

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 43. ARIZONA BOARD OF OCCUPATIONAL THERAPY EXAMINERS

##### PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-43-206                          | New Section                     |
- 2. The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**
- |                       |                     |
|-----------------------|---------------------|
| Authorizing statute:  | A.R.S. § 32-3404(A) |
| Implementing statute: | A.R.S. § 32-3430    |
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 5 A.A.R. 2445, July 30, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |             |   |
|-------------|---|
| Name:       | Cedes Bruno   |
| Address:    | 5060 North 19th Avenue, Suite 216<br>Phoenix, Arizona 85015 |
| Telephone:  | (602) 589-8352  |
| Fax Number: | (602) 589-8354  |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The Board is adding 1 new section to its rules, R4-43-206, Procedures for Submitting Fingerprints, to implement A.R.S. § 32-3430, Fingerprinting which became effective August 6, 1999. The rule describes the new requirement for all Occupational Therapy applicants to obtain and submit their fingerprints as part of the license or limited permit application process.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
None.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not Applicable.
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
The Board will absorb the costs of reprinting and distributing the amended rules to licensees. The applicant will bear the cost of \$24 paid to the FBI through the Department of Public Safety for each fingerprint card submitted for a criminal records check; plus, a possible fee for having fingerprints taken at a local police station, sheriff's office, or private contractor.

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**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Cedes Bruno  
Address: 5060 North 19th Avenue, Suite 216  
Phoenix, Arizona 85015  
Telephone: (602) 589-8352  
Fax Number: (602) 589-8354

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Written and oral comments will be accepted at the location listed above between 8:00 a.m. and 5:00 p.m., Monday through Friday (excluding state holidays), until the close of the record. No date has been selected for the close of record. Oral proceedings will be conducted at all open public meetings as they are announced by Agenda. Meetings are scheduled several months in advance and schedules may be received by calling at telephone number (602) 589-8352.

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

Not applicable

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

Not applicable

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

**ARTICLE 2. LICENSURE**

Section

R4-43-206. Procedures for Submitting Fingerprints

**ARTICLE 2. LICENSURE**

**R4-43-206. Procedures for Submitting Fingerprints**

- A.** In addition to the documents required by R4-43-201 through R4-43-205, each applicant for original licensure, license renewal, license reinstatement, or limited permit shall submit a full set of readable fingerprints to the Board, if the applicant has not previously done so. The Board shall provide fingerprint cards and fingerprint card instructions to applicants. The applicant shall have the fingerprint card completed by an authorized fingerprinter. If the fingerprints are unreadable, the Board shall reject the fingerprint card and shall notify the applicant of the rejection. The applicant shall submit a new readable card within 20 days from the date of the notice of rejection. The Board shall suspend the license or limited permit of a person who does not submit a new readable set of fingerprints.
- B.** The applicant shall submit the completed, readable fingerprint cards to the Board along with the other required documents and a processing fee of \$24 for each card submitted.
- C.** The Board shall review the results of each applicant's criminal records check and compare it with the applicant's disclosures on the application form. The Board shall take any action authorized by law regarding disqualifying factors or violations of the Board's statutes or rules.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REVIEW BOARD**

**PREAMBLE**

**1. Sections Affected**

Article 1  
R20-7-101

**Rulemaking Action**

New Article  
New Section

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**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 23-422 and 23-423.

Implementing statutes: A.R.S. §§ 23-422 and 23-423.

**3. A list of all previous notices appearing in the Register addressing the proposed rule:** None.

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

Name: Lisa Gervase, Counsel for the Board

Address: 4150 W. Northern

Phoenix, AZ 85051

Telephone Number: (602) 955-1254

Facsimile Number: (602) 955-1261

E-mail: lisa.gervase@azbar.org

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

This proposed rule outlines the procedures to be followed in handling appeals before the OSHA Review Board. The rule is necessary for parties and attorneys appearing before the Board to have a road map to follow. The Board, parties, and attorneys have used the Rules of Civil Appellate Procedure and other related civil and administrative rules as guidance in handling appeals before the Board; however, that has led to some confusion and inconsistency. This rule will set forth simple, organized procedures to follow in one place.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:** None.

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

Not applicable.

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

There should be no negative impact to follow this rule because in some form, the Board, parties, and attorneys are using these types of procedures. The rule codifies years of practice. There should be a positive impact in having simple, concise rules in one place to follow. There is minimal economic impact on the Board and other state agencies involved in rule promulgation to draft, review, and promulgate the rule and related documents. However, the benefit of having a clear, concise rule in one place outweighs any economic impact in promulgating the rule.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Lisa Gervase

Address: 4150 W. Northern

Phoenix, AZ 85051

Telephone Number: (602) 955-1254

Facsimile Number: (602) 955-1261

E-mail: lisa.gervase@azbar.org

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: January 28, 2000

Time: 10:00 a.m. - 12:00 noon

Location: Law Office of Lisa Gervase

4150 W. Northern, East Building Conference Room

Phoenix, AZ 85051

Nature: Public Comment Hearing at which members of the public may appear and make comments regarding the rules and the economic, small business, and consumer impact statement. The Board will accept comments until the

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close of record, which will not be before January 28, 2000.

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

None.

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

None.

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

**TITLE 20. COMMERCE, BANKING, AND INSURANCE.**

**CHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REVIEW BOARD**

(Authority: A.R.S. §§ 23-422 and 23-423)

**ARTICLE 1. OSHA REVIEW BOARD**

Section

R20-7-101. Procedures

**ARTICLE 1. OSHA REVIEW BOARD**

**R20-7-101. Procedures**

In addition to A.R.S. § 23-423, the following procedures govern proceedings before the Occupational Safety and Health Administration Review Board:

**A. Filing and service.**

1. A party filing a document with the Board shall submit 1 original and 6 copies to the Board, and 2 copies to the opposing party or, if represented, the opposing party's counsel;
2. The Board or the Board's counsel shall state the address for filing documents with the Board in the notice of review (briefing schedule) mailed by the Board under A.R.S. § 23-423(D).

**B. Form and size of briefs.**

1. A party requesting review of an administrative law judge's decision (appellant) shall file a document (opening brief) with the Board no later than 30 calendar days after service of the briefing schedule under A.R.S. § 23-423(D), unless subparagraph (C)(2) applies. An appellant's opening brief shall set forth:
  - a. A statement of what the case involves and the administrative law judge's decision;
  - b. A concise statement of the facts relevant to the issues presented for review with references to the record, consisting of the official transcript of the oral proceedings and the exhibits that were accepted into evidence at the hearing before an administrative law judge. This statement of facts shall contain only facts that are in the record;
  - c. A statement of the issues presented for review;
  - d. An argument, which contains the appellant's contentions with respect to the issues presented, with citations to appropriate statutes, rules, or other legal authority; and
  - e. A short conclusion stating the relief sought.
2. A party responding to an opening brief (respondent) shall file a document (response brief) with the Board no later than 30 days after service of the appellant's brief. A response brief shall conform to the requirements of subsections (B)(1)(a) through (e). Information provided pursuant to subsections (B)(1)(a) through (c) only needs to be included to the extent that the respondent believes the appellant's statements are insufficient or incorrect.
3. An appellant may file a document (reply brief) to answer the respondent's brief, within 20 days after service of the response brief. A reply brief shall be confined strictly to rebutting points argued in the response brief. Based on a motion filed by a respondent, or on its own initiative, the Board may strike from the record information in a reply brief that goes beyond rebutting points argued in a response brief.
4. An opening brief and a response brief shall not exceed 35 typewritten pages, and a reply brief shall not exceed 15 typewritten pages, excluding pages containing a table of contents, table of authorities, or appendix. All briefs shall be legible and double-spaced, except for quotations, that may be single-spaced.

**C. Oral argument.**

1. A party may request oral argument by noting on the first page of the party's brief immediately below the title of the brief "oral argument requested", or by filing, no later than 10 days after the time for filing the reply brief, a separate document requesting oral argument.

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2. A party shall have 15 minutes for oral argument, including no more than 5 minutes in rebuttal.
3. The Board may limit or extend the time for oral argument and may request additional oral argument from a party.
4. Unless the Board grants a request pursuant to subsection (C), a party shall only use a presentation aid that relies on facts or evidence already in the record.

**D.** Time extension.

If a party requires an extension of time to file a brief, the party may make a written request for a continuance to the Board through its counsel, and the Board or its counsel shall decide whether to extend the time for filing the brief.

**E.** Failure to file a brief or appear at hearing.

1. If an appellant fails to file an opening brief within the time required, the Board shall dismiss the appeal. If a respondent fails to file a response brief within 30 days of service of the appellant's opening brief, the Board shall consider the appeal submitted for decision based only on the opening brief.
2. If a party fails to appear at the hearing, that party's oral argument opportunity is waived and the Board shall decide the appeal based on the briefs submitted and any oral argument by the other party.

**F.** Board's decision.

1. At the time scheduled for the hearing and after the parties' oral arguments, if any, the Board shall discuss only the issues presented. The Board's discussion, decision, and basis for its decision shall be on the record.
2. A party or a party's attorney shall not provide unsolicited input during the Board's deliberation. If the Board wants information, the Board shall first seek that information from the Board's counsel. If the Board has additional questions for a party, the Board shall allow each party or each party's attorney to respond.
3. The Board shall issue a written decision for mailing to the parties citing the parties' statutory appeal rights within 30 days of the Board's hearing.

**G.** Remand for settlement.

Upon the parties' stipulation, the Board may remand a case to the administrative law judge to consider a settlement agreement.

**H.** Ex parte communication.

A party shall not communicate, directly or indirectly, with a Board member about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding where a party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.