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
 2. More than 60 months after the member’s previous retirement date, shall comply with subsection (B).
- F.** Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member’s effective retirement date, the member shall submit a signed letter to ASRS stating that the member’s spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member’s new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.
- G.** Survivor benefits:
1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member’s death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and

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- 2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
 - a. Notify both the spouse and designated beneficiary and:
 - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
 - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
 - b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.
- H. Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.
- I. Spousal waiver and consent; consent revocation
 - 1. The current spouse of a member has a right to:
 - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
 - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
 - 2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.
 - 3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

[R14-122]

PREAMBLE

- 1. Article, Part, or Sections Affected (as applicable)

Article 14	<u>Rulemaking Action</u>
R4-7-1401	New Article
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
- 2. Citations to the agencies 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
- 3. The effective date of the rules:
 - October 5, 2014
 - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):
 - Not applicable
 - b. If the agency selected a date later than the 60 day effective date specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
 - Not applicable
- 4. Citation to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the

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final rulemaking package:

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
Notice of Supplement Proposed Rulemaking: 20 A.A.R. 676, March 14, 2014

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

Name: Pamela J. Paschal, Executive Director
Address: Board of Chiropractic Examiners
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

6. 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 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.

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

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

8. A showing of good cause why the rule is necessary to promote a statewide interest if the 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:

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 \$400.00 for application a \$200.00 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. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Board removed the proposed issuance and application package fees; determined the initial application fee should be increased from \$200.00 to \$400.00; established the pro-rated fee for the first year registration; specified require-

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ments 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.

Although the following changes reflect no substantial difference from the proposed rule, they have been made to the Notice of Final Rulemaking:

For consistency, all references to dollar amounts have been changed to numeric format; all use of "A.A.C." has been removed; all use of the term "as per" has been changed to "according to".

R4-7-1401(D)(1) language has been changed from "fails to qualify" to "is not eligible" in order to remain consistent with other references within the rule.

R4-7-1401(F), and R4-7-1403(C)(6) have been changed from "owners, officers or directors" to "owners, officers and directors" to ensure all parties are included in the requirement.

R4-7-1403(C)(8); R4-7-1404(D)(6) and R4-7-1406(A)(1) have been amended to clarify that all unconcluded charges must be reported.

In order to be consistent with R4-7-1404(N); a statement requiring compliance with the Chapter and A.R.S. § 32-900 et seq. has been added to R4-7-1403(I)

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

The Board notified the two chiropractic associations operating in Arizona of the proposed rule. No written or verbal comments were received from either. The Board also sent an announcement of the proposed rulemaking to 25 entities that it believes may fall under this law. Three of those entities responded that the business is exempt from the rule. Additional phone calls were received for the purpose of clarification only. In particular, the callers inquired as to why the notice was sent to them. They received the explanation that they were noticed in order to provide them opportunity to make comment on the rulemaking. No comment was received.

12. All agencies shall list other matters prescribed by statute that are 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 provide chiropractic services in compliance with A.R.S. § 32-934.

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 of 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 rule:

Not applicable

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 7. BOARD OF CHIROPRACTIC EXAMINERS

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

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- 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 is not eligible 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.
 - 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 and 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:

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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 \$400.00.
 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 and 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 uncompleted charge.
 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 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 under 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 R4-7-1401(D).
 3. The business entity has complied with the requirements of this Chapter and A.R.S. § 32-900 et. seq.
 4. Pays the original business entity prorated renewal fee of \$17.00 per month from the first day of the month the business entity is registered through May 31 plus \$25.00 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 3 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.

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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 according to 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 or unconcluded charge 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 \$200.00 plus a \$25.00 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.
 - 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 R4-7-1402 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 \$200.00 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.

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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.
 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 \$200.00 and a \$25.00 fee for each Board issued duplicate renewal certificate for the purpose of compliance with R4-7-1402.
 10. The non-refundable late fee of \$200.00.
 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 R4-7-1401 (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.
- 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 unconcluded charge.
 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 \$100.00 for each violation. If the business entity fails to pay the civil penalty within thirty days, the business entity shall within 15 days pay an increased civil penalty of one \$150.00 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.

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- 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.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

[R14-121]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R4-15-101 | Amend |
| R4-15-102 | Amend |
| R4-15-103 | New Section |
| R4-15-201 | Amend |
| R4-15-203 | Amend |
| R4-15-204 | Amend |
| R4-15-205 | Amend |
| R4-15-207 | Amend |
| Table 1 | Amend |
| R4-15-301 | Amend |
| R4-15-302 | Amend |
| R4-15-303 | Amend |
- 2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statutes (specific):**
Authorizing statute: A.R.S. § 32-4203(A)(7)
Implementing statutes: A.R.S. §§ 32-4203(A)(1), 32-4203(A)(2), 32-32-4203(A)(3), 32-4203(A)(5), 32-4203(B)(3), 32-4222, 32-4223, 32-4225(E), 32-4226, 32-4227, 32-4228, 32-4251(B), 41-1072 *et seq.*
- 3. The effective date of the rule:**
August 5, 2014
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5).**

The Board is requesting an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule. The Board’s statutes in A.R.S. §§ 32-4201 *et seq.* were amended effective June 30, 2013, and September 13, 2013. The Board began drafting conforming rules after the statutory amendments became effective. R4-15-301 is being amended because A.R.S. § 32-4225 reduces a licensee’s continuing education hours from 25 hours to 24 hours. The Board is changing “board approved school” to “board recognized school” to be consistent with A.R.S. § 32-4228. The rules benefit a renewal applicant who will have more ways to obtain continuing education. Unless audited, a renewal applicant can provide an affirmation of CE rather than documentary evidence and retain the documentary evidence in the applicant’s own file. The time-frame for the Board to approve or deny a license have been reduced from 180 days to 120 days, which allows an applicant to be licensed faster.

Additionally, the Board believes that eliminating the inconsistencies between statute and rule preserves the public peace, health, or safety. The amended statutes require the Board to write communication proficiency standards in rule and has done so in R4-15-201. The Board no longer issues a provisional license or temporary

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license and clarified these changes in the rules. The Board is also required by A.R.S. § 32-4203 to provide ethical standards that govern the practice of massage therapy.

The Board is requesting an immediate effective date for both reasons stated above.

- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

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

Notice of Rulemaking Docket Opening: 20 A.A.R. 614, March 7, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 998, May 2, 2014

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

Name: Kathleen Phillips, Executive Director
Address: Board of Massage Therapy
1400 W. Washington, Suite 300
Phoenix, AZ 85007
Telephone: (602) 542-8204
Fax: (602) 542- 8804
Email: kathleen.philips@massageboard.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 Board is amending its rules to be consistent with legislation passed during the 2013 legislative session and to reflect current policy and the proposed course of action in its five-year-review report approved by the Governor's Regulatory Review Council on January 5, 2010. The Board is changing the term "Board-approved school" to "Board-recognized school" throughout the rules to be consistent with the term used in its authorizing statute in A.R.S. § 32-4228. The Board is amending its definitions in R4-15-101 to make the terms understandable to the reader, afford consistent interpretation and application of the terms, make the terms consistent with current statutory authority, and repeal terms that are not used in the Board's rules. The Board is amending the definition of "good moral character" to reflect the statutory addition of A.R.S. § 32-4222 (G), which states "The board may deny an application for a license if the applicant committed an act that would subject a person license under this chapter to disciplinary action." Disciplinary actions that may be taken by the Board are contained in A.R.S. § 32-4253 and do not contain a five-year restriction to any of the actions that may be taken. The Board is removing five-year restrictions from the rule, thereby broadening application of the rule. Thus, the Board believes that A.R.S. § 32-4222(G) provides the Board with discretion and allows the Board to remove the reference to "within five years before the date of the application" in the subsections of the good moral character definition. The Board is amending its fees' rule in R4-15-102 to inform an applicant that the Board accepts fees by cashier's check or money order only if submitting a paper application. The Board will only accept credit cards for electronic submissions of applications. Pursuant to A.R.S. § 32-4203(A)(6), the Board is adopting ethical standards. The Board is amending its application rule in R4-15-201 by requiring a passport photograph of the applicant, changing the term "general equivalency diploma" to "high school equivalency diploma" to conform with A.R.S. § 15-702, repealing the provision for temporary licenses because the Board does not issue temporary licenses, and adding the test administered by the FSMTB as an approved test. As required by A.R.S. § 32-4222(E), the Board is establishing communication proficiency standards by adding provisions for an applicant whose native language is not English. The provision will require such an applicant to take an English proficiency examination as stated in R4-15-201. The provision is being adopted as a health and safety measure to ensure that a massage therapist is able make an evaluation of a client and communicate in English with the client or other health care practitioners and with a 911 operator in the case of an emergency. The Board is adding requirements for renewal applications in R4-15-205, changing the requirement for hours of continuing education from 25 to 24 to be consistent with A.R.S. § 32-4225(E), and adding other means of obtaining continuing education, including attendance at a Board meeting, CPR and First Aid, and instructor credit. The Board is deleting time-frame requirements for a provisional and temporary license because it no longer issues either type of license and is reducing the overall time-frame for a regular license from 180 to 120 days. The Board may add, delete, or modify other sections as necessary.

The Board is submitting this rulemaking to the Secretary of State's office in accordance with the exemption authorization under item 4 of Executive Order 2012-03, State Regulatory Rulemaking Moratorium.

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

The Board did not review or rely on any study.

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

Not applicable

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

When used in the economic impact statement, annual cost/revenue are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$5,000, and substantial when greater than \$5,000.

The Board will incur moderate expense to write the rules and economic impact statement and enforce the new rules requirements.

Changing the term “Board-approved school” to “Board-recognized school” throughout the rules to be consistent A.R.S. § 32-4228 should not increase costs to any individual, licensee, massage therapy school, or massage therapy business.

Amending the definition of “good moral character” in R4-15-101 could result in minimal to substantial costs to an applicant who is determined by the Board to be unqualified as a result of the rule. The cost is dependent upon what type of action is taken by the Board for the applicant’s conduct. The clarification of “classroom instruction”, “clinical instruction”, and “supervised instruction” should not increase costs to an applicant, licensee, or massage therapy school but will benefit them by providing definitions that are understandable and consistent.

There should be no increase in costs to applicants for amending R4-15-102 because the Board currently allows only money orders or cashier’s checks for any of its fees if received in paper form. The Board does not expect any increase in costs for filing electronically. The requirement for a passport photo as part of its application in R4-15-201 should not increase costs to an applicant because most applicants currently voluntarily provide photographs. The photographs are important because they are used to identify licensees being investigated in sting operations by the municipalities involving prostitution. The Board’s addition of the test administered by the Federation of State Massage Therapy Boards (FSMTB) as an approved test benefits an applicant by giving the applicant a choice in determining which test the applicant wishes to take. Requiring an applicant whose native language is not English to take either the Test of English as a Foreign Language (TOEFL) or Test of English for International Communications (TOEIC) will minimally increase costs to an applicant whose native language is not English.

The additional information required on a renewal application should not increase costs to a licensee. Although a licensee is required by A.R.S. § 32-3208 to inform the Board of any criminal charges within 10 working days, the licensee does not always do so. Thus, the provisions for renewal in R4-15-205 aid the Board in enforcement.

The addition of more continuing education activities that may be completed by a licensee should not increase costs to licensees and may even decrease costs because of the decreased cost of the courses. Licensees who take advantage of the new rule allowing continuing education for attendance at Board meetings will benefit because there is no charge for the attendance. Instructors of massage therapy classes will benefit because they will be able to claim some of the time they provide instruction to licensees. The organizations listed in the rules who provide CPR and first aid may benefit because more licensees may take these courses.

If a massage therapy school decides to add an English speaking class to its curriculum, the benefit could be minimal for the school if the school charges for the class.

The Board does not anticipate any increases in costs to consumers of massage therapy services because of the rules.

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

The Board made minor changes suggested by Council staff and the following clarifying changes to the rules, which are not substantial:

The Board made typographical changes and renumbered the sections in R4-15-201(B) appropriately. The Board added “certification” between “An” and “expiration” in R4-15-302(5)(c) and underlined all of the introductory language in R4-15-303(B) to show it is new language.

The Board changed the A.R.S. citation in R4-15-207 (C), (2) and (3) from Title 4, Chapter 15 to Title 32, Chapter 42 to reference the correct statutory title and chapter for qualifications and requirements that must be met.

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

The Board did not receive any comments.

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:

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 a license or certificate, which falls within the definition of general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal

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law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rule.

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:

The Board did not receive such an analysis from any person.

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

There is no incorporation by reference document.

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 package:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-15-101. Definitions
- R4-15-102. Fees
- R4-15-103. Ethical Standards

ARTICLE 2. LICENSING

Section

- R4-15-201. Qualifications; Application for a Regular License
- R4-15-203. Application for a License by Reciprocity
- R4-15-204. ~~Board-approved~~ Board-recognized School
- R4-15-205. Application for Renewal of a License
- R4-15-207. Licensing Time-frames
- Table 1. Time-frames (in Days)

ARTICLE 3. CONTINUING EDUCATION

Section

- R4-15-301. Required Continuing Education Hours
- R4-15-302. Approval of Continuing Education
- R4-15-303. Documentation of Completion of Continuing Education

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
2. "Applicant" means an individual requesting a regular, ~~provisional, temporary,~~ renewal, or reciprocity license from the Board or recognition as an out-of-state school as required by A.R.S. § 32-4228.
3. No change
4. ~~"Board-approved school" means the same as "Board-recognized school" in A.R.S. § 32-4201.~~
4. "Classroom instruction" means the physical or distance learning format environment in which massage therapy

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- didactic teaching or lecturing takes place.
5. “Client” means an individual receiving massage therapy.
6. “Clinical instruction” means the hands-on application of massage therapy.
- ~~5-7.~~ No change
8. No change
- ~~6-9.~~ “Correspondence” or “distance learning format” “Distance learning” means the instructor of a continuing education and the individual receiving the ~~instruction~~ continuing education are not located in the same room in which the continuing education is being provided.
10. “FSMTB” means Federation of State Massage Therapy Boards, the body that administers a massage and bodywork licensing examination.
11. “Health care practitioner” means “practitioner” defined in A.R.S. § 32-3101.
- ~~7-12.~~ “Hour” or “classroom hour” means a minimum of 50 to 60 minutes of participation.
- ~~9-13.~~ “General equivalency High school equivalency diploma” means:
- A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a ~~general educational development~~ high school equivalency test or meets the requirements of A.R.S. § 15-702(B),
 - A document issued by a state other than this state to an individual who passes a ~~general educational development~~ high school equivalency test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B), or
 - No change
- ~~10-14.~~ “Good moral character” means an applicant:
- Has not, ~~within the five years before the date of the application,~~ been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or other similar related offense;
 - Has not, ~~within five years before the date of the application,~~ been convicted of an act involving dishonesty, fraud, misrepresentation, ~~or gross negligence, or incompetence or is;~~
 - Is not currently incarcerated in a local, state, or federal penal institution or is not on community supervision after a period of incarceration in a local, state, or federal penal institution for such an act;
 - ~~d.~~ Has not, within five years before the date of the application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action; or
 - ~~e.~~ Has not, within five years before the date of the application, had a massage therapy certification revoked or suspended by a national massage therapy certifying agency; and.
- ~~11-15.~~ No change
- ~~12-16.~~ “Massage therapy student” means an individual receiving instruction in massage therapy or bodywork therapy at a ~~Board-approved~~ Board-recognized school.
- ~~13-17.~~ No change
14. “National massage therapy certificate number” means a unique identification number issued by the NCBTMB.
15. “Provisional license” means an approval issued by the Board to an applicant who meets the requirements in A.R.S. § 32-4222(A) and (C), and this Chapter.
- ~~16-18.~~ No change
- ~~17-19.~~ “Practice of massage therapy” means the same as “massage therapy” as defined in A.R.S. § 32-4201.
18. “Self-supportive as a massage therapist” means that an individual has reported income to the Arizona Department of Revenue that was derived from the performance of services that would fall within the scope of the practice of massage therapy under A.R.S. § 32-4201 each year from December 31, 1992 until December 31, 2004.
- ~~19-20.~~ “Supervised instruction” means the ~~massage therapist~~ a licensee responsible for a massage therapy student at a ~~Board-approved~~ Board-recognized school:
- For clinical instruction:
 - ~~a.~~ Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student's education,
 - ~~b.~~ Is immediately available for consultation, and
 - ~~c.~~ Evaluates the performance of the massage therapy student.
 - For classroom instruction:
 - Is immediately available for consultation, and
 - Evaluates the performance of the massage therapy student.
21. “TOEFL” means Test of English as a Foreign Language.
22. “TOEIC” means Test of English for International Communications.

R4-15-102. Fees

- A. No change
- No change
 - No change

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3. No change
 4. No change
 5. No change
- B. No change
- C. ~~An~~ If an applicant submits a paper application, the applicant shall pay an original license application fee or a fee for which a previous check was returned for insufficient funds in cash any of the fees listed in subsection (A) by cashier's check; or money order.
- D. ~~An applicant shall pay a reinstatement or duplicate license fee in cash, cashier's check, money order, or personal check. If an applicant submits an electronic application, the applicant shall pay by credit card.~~

R4-15-103. Ethical Standards

Pursuant to A.R.S. § 32-4203(A)(6), the Board is adopting the following ethical standards, which a licensee is required to meet:

1. When a licensee agrees to provide massage therapy to a client, the licensee shall:
 - a. Inform the client and other health care practitioners, if applicable, of the licensee's qualifications, education, and experience;
 - b. Provide only those massage therapies that are within the licensee's qualifications, education, and experience;
 - c. Provide massage therapy only when the licensee believes that it will be advantageous to the client;
 - d. Refer the client to other health care practitioners after evaluating the client for any contraindications and the referral is within the best interests of the client;
 - e. Provide draping that ensures the safety, comfort, and privacy of the client;
 - f. Respect the client's right to refuse, modify, or terminate treatment;
 - g. Safeguard the confidentiality of all client information unless disclosure is requested by the client in writing, medically necessary, required by law, or necessary for the protection of the public; and
 - h. Refrain from engaging in sexual activity with the client even if the client attempts to sexualize the relationship.
2. A licensee shall not advertise that the licensee offers sensual or erotic massage that constitutes sexual activity as stated in A.R.S. § 32-4253 or for the purposes of sexual gratification.
3. A licensee shall not discriminate against a client on the basis of race, sex, age, religion, disability, or national origin.

ARTICLE 2. LICENSING

R4-15-201. Qualifications; Application for a Regular License

- A. To meet the requirements in A.R.S. § 32-4222(B), an applicant who submits an application:
1. Before January 1, 2008 shall complete 500 classroom and clinical hours of supervised instruction at a ~~Board-approved~~ Board-recognized school, and
 2. On and after January 1, 2008 shall complete 700 classroom and clinical hours of supervised instruction at a ~~Board-approved~~ Board-recognized school.
- B. An applicant for a regular license shall meet the requirements in A.R.S. § 32-4222(A) and (B) before submitting ~~and submit~~ an application packet that contains:
1. An application form that includes:
 - a. The applicant's name, date of birth, place of birth, social security number, email address, residence and business addresses, ~~and residence and business telephone numbers, and mailing address, if applicable;~~
 - b. The applicant's race, gender, height, weight, and eye color;
 - ~~b-c.~~ No change
 - ~~e-d.~~ No change
 - ~~d-e.~~ To satisfy the requirements in A.R.S. § 32-4222(A)(5):
 - i. If the applicant graduated from a high school, the date of graduation and name of the high school; ~~or~~
 - ii. If the applicant received a ~~general~~ high school equivalency diploma, the date the ~~general~~ high school equivalency diploma was awarded; or
 - iii. If the applicant passed an ability to benefit examination recognized by the United States Department of Education, written documentation of passage;
 - e-f. One passport quality photograph of the applicant's head and shoulders no larger than 2 ½ by 3 inches taken no more than 60 days before the date of the application;
 - e-g. The name and address of each ~~Board-approved~~ Board-recognized school attended by the applicant, ~~and~~ dates of attendance, and date of completion of the course of study;
 - f. If applicable, the applicant's national massage therapy certificate number and date of certification;
 - ~~g-h.~~ Whether the applicant has successfully completed the classroom hours of supervised instruction required under subsection (A) at a Board-approved school. The number of hours of classroom and clinical instruction completed by the applicant at a Board-recognized school;
 - ~~h-i.~~ Whether the applicant has passed the examination administered by the NCBTMB or FSTMB and if so, the name of the entity and date the examination was taken;

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- ~~i-j.~~ Whether the applicant, ~~within the five years before the date of the application,~~ has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a ~~similar~~ related offense or entered into a plea of no contest and, if so:
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
- k. Whether the applicant currently holds or has held a massage therapy license issued by another state and if so, the name of each state;
- ~~j-l.~~ Whether the applicant has ~~within five years before the date of the application~~ ever voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another ~~similar~~ related license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
- m. Whether the applicant is requesting a temporary license; and
- ~~k-m.~~ No change
- ~~t-n.~~ No change
- o. Whether English is the applicant's native language and, if not:
 - i. What the applicant's native language is, and
 - ii. Whether the applicant has met the requirements in subsection (C); and
- ~~n-p.~~ No change

2. Documentation of citizenship or alien status that meets the requirements in A.R.S. § 41-1080;

~~2-3.~~ No change

~~3-4.~~ No change

C. If English is not the native language of the applicant, to meet the requirements in A.R.S. § 32-4222(E), the applicant shall take and pass, no more than twenty four months before the date of the application, either of the following examinations:

1. The internet-based TOEFL with the following minimum scores:

- a. For the writing section, 25;
- b. For the speaking section, 25;
- c. For the reading section, 25; and
- d. For the listening section, 25; or

2. The TOEIC with the following minimum scores:

- a. For the speaking section, 150;
- b. For the writing section, 150;
- c. For the listening section, 300;
- d. For the reading section, 350.

~~E-D.~~ In addition to the requirements in ~~subsection (A)~~ subsections (A), (B), and (C), an applicant shall arrange to have directly submitted to the Board from the issuing entity:

- 1- ~~A copy of the applicant's high school diploma or general equivalency diploma;~~
- ~~2-1.~~ Written verification of a passing score on the NCBTMB or FSTMB examination; and
- ~~3-2.~~ To show proof of completion of the classroom hours of supervised instruction at a ~~Board-approved~~ Board-recognized school required in subsection (A), academic transcripts from the ~~Board-approved~~ Board-recognized school from which the applicant graduated; and
- 3. The score earned on the examination in subsection (C).

R4-15-203. Application for a License by Reciprocity

A. An applicant for a license by reciprocity shall meet the requirements in A.R.S. § 32-4223 and:

- 1. Submit an application ~~form~~ packet that contains the information in ~~R4-15-201(A)(1)(a), (b), and (c)~~ R4-15-201 (B)(1)(a), (b), (c), (d), (e), (i), (j), (k), (m), (n), (B)(2), and photograph required by R4-15-201(B)(1)(f) and:
 - a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S § 32-4223(A)(1), the name of ~~each~~ the state where the applicant was licensed continuously for five years immediately before the date of the application;
 - b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), whether the applicant holds a current certification from the ~~National Certification Board for Therapeutic Massage and Bodywork~~ NCBTMB or another agency that meets the standards of the National Commission for ~~Competency Assurance~~ Certifying Agencies; and
 - e. ~~Whether the applicant has within five years before the date of the application voluntarily surrendered a massage therapy license or had a massage therapy license or another similar license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdic-~~

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~~tion that would be subject to discipline in this state under this Chapter; and~~
~~d-c.~~ No change

2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S § 32-4223(A)(1), ~~submit a copy of the state's massage therapy statutes and rules and~~ arrange to have verification of the license or certificate in the jurisdiction in the other state sent directly to the Board from the jurisdiction including:
 - a. No change
 - b. No change
 - c. No change
 3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have:
 - a. ~~a~~ A verification of certification as a massage therapist sent directly to the Board from the ~~National Certification Board for Therapeutic Massage and Bodywork NCBTMB~~ or other agency that meets the standards of the National Commission for ~~Competency Assurance~~ Certifying Agencies; and
 - b. Academic transcripts from the Board-recognized school from which the applicant completed the course of study;
 4. No change
 5. No change
- ~~B.~~ In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board from the issuing entity;
1. ~~A copy of the applicant's high school diploma or general equivalency diploma, and~~
 2. ~~Academic transcripts from the Board-approved school from which the applicant graduated.~~

R4-15-204. Board-approved Board-recognized School

- A. A massage therapy school or bodywork therapy school in this state that is offered by a community college or approved by the Arizona State Board for Private Postsecondary Education is a ~~Board-approved~~ Board-recognized school.
- B. A massage therapy school or bodywork therapy school in another state that is approved by an agency similar to the Board for Private Postsecondary Education and that wishes to be a ~~Board-approved~~ Board-recognized school shall:
 1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change

R4-15-205. Application for Renewal of a License

An applicant for a renewal license shall submit:

1. An application form that contains the ~~applicant's~~ licensee's:
 - a. Name;
 - b. Massage therapy license number;
 - c. Massage therapy license expiration date;
 - d. Birthdate;
 - ~~b-e.~~ Residence and practice addresses; ~~and~~
 - ~~e-f.~~ Residence and practice telephone numbers;
 - g. Mailing address;
 - h. E-mail address;
 - i. Alien status declaration if the licensee is not a citizen or national of the United States;
 - j. Declaration of whether the licensee has been charged with or convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest during the two-year period immediately preceding the renewal application date and, if so the licensee shall provide the following information:
 - i. The charged felony or offense;
 - ii. The date of conviction;
 - iii. The court having jurisdiction over the felony or offense;
 - iv. The probation officer's name, address, and telephone number, if applicable;
 - v. A copy of the notice of expungement, if applicable; and
 - vi. A copy of the restoration of civil rights, if applicable;
 - k. Declaration that the licensee has completed the continuing education required by A.R.S. § 32-4225(E) during the two-year period immediately preceding the renewal application date or if audited, the documentation required in R4-15-303(B); and
 - l. Signature and date of submission; and
2. ~~The information required in R4-15-303; and~~
- 3-2. ~~The fee required in R4-15-102(A).~~

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R4-15-207. Licensing Time-frames

- A. The overall time-frame described in ~~A.R.S. § 41-1072(1)~~ A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25 percent of the overall time-frame.
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
 - 1. No change
 - 2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 4 32, Chapter ~~45~~ 42 and this Chapter.
 - 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 4 32, Chapter ~~45~~ 42 and this Chapter.
- D. The Board shall consider an application withdrawn if within ~~360~~ 365 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).
- E. An applicant who does not wish an application withdrawn may request a denial in writing within ~~360~~ 365 days from the application submission date.
- F. No change

Table 1. Time-frames (in Days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular license R4-15-201	A.R.S. § 32-4222	180 <u>120</u>	90 <u>60</u>	90 <u>60</u>
Temporary License R4-15-201	A.R.S. § 32-4224	60	30	30
Provisional License R4-15-202	A.R.S. § 32-4222	180	90	90
License by Reciprocity R4-15-203	A.R.S. § 32-4223	120	60	60
Out of state School Approval Board-recognized school R4-15-204	A.R.S. § 32-4228	120	60	60
Renewal License	A.R.S. § 32-4225	60	30	30

ARTICLE 3. CONTINUING EDUCATION

R4-15-301. Required Continuing Education Hours

- A. During the two-year period immediately preceding license expiration, a licensee applying for a renewal license shall complete ~~25~~ 24 hours or more of continuing education.
- B. A licensee may complete a maximum of 12 continuing education hours from a ~~correspondence or~~ distance learning format to satisfy the requirement in subsection (A).
- C. A licensee shall not carry over hours from one renewal period to another renewal period.

R4-15-302. Approval of Continuing Education

The following continuing education is approved by the Board:

- 1. No change
 - a. No change
 - b. No change
- 2. No change
 - a. No change
 - b. No change
- 3. Continuing education offered by a regionally or nationally accredited post-secondary institution in a state other than

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- Arizona; ~~or~~
4. No change
 5. For each renewal period no more than four hours of CPR or four hours of First Aid for a combination of no more than eight hours that is taught by an instructor who has been certified in CPR or First Aid instruction by the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council and has a current card issued by the American Red Cross, American Heart Association, or American Safety and Health Institute, or National Safety Council that contains:
 - a. The instructor's name.
 - b. A statement by the certifying entity that authorizes the instructor to teach CPR or first aid, and
 - c. A certification expiration date;
 6. For each renewal period no more than three hours for attendance at a Board meeting, if the licensee obtains a document that states the licensee attended a minimum of three hours at a Board meeting, the date of the Board meeting, and the signature of the Board's chair or executive director. The licensee may claim only the actual number of hours attended by the licensee for a maximum of three hours; or
 7. For each renewal period one hour for each eight hours serving as an instructor of a massage therapy class at a Board-recognized school for a maximum of 10 hours and the licensee documents:
 - a. The name of the Board-recognized school.
 - b. The title of the massage therapy class.
 - c. The subject matter of the massage therapy class.
 - d. The dates of the instruction.
 - e. The location of the massage therapy class, and
 - f. A confirmation of number of hours that is on official school letterhead and signed by the owner of the Board-recognized school or designee.

R4-15-303. Documentation of Completion of Continuing Education

- A.** When renewing a license, a licensee shall submit ~~with on~~ a renewal application ~~documentation~~ an affirmation of completion of ~~25~~ 24 hours of continuing education, ~~that includes:~~
- B.** The Board may annually and randomly select a minimum of 10% of active licenses for an audit of continuing education and require the following information:
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. The location where the continuing education took place, and
 7. The name of the instructor providing the continuing education, ~~and,~~
 8. ~~The signature of the licensee.~~