

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

Editor's note: The following Notice of Final Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations on April 30, June 29 and October 16, 2009. (See a copy of the memoranda in this issue on pages 1795 through 1797.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 1, 2009.

[R09-96]

PREAMBLE

1. Sections Affected

R4-24-101
Table 1
R4-24-301

Rulemaking Action

Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 32-2003(5)

Implementing statute: A.R.S. § 32-2022(B), 32-2041, and 41-1073

3. The effective date for the rules:

December 5, 2009 [*Editor's Note: The Governor's Regulatory Review Council (G.R.R.C.) denied the Board's request for an immediate effective date as requested below.*]

The Board respectfully requests an immediate effective date under A.R.S. § 41-1032(A)(1), which allows an immediate effective date for a rule that preserves the public peace, health, or safety. In R4-24-101, the Board updates materials incorporated by reference. These materials, which establish standards for assessing whether the education of a foreign-trained applicant who graduated after June 30, 2009, is substantially similar to education received by a U.S.-trained applicant, become effective on July 1, 2009. The updated standards will enable the Board to fulfill its responsibility to protect public health by increasing the number of credit hours required of a foreign-trained applicant, thereby ensuring that the foreign-trained applicant meets national standards for licensure. In R4-24-301, the Board updates important aspects of the physical therapist-patient relationship to ensure that the patient is involved in making health-care decisions. In Table 1, the Board adds an omitted time-frame. The delay in completing this rulemaking does not result from Board inaction but rather from the Governor's moratorium on rulemaking activity.

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 4343, November 21, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 4696, December 26, 2008

Notice of Oral Proceeding on Proposed Rulemaking: 15 A.A.R. 734, May 1, 2009

Notice of Public Information: 15 A.A.R. 962, June 12, 2009

Notice of Rulemaking Docket Opening: 15 A.A.R. 1129, July 3, 2009

Notice of Proposed Rulemaking: 15 A.A.R. 1124, July 3, 2009

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

Name: Charles Brown, Executive Director

Address: Board of Physical Therapy
4205 N. 7th Ave., Suite 208
Phoenix, AZ 85013

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Telephone: (602) 274-0236
Fax: (602) 274-1378
E-mail: Charles.brown@ptboard.state.az.us

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

The Board is updating material incorporated by reference, specifying in table form the time-frame for renewal of a license or certificate, and amending the rule regarding lawful practice to include information on patient consent to examination and treatment and patient involvement in making health-care decisions.

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

None

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

Not applicable

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

The clarified standards regarding patient consent may impose minimal economic impact on physical therapists but will have the benefit of protecting both the physical therapist and the consumer of physical therapy services. The new standards for assessing whether the training of a foreign-educated applicant is substantially similar to that of a U.S.-educated applicant may cause some foreign-educated applicants who graduated after June 30, 2009 to need additional training. They may also require some foreign educational institutions to need to update curricula. However, the Federation of State Boards of Physical Therapy announced the new standards five years ago so foreign educational institutions and their students should have had sufficient time to be compliant.

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

The Board made only minor, non-substantive, changes between the proposed and final rules.

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

Mr. Adi Halili submitted two written comments and attached several studies he has conducted. In his first written comment, Mr. Halili proposed adding a definition of "substantially equivalent" to R4-24-101. The Board informed Mr. Halili that it is unable to define "substantially equivalent" as he suggested because the term is defined in statute at A.R.S. § 32-2022(E). The statutory definition provides the Board with discretion to determine whether the education of a foreign-trained applicant prepares the applicant to engage without restriction in the practice of physical therapy. The definition proposed by Mr. Halili, removes the Board's discretion and imposes specific general-education course requirements. Indeed, Mr. Halili comments that without the specificity in his proposed definition, "...the interpretation of the term 'substantially equivalent'... is subjected to bias and prejudice..." He further says that "the [course evaluation tool] is not specific enough and is not intended to specify the specific criteria in each jurisdiction." What Mr. Halili views as lack of specificity is actually Board discretion. The Board is unwilling to limit the discretion that the legislature believed was in the best interest of applicants and the public.

Additionally, although Mr. Halili's proposed definition acknowledges that professional-education courses are necessary for a physical therapist to be qualified to practice without restriction, his proposed definition focuses exclusively on general-education courses. And, all of the general-education courses listed by Mr. Halili in his proposed definition are included in the recommendations in the course evaluation tool. The difference is that Mr. Halili's proposed definition imposes a specific requirement regarding general-education courses while the course evaluation tool, for the most part, makes only recommendations. Indeed, the course evaluation tool includes the caveat that "The applicant must meet the specific requirements in the jurisdiction where they are seeking licensure."

To assess whether the education of a foreign-trained applicant is substantially similar to that of a U.S.-trained applicant, the Board relies on the definition at A.R.S. § 32-2022(E), the course evaluation tool incorporated by reference in R4-24-101, and the credential evaluation required under R4-24-203(A)(5). R4-24-203(B) indicates that even if the education of a foreign-trained applicant is determined not to be substantially equivalent to that of a U.S.-trained applicant, the Board exercises discretion when deciding the next steps to recommend to the applicant. The Board provides the foreign-trained applicant whose education is determined not to be substantially equivalent with written information regarding the deficiencies and alternatives for correcting the deficiencies.

In his second written comment, Mr. Halili made two proposals. He first proposed adding a definition of "uniform criteria" to R4-24-101. The proposed language for this definition and the offered rationale were the same as those offered for the proposed definition of "substantially equivalent."

Mr. Halili also proposed amending R4-24-203 to lower the score required to pass the English-proficiency examination. R4-24-203 is not part of this rulemaking so the comment is not relevant. However, the Board informed Mr. Halili that following much discussion at an open meeting in 2005, the English-proficiency examination passing scores were set to coincide with the scores required for admission to Arizona graduate programs in physical therapy.

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Additionally, Mr. Halili expresses concern only about the iBT examination. He does not express concern about the paper-based TOEFL examination. When the Arizona-required passing score is expressed as a percentage of the possible score, Arizona requires 83.3% on the iBT and 82.7% on the paper-based TOEFL. The Board believes this demonstrates that it has established comparable standards for applicants regardless of the method used to take the English-proficiency examination. Mr. Halili is concerned about a shortage of licensed physical therapists in Arizona and hypothesizes that the shortage accounts for some of the complaints made against physical therapists. He is especially concerned that the licensing requirements may prevent some foreign-educated applicants from being licensed. The Board appreciates Mr. Halili sharing his concern and expertise. However, the issues addressed are not part of the current rulemaking.

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

None

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

Coursework Tool for Foreign Educated Physical Therapists who Graduated after June 30, 2009; Fifth edition; 2004 (effective July 1, 2009); Federation of State Boards of Physical Therapy; 124 West Street, South Alexandria, VA 22314; 703-299-3100; incorporated at R4-24-101.

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section
R4-24-101. Definitions

ARTICLE 2. LICENSING PROVISIONS

Section
Table 1. Time-frames (in days)

ARTICLE 3. PRACTICE OF PHYSICAL THERAPY

Section
R4-24-301. Lawful Practice

ARTICLE 1. GENERAL PROVISIONS

R4-24-101. Definitions

In addition to the definitions in A.R.S. § 32-2001, in this Chapter:

1. No change
2. No change
 - a. No change
 - b. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. "Course evaluation tool" means ~~A the Coursework Evaluation Tool for Persons Who Received Their Foreign Educated Physical Therapy Education Outside the United States Therapists who Graduated after June 30, 2009, Fourth Fifth Edition, 2003 2004 (effective July 1, 2009), published by the Federation of State Boards of Physical Therapy, 509 W~~ the 124 West St., South Alexandria, VA, 22314, incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
12. No change

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- 13. No change
- 14. No change
- 15. No change
- 16. No change
- 17. No change
 - a. No change
 - b. No change
 - c. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change
- 22. No change
- 23. No change
- 24. No change
- 25. No change
- 26. No change
- 27. No change
- 28. No change
- 29. No change
- 30. No change
- 31. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 32. No change
- 33. No change
- 34. No change
- 35. No change
- 36. No change
- 37. No change

ARTICLE 2. LICENSING PROVISIONS

Table 1. Time-frames (in days)

Type of Applicant	Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Original License (R4-24-201)	License	A.R.S. §§ 32-2022; 32-2023	75	30	45
License by Endorsement (R4-24-201)	License by Endorsement	A.R.S. § 32-2026	75	30	45
Physical Therapist Assistant Certificate (R4-24-207)	Certificate	A.R.S. §§ 32-2022; 32-2023	75	30	45
Foreign-educated (R4-24-203)	License	A.R.S. §§ 32-2022; 32-2025	75	45	30
<u>Renewal of license or certificate (R4-24-208)</u>	<u>License or certificate</u>	<u>A.R.S. § 32-2027</u>	<u>30</u>	<u>15</u>	<u>15</u>
Foreign-educated and Supervised Clinical Practice (R4-24-203, R4-24-204)	Interim Permit and Approval of Facility	A.R.S. § 32-2025	60	30	30
Reinstatement (R4-24-202)	Reinstatement of License or Certificate	A.R.S. § 32-2028	30	15	15

ARTICLE 3. PRACTICE OF PHYSICAL THERAPY

R4-24-301. Lawful Practice

A. A physical therapist shall provide the referring practitioner, if any, with information from the patient assessment, diagno-

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sis, and plan of care. ~~A~~ Within one week after a patient is initially evaluated, the physical therapist shall provide this information, verbally or in writing, after a patient is initially evaluated:

1. In writing and place a copy of the written notice in the patient's record, or
2. Orally and place a contemporaneously made note of the verbal communication in the patient's record.

B. ~~A physical therapist shall maintain the confidentiality of patient records in accordance with A.R.S. Title 12, Chapter 7 as required by federal and state law.~~

C. On written request by a patient or the patient's health care decision maker, a physical therapist shall provide access to or a copy of the patient's medical or payment record in accordance with A.R.S. § 12-2293.

~~C.D.~~ ~~A physical therapist shall obtain a patient's informed consent before examination and treatment. The and document the consent shall be in writing or documented in the patient chart and include: patient's record.~~

1. ~~The nature of the proposed intervention;~~
2. ~~Material risk of harm or complication;~~
3. ~~A reasonable alternative to the proposed intervention, and~~
4. ~~The goal of treatment.~~

E. A physical therapist shall respect a patient's right to make decisions regarding examination and the recommended plan of care including the patient's decision regarding consent, modification of the plan of care, or refusal of examination or treatment. To assist the patient in making these decisions, the physical therapist shall:

1. Communicate to the patient:
 - a. Examination findings,
 - b. Evaluation of the findings, and
 - c. Diagnosis and prognosis;
2. Collaborate with the patient to establish the goals of treatment and the plan of care; and
3. Inform the patient that the patient is free to select another physical therapy provider.