

Notices of Final Rulemaking

Address: Arizona Department of Agriculture
1688 W. Adams Street
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: casey.cullings@azag.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 An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 primary purpose of this rulemaking is to eliminate the requirement of having at least one unit of continuing education related to the use of fumigants for a raw agricultural commodity or on-farm burrowing rodent problem in order to renew fumigation certification. This continuing education course is only currently offered by the Department and only once a year. Because no private organizations offer this course, licensees face a particular burden of having to come to Phoenix regardless of where they live in the state on the one date the course is offered.

The rulemaking also reorders and clarifies the rule in several respects. Former paragraph D is being incorporated in paragraph B. Former paragraph F is becoming paragraph D. Former paragraph H is becoming paragraph F.

Current Paragraph	Proposed Subsection
D	Part of B
E	E
F	D
G	G
H	F

The examination and renewal requirements for fumigation certification are being incorporated into the general paragraphs concerning examinations and renewal. The Department's abbreviations for commercial applicators and private applicators are being added. The language about the core exam for commercial applicator certification is being clarified since Appendix A, subsection (A) actually contains the core exam subjects as opposed to being in addition to the core exam subjects. Similarly, the language for private applicator certification will now specify that Rule 202 lists the core exam subjects. The renewal provisions are being amended to make clear that a person either needs to complete continuing education courses or retake the certification exam and that a person retaking the exam is limited to a one year renewal, which is the current Department practice. The provision that CEU requirements are not applicable when the initial certification was issued between October 1 and December 31 is being expanded to cover all certifications listed in this rule as opposed to just private applicator certifications, which actually will make the rule in line with current Department practice. Other sentences are being clarified and/or moved to a different paragraph.

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:

None

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

Not applicable.

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

The rulemaking is exempt from the requirement to prepare an economic, small business and consumer impact statement pursuant to A.R.S. § 41-1055(D)(3). This rulemaking decreases monitoring by the Department and decreases a reporting burden on licensees with fumigation certification without increasing the cost of implementation or enforcement by removing the requirement that the licensees take a particular continuing education course (on the use of fumigants for a raw agricultural commodity or on-farm burrowing rodent problem) in order to have their certification renewed.

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

The Department made a grammatical correction by replacing “CEU credits” with “CEUs” in subsection (F)(3)(d).

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

Robert Shuler, representing the Arizona Crop Protection Association, spoke in favor of the rulemaking.

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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:

Pursuant to A.R.S. § 3-104(F), the Department discussed this rulemaking with the ADA Advisory Council on June 21, 2012, and the Council voted in favor of the rulemaking.

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 maintains the requirement for pesticide applicators to obtain certification. A general permit (i.e. certification) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires applicator certification must pass a core exam. A person who desires commercial applicator certification must additionally pass a category specific exam, such as agricultural pest control or seed treatment. "For example, practical knowledge of drift problems should be required of agricultural applicators but not of seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques." 40 CFR 171.4(c). There are eight categories of commercial certification plus a separate category for private fumigation certification. Under a general permit, an applicant would have to pass the core exam and all nine category specific tests (see 40 CFR 171.4 (requiring category specific exams)) whereas now private applicator certification does not require passing any category specific test and commercial applicator certification can be issued by passing one category specific exam.

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:

Certification of pesticide applicators, as described in this rule, is subject to 40 CFR 171, particularly 40 CFR 171.4, 171.5 & 171.7. Those federal regulations require: "State standards must conform and be at least equal to those prescribed herein." 40 CFR 171.4(a) & 171.5(a). A federally approved state plan is also necessary for the State to certify applicators. 40 CFR 171.7. One aspect of state plans is "provisions to ensure that certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly," which the Department accomplishes through continuing education requirements. 40 CFR 171.8(a)(2). The Department has an approved state plan in place. The Department believes the rule may be considered as more stringent than federal law in particular respects, but that the aspects of this rule are nonetheless authorized by 40 CFR 171 and therefore arguably not more stringent than the federal law. For the purpose of this rulemaking, the Department will assume that the rule is more stringent than federal law and states that the Department has the authority to exceed the requirements of federal law, except with respect to record keeping and reporting requirements not at issue in this rule, under A.R.S. § 3-363 as well as 40 CFR 171.

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

No

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

None.

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

Not applicable

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION**

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

Section

R3-3-208. Applicator Certification; Examination; Fee; Renewal

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

R3-3-208. Applicator Certification; Examination; Fee; Renewal

A. An individual shall not act as a private applicator or commercial applicator unless the individual is certified by the Department.

B. Application. An individual applying for either commercial or private applicator certification shall ~~provide~~ pay a \$50 fee

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and submit a completed application to the Department containing the following information on a form obtained from the Department:

1. ~~Name, social security number, address, e-mail address if applicable, daytime telephone number, Social Security number, and signature of the applicant;~~ The applicant's name, address, e-mail address if applicable, daytime telephone number, Social Security number, and signature of the applicant;
2. Date of the application;
3. ~~Address, e-mail address, if applicable, and daytime telephone number of the applicant;~~
- 4-3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
- 5-4. Whether the application is for a commercial or private applicator certification;
5. If applicable, an indication the applicant seeks private applicator fumigation certification;
6. For commercial certification, the categories in which the applicant seeks to be certified;
7. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and
8. Certification renewal period.

C. Private applicator fumigation certification.

1. ~~An individual seeking fumigation certification must first be certified as a private applicator or a commercial applicator.~~ Fumigation certification requires certification as a private applicator or a commercial applicator.
2. Fumigation certification allows a private applicator or a commercial applicator acting as a private applicator to use, apply, or supervise the use or application of a fumigant to an on-farm raw agricultural commodity or on-farm burrowing rodent problem.
3. ~~An applicant shall score at least 75 percent on a written fumigation examination administered by the Department;~~
4. ~~If the fumigation certification is renewed with the private applicator certification or the commercial applicator certification, the private applicator or commercial applicator shall:~~
 - a. ~~Retake and pass the written fumigation examination; or~~
 - b. ~~Submit evidence of completing the number of CEUs required under subsection (H)(4)(a); and~~
 - c. ~~Submit evidence of completing at least three additional CEUs per year, at least one of which shall be related to the use of fumigants to a raw agricultural commodity or on-farm burrowing rodent problem.~~

D. ~~An applicant shall submit a completed application to the Department accompanied by a \$50 fee.~~

E. ~~Applicator certification is not transferable, expires on December 31, and is:~~

1. ~~Issued for one year as an initial certification;~~
2. ~~Renewed for one or two years, depending on the renewal period selected by the applicant; and~~
3. ~~Renewed for all categories of certification for the same renewal period.~~

F.D. Examinations. The Department shall administer examinations by appointment at every Environmental Services Division office. An applicant shall achieve a passing score of 75 percent in the applicable subject area in order to receive initial certification.

1. ~~Commercial applicator certification (PUC). In addition to the core examination required for an initial commercial applicator certification in by R3-3-202, an applicant shall demonstrate knowledge and understanding of the subjects listed in Appendix A, subsection (A) (B) for each commercial certification category sought.~~
2. ~~Commercial certification categories.~~
 - a. ~~An individual may apply for commercial applicator certification in any of the following categories:~~
 - i.a. ~~Agricultural pest control,~~
 - ii.b. ~~Forest pest control,~~
 - iii.c. ~~Seed-treatment,~~
 - iv.d. ~~Aquatic pest control,~~
 - v.e. ~~Right-of-way pest control,~~
 - vi.f. ~~Public health pest control,~~
 - vii.g. ~~Regulatory pest control, control: M-44 or rodent, if a government employee or~~
 - viii.h. ~~Demonstration and research pest control.~~
 - b. ~~An applicant shall demonstrate practical knowledge of the certification category subjects listed for the category in Appendix A, subsection (B).~~
3. ~~Private applicator certification (PUP). An applicant shall demonstrate knowledge and understanding of the core examination subjects listed in Appendix A, subsection (C) R3-3-202.~~
4. ~~Fumigation certification. An applicant seeking private applicator fumigation certification shall also pass a separate fumigation examination.~~
- 4-5. ~~An individual who fails an examination may retake it no more than three times in a 12-month period, and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~

E. Applicator certification is not transferable, expires on December 31, and is:

1. Issued for the remainder of the calendar year as an initial certification;
2. Renewed for one or two years, depending on the renewal period selected by the applicant; and

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3. Renewed for all categories of certification for the same renewal period.
- ~~G. Renewal; expired license.~~
- ~~1. An applicant may renew an expired license without retaking the written examinations under the following conditions:
 - a. The applicant complies with the CEU requirements in subsection (H)(4);
 - b. The applicant submits a completed application and fee within 30 days after the expiration date, and
 - c. The applicant does not provide any pesticide-related service from the date the license expired until the date the renewal is effective.~~
 - ~~2. All other applicants for renewal shall retake the written examinations prescribed in subsections (F) or (C) and (F).~~
- ~~H.F. Renewal.~~
- ~~1. The continuing education requirements in subsection (H)(4) are not applicable to an individual who passes the certification examination prescribed in subsections (C) or (F) or (C) and (F), and who applies for private applicator certification between October 1 and December 31 of the test year.~~
 - ~~2.1. An applicant for renewal of an applicator certification shall select a one or two-year renewal period.~~
 - ~~3.2. An applicant shall submit the completed application accompanied by a \$50 fee for each year or portion of the year during which the certification is valid a one-year renewal or \$100 for a two-year renewal.~~
 - ~~4.3. CEU requirements.~~
 - ~~a. The Department shall not renew a private applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs for each year for which certification is sought or retakes and passes the written examinations prescribed in subsection (F)(3) or subsections (C) and (F)(3) of the renewal period.~~
 - ~~b. The Department shall not renew a commercial applicator certification unless, before prior to expiration of the current certification, the applicator completes six CEUs for each year of the renewal period or retakes and passes the written examinations prescribed in subsections (F)(1) and (2).~~
 - ~~c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's private or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.~~
 - ~~d. An applicator shall complete CEU credit from January 1 through December 31 while the current certification period is in effect. CEU credits CEUs earned in a year that are in excess of the requirements do not carry forward for use in future years subsequent renewals.~~
 - ~~e. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.~~
 - ~~f. The CEU requirements are not applicable to an individual renewing an initial certification issued between October 1 and December 31.~~
 - ~~4. Examination exception. An applicator who fails to complete the CEUs required for renewal may renew a certification, prior to expiration, for one year by submitting the completed application accompanied by a \$50 fee and retaking and passing the applicable certification examination prescribed in this Section.~~
- ~~G. Renewal; expired certification.~~
- ~~1. An applicant may renew an expired certification without retaking the written examinations provided the applicant:
 - a. Has satisfied the CEU requirements,
 - b. Submits a completed application and fee within 30 days after the expiration date, and
 - c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective.~~
 - ~~2. All other applicants for renewal shall complete the requirements for initial certification, including retaking and passing the written examinations prescribed in this Section.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2510.)

[R12-176]

PREAMBLE

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

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R4-19-311

Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. §§ 32-1606(A)(1) and 32-1668

Implementing statutes: A.R.S. §§ 32-1668 and 32-1669

3. The effective date of the rule:

September 11, 2012. The Arizona State Board of Nursing (Board) is seeking an immediate effective date under A.R.S. § 41-1032(A)(1). Consistent with A.R.S. § 41-1032(A)(1) the public peace, health and safety will be preserved with an immediate adoption of this amendment by allowing the Board to remain in the multi-state nurse licensure compact.

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

Notice of Rulemaking Docket Opening: 18 A.A.R. 1078, May 11, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 1060, May 11, 2012

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

Name: Pamela K. Randolph RN, MS

Address: Associate Director of Education and Evidence-based Regulation
4747 N. 7th St., STE 200
Phoenix, AZ 85014

Telephone: (602) 771-7803

Fax: (602) 771-7888

E-mail: prandolph@azbn.gov

Web site: azbn.gov

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

The Arizona State Board of Nursing (Board) is amending R4-19-311 for the sole purpose of updating the incorporation by reference from the 1999 version of model nurse licensure compact rules to the 2008 version of model nurse licensure compact rules. Adopting this latest version of the model rules is a condition of compact participation, which allows interstate mobility of nurses between Arizona and 23 other states. Changes between the previous version of the model rules (1999) and the current version include: additional options regarding evidence of primary state of residence, course of action if the nurse is residing outside of the United States, course of action for a revoked, suspended, surrendered or denied license and clarifying language.

7. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to 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:

There were no relevant studies that were either relied upon or not relied upon in the Board's justification for this rule.

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 proposed amendment to Section R4-19-311 is not expected to have an economic impact on any regulated entity, the Board, or small businesses. The Arizona State Board of Nursing licenses approximately 72,000 registered nurses and 11,000 practical nurses. Of these nurses approximately 72,062 hold compact RN or LPN licenses and 10,770 hold single state only licenses. Amending this rule will allow Arizona to remain in the Nurse Licensure Compact with 23 other states. The compact allows nurses residing in Arizona who hold a compact license to practice in all compact states. Failure to amend this rule may result in loss of this privilege and subsequent economic harm to nurses.

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

There have been no changes.

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

The Board held an oral proceeding on June 11th at 4:00 pm in the Board offices at 4747 N. 7th St., STE 200, Phoenix, AZ 85014. There were no persons in attendance other than Board staff. The Board did not receive any written comments on this rulemaking. The comment period closed on June 11, 2012, at 5:00 pm.

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 question:

There are no other matters prescribed by statute applicable to the Board or this specific class of rules

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

This rulemaking does not require a permit; however, this Section relates to the issuance of a multi-state license which can be considered a general permit

b. Whether a federal law is applicable to the subject of the rule, whether the rules is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of the 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 of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted

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

The material incorporated by reference is the "Nurse Licensure Compact Model Rules and Regulations" published August 4, 2008, by National Council of State Boards of Nursing (NCSBN), 111 E. Wacker Drive, STE 2900, Chicago, IL 60601 and may be downloaded at <https://www.ncsbn.org/2539.htm>. This incorporation by reference is contained in R4-19-311.

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:

This rule was never made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 3. LICENSURE

R4-19-311. Nurse Licensure Compact

ARTICLE 3. LICENSURE

R4-19-311. Nurse Licensure Compact

The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the Nurse Licensure Compact Model Rules and Regulations, published by the National Council of State Boards of Nursing, Inc., 111 E. Wacker Dr., Suite 2900, Chicago, IL, 60601, www.ncsbn.org, ~~November 2, 1999~~ August 4, 2008, and no later amendments or editions, which is incorporated by reference and on file with the Board.

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

Not applicable

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

The Board's current rules rely on A.R.S. § 32-1826(A), which requires the Board to establish fees by a formal vote at its annual January meeting. As a result, the Board has annually established and posted its licensing fees on its website. The Board has never placed the licensing fees in rule. The recent addition of A.R.S. § 41-1008(D) (See HB 2744) to the Administrative Procedure Act requires an agency to comply with all rulemaking provisions to establish or increase a fee unless the agency is granted an express exemption by the legislature. This change makes it necessary for the Board to put its fees in rule. This rulemaking puts the fees charged by the Board for its licensing activities into rule. It does not increase any of the fees.

The conduct and its frequency of occurrence that the rule is designed to change:

The Board charges fees for its licensing activities every day. As a result, the Board is not in compliance with the new provision in A.R.S. § 41-1008(D).

The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The harm resulting from not having licensing fees in rule is failure to comply with the new statute. The harm will continue until this rulemaking is completed.

The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is completed, the Board will be in compliance with statute.

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

No changes were made between the proposed and final rules.

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

No comments were received regarding the rulemaking. No one attended the oral proceeding on June 26, 2012.

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

None

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

The rule does not require a permit.

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

Federal law is not applicable to the Board's licensing fees.

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:

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 1. GENERAL PROVISIONS

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Section

R4-22-108. Miscellaneous Fees and Charges

ARTICLE 1. GENERAL PROVISIONS

R4-22-108. Miscellaneous Fees and Charges

A. Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect ~~The the~~ following fees for the Board's licensing activities ~~services rendered by the Board are hereby established:~~

1. Application to practice osteopathic medicine, \$400;
2. Issuance of initial license, \$180 (pro-rated);
3. Biennial renewal of license, \$636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
4. Locum tenens registration, \$300;
5. Annual registration for internship, residency, or clinical fellowship, \$50;
6. Teaching license, \$318;
7. Five-day educational teaching permit, \$106; and
8. Annual registration to dispense drugs and devices, \$240 (initial registration fee is pro-rated).

B. Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:

1. ~~For verification~~ Verification of a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, \$5.00-;
2. ~~For a copy of the minutes to all Board meetings during the calendar year, \$75.00-~~ Issuance of a duplicate license, \$10;
3. ~~For the sale of lists~~ List of physicians licensed by the Board, \$25.00 if for non-commercial use or \$100 if for commercial use-;
4. ~~For copying~~ Copying records, documents, letters, minutes, applications, and files, 25¢ per page-;
5. ~~For copying~~ Copy of an audio tapes tape, \$35.00 per tape-; and
6. ~~For the sale of computerized tapes or diskettes~~ Digital medium not requiring programming, \$100.

C. Except as provided under A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

[R12-178]

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2510.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 22, 2011.

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 4	New Article
R4-26-401	New Section
R4-26-402	New Section
R4-26-403	New Section
R4-26-404	New Section
R4-26-405	New Section
R4-26-406	New Section
R4-26-407	New Section
R4-26-408	New Section
R4-26-409	New Section
R4-26-410	New Section
R4-26-411	New Section
R4-26-412	New Section
R4-26-413	New Section
R4-26-414	New Section
R4-26-415	New Section
R4-26-416	New Section

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R4-26-417
R4-26-418

New Section
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. § 32-2063(A)(3) and (A)(9)

Implementing statute: A.R.S. §§ 32-2091 through 32-2091.14

3. The effective date for the rules:

September 11, 2012. The Board respectfully requests that an immediate effective date be approved under A.R.S. § 41-1032(A)(1) to preserve public health and safety. However, the Board has decided not to collect the fees in the amounts listed in R4-26-402(A)(2) through (A)(4) until January 1, 2013. Rather, through December 31, 2012, the Board shall continue to collect the current fees of \$400 for issuance of an initial license and renewal of an active license and \$50 for renewal of an inactive license.

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):

The Board respectfully requests under A.R.S. § 41-1032(A)(1) that the rules become effective on September 11, 2012. For the last two years, the Board has been authorized to license as a behavior analyst an individual who meets certain specified criteria provided under a statutory waiver. The waiver ends on August 15, 2012. This means an individual can be licensed as a behavior analyst only if the standards provided in statute and rule are met. While the Board is able to license individuals relying only on the standards provided in statute, the standards established in this rulemaking provide useful additional guidance to the Board and applicants. To ensure the standards established in this rulemaking are enforceable, it is necessary that the rules go into effect immediately.

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 as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 2502, December 16, 2011

Notice of Proposed Rulemaking: 18 A.A.R. 760, March 30, 2012

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

Name: Dr. Cindy Olvey, Executive Director

Address: Board of Psychologist Examiners
1400 W. Washington, Suite 235
Phoenix, AZ 85007

Telephone: (602) 542-8162

Fax: (602) 542-8279

E-mail: Cindy.Olvey@psychboard.az.gov

Web site: www.psychboard.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:

Under Laws 2008, Chapter 288, § 2, the legislature required, beginning January 1, 2011, that a person who practices as a behavior analyst in Arizona must be licensed under A.R.S. Title 32, Chapter 19.1, Article 4. The Board has been licensing behavior analysts since January 1, 2011, under a waiver provided by Laws 2010, Chapter 299, § 2, if the behavior analyst meets certain specified conditions. The waiver ends August 15, 2012. This rulemaking will complement the newly enacted statute.

This rulemaking was authorized under an exception to the rulemaking moratorium provided by e-mail from Steven Killian, Assistant Policy Advisor, on June 22, 2011.

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 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:

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Not applicable

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

The primary economic impact results from the legislature's decision to require a behavior analyst to be licensed before providing behavior analysis services in Arizona, specify the qualifications required for licensure, require payment of a licensing fee, and require completion of continuing education. This is a new profession regulated by the Board. Fees will be received from licensees and applicants to offset the cost of regulation. Costs resulting from these rules are costs associated with the Board implementing the statutory requirements. The rules require that an application be submitted for license and license renewal as well as specify continuing education requirements determined by the Board.

Fees associated with the legislative mandate are a cost of doing business that probably will be passed to users of behavior analysis services. Fees are more than offset by the benefits from being able to work as a behavior analyst in Arizona.

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

In R4-26-401(B)(4)(d), the Board added “place of birth” to the list of information about an applicant that it will keep confidential. This change is not substantial under the standards provided at A.R.S. § 41-1025(B). Persons affected by the rule, applicants, remain the same. The subject matter of the rule, providing an applicant’s place of birth, does not change. The primary effect of the rule, providing the Board with information to verify the identity of an applicant, remains the same. The only change in effect is that a piece of information readily used for identity-theft purposes is no longer available to the public. And as indicated in item 11, the Board also deleted reference to BACB’s street address.

Additional minor, non-substantive changes were made between the proposed and final rules.

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

Comments were received from four individuals: Don Stenhoff, Cyndee Wing, Bryan Davey, and Amanda Gisbert.

COMMENT	AGENCY RESPONSE	ACTION
The rules say that an active or inactive license expires on May 1 of an odd-numbered year. When does a renewed license expire? (Wing)	A licensee renews a license to ensure that the license remains active. A renewed license is an active license and expires on May 1 of an odd-number year.	No change
The rules require a licensee to complete 30 hours of CE every two years but BACB requires only 30 hours every three years. The Board’s requirement is costly and difficult to complete. It should be aligned with BACB. (Wing)	A.R.S. § 32-2091.07(D) provides the Board with broad authority to establish a CE requirement. In establishing the requirement, the Board reviewed the requirements of Arizona boards regulating similar professions requiring a master’s degree. The Board is not required to align its requirements with those of BACB.	No change
The street address of BACB has changed. (Gisbert and Davey)	The comment is correct.	Because a street address can change often, the street address of BACB was deleted and reference is made only to the internet address.
In addition to the guidelines for responsible conduct, the rules should contain information regarding the BACB’s disciplinary standards by which a BCBA must abide. (Gisbert)	A.R.S. § 32-2091(12)(dd) requires the Board to adopt an ethical standard. The Board chose to adopt the BACB ethical standard. However, A.R.S. § 32-2091.09 establishes the procedures used by the Board when there is a complaint against a licensee. The Board is not authorized to follow the BACB procedure.	No change

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Beginning in 2015, BACB coursework requirements will change. This information should be updated in the rules. (Gisbert)	A.R.S. § 32-2091.03(A)(3) establishes the coursework requirement for a licensee in Arizona. Aligning this requirement with a changed requirement of BACB necessitates a statutory change.	No change
The Board's mandatory reporting requirements should be aligned with those of the BACB. (Gisbert)	The BACB reporting requirement differs from that required in Arizona under A.R.S. § 32-3208.	No change
Change R4-26-404(B) to allow only two attempts to pass the BACB examination. (Stenhoff and Davey)	In A.R.S. § 32-2091.05(D), the legislature appears to express a preference that an applicant be allowed three opportunities to pass the licensing examination.	No change
Any reference to the BACB ethical standards should indicate the reference is to the most recent version of the standards. (Davey)	A.R.S. § 41-1028(B) requires that material incorporated by reference in a rule be fully identified by date and specifically exclude later amendments or editions of the incorporated matter.	No change

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 legislature required that behavior analysts be licensed so a license rather than a permit is required under the rules.

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

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

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

No analysis was submitted.

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

BACB Guidelines for Responsible Conduct for Behavior Analysts, July 2010, published by the BACB and available from the Board or at www.bacb.com. The material is incorporated at R4-26-406.

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 rules were not previously made as emergency rules.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

ARTICLE 4. BEHAVIOR ANALYSIS

Section

- R4-26-401. Definitions
- R4-26-402. Fees and Charges
- R4-26-403. Application for Initial License
- R4-26-404. License Examination

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<u>R4-26-405.</u>	<u>Coursework Requirement</u>
<u>R4-26-406.</u>	<u>Ethical Standard</u>
<u>R4-26-407.</u>	<u>License by Reciprocity</u>
<u>R4-26-408.</u>	<u>License Renewal</u>
<u>R4-26-409.</u>	<u>Continuing Education Requirement</u>
<u>R4-26-410.</u>	<u>Voluntary Inactive Status</u>
<u>R4-26-411.</u>	<u>License Reinstatement</u>
<u>R4-26-412.</u>	<u>Client Records</u>
<u>R4-26-413.</u>	<u>Change of Name, Mailing Address, E-mail Address, or Telephone Number</u>
<u>R4-26-414.</u>	<u>Complaints and Investigations</u>
<u>R4-26-415.</u>	<u>Informal Interview</u>
<u>R4-26-416.</u>	<u>Rehearing or Review of Decision</u>
<u>R4-26-417.</u>	<u>Licensing Time-frames</u>
<u>R4-26-418.</u>	<u>Mandatory Reporting Requirement</u>

ARTICLE 4. BEHAVIOR ANALYSIS

R4-26-401. Definitions

A. The definitions in A.R.S. § 32-2091 apply in this Article.

B. Additionally, in this Article:

1. "Advertising" means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
2. "Applicant" means an individual who applies to the Board for an initial or renewal license.
3. "BACB" means the Behavior Analyst Certification Board.
4. "Confidential information" means:
 - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client's diagnosis, treatment, or personal family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
 - ii. Home address, telephone number, and e-mail address;
 - iii. Test scores;
 - iv. Date of birth;
 - v. Place of birth; and
 - vi. Social Security number.
5. "Gross negligence" means an extreme departure from the ordinary standard of care.
6. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
7. "License period" means the two years between May 1 of one odd-numbered year and April 30 of the next odd-numbered year.
8. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
 - a. Nature of the alleged conduct,
 - b. Severity of the alleged conduct,
 - c. Recentness of the alleged conduct,
 - d. Actions taken by the applicant to remedy potential violations, and
 - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
9. "Party" means the Board, an applicant, a licensee, or the state.
10. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
11. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
12. "Recognized accrediting agency" means a regional accrediting agency recognized by the U.S. Department of Education or a quality assurance or accreditation entity authorized to operate by a foreign government.
13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.

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14. “Supervised experience” means supervised work experience, independent fieldwork, university practicum, or intensive university practicum.

R4-26-402. Fees and Charges

- A.** As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
1. Application for an active license: \$350;
 2. Renewal of an active license: \$500;
 3. Renewal of an inactive license: \$85;
 4. Issuance of an initial license: \$500; and
 5. Reinstatement of expired license: \$200.
- B.** As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
1. Duplicate license: \$25;
 2. Duplicate renewal receipt: \$5;
 3. Copy of the Board's statutes and rules: \$5;
 4. Verification of a license: \$2;
 5. Audio recording of a Board meeting: \$10 per meeting;
 6. Electronic medium containing the name and address of all licensees: \$.05 per name;
 7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
 8. Customized electronic medium: \$.35 per name; and
 9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
- C.** Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

R4-26-403. Application for Initial License

- A.** An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall submit an application form, which is available from the Board office and on its website, and provide the following information:
1. Full name;
 2. Other names by which the applicant is or ever has been known;
 3. Home address and telephone number;
 4. Business name and address;
 5. Work telephone and fax numbers;
 6. E-mail address;
 7. Gender;
 8. Date of birth;
 9. Social Security number;
 10. An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;
 11. Place of birth;
 12. A statement of whether the applicant:
 - a. Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;
 - b. Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;
 - c. Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;
 - e. Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;
 - f. Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;
 - i. Is or ever has been under investigation by any professional organization, health care institution, provider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board

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of Psychologist Examiners, concerning the ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the investigation:

- j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently;
13. Name and address of every institution of higher learning attended, dates attended, degree received, name of department, and major subject area studied;
 14. Title of graduate degree program;
 15. Name of major advisor and department;
 16. Title of thesis or dissertation, if applicable;
 17. Title of specialty area, if applicable;
 18. A statement of whether:
 - a. The graduate program completed was accredited at the time of graduation and if so, the name of the accrediting agency;
 - b. The applicant completed a minimum of 225 classroom hours of graduate-level instruction that meet the standards prescribed under R4-26-405; and
 - c. The applicant completed degree, coursework, and supervised experience after January 1, 2000, and if so, whether the applicant completed 1,500 hours of supervised experience in the practice of behavior analysis in no less than 12 months; or
 - d. The applicant completed degree, coursework, or supervised experience before January 1, 2000, and if so, whether:
 - i. The coursework or supervised experience occurred in a setting outside of a college or university program;
 - ii. The coursework or supervised experience was acquired after the graduate degree program and before January 1, 2000; and
 - iii. The applicant is certified by the BACB;
 19. A list of the applicant's supervised experience and the names of individuals the applicant has asked to complete verification forms under subsection (C);
 20. A statement of whether the applicant has completed a minimum of 1,500 hours of supervised experience in behavior analysis that meets the requirements under A.R.S. § 32-2091.03;
 21. A statement of whether the applicant's supervised experience included:
 - a. Conducting behavioral assessment and assessment activities related to the need for behavioral interventions;
 - b. Designing, implementing, and monitoring behavior analysis programs for clients;
 - c. Overseeing the implementation of behavior analysis programs by others; and
 - d. Performing or participating in other activities normally performed by a behavior analyst;
 22. The applicant's signature attesting that all statements in the application are true in every respect.
- B.** Additionally, an applicant shall submit:
1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
 2. The application fee required under R4-26-402;
 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 4. The Board's Mandatory Confidential Information form.
- C.** Additionally, an applicant shall ensure that the following is submitted directly to the Board:
1. Verification that the applicant has passed the examination referenced in R4-26-404 submitted by the BACB;
 2. Verification of supervised experience submitted by an individual with direct knowledge of the supervised work experience, independent fieldwork, university practicum, or intensive university practicum;
 3. Official transcripts from all graduate institutions attended submitted by the institutions; and
 4. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory

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jurisdiction.

R4-26-404. License Examination

- A.** To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB as part of its certification process.
- B.** An individual who fails the BACB examination three times, regardless of jurisdiction, shall not take the examination again until the individual complies with additional requirements that the Board specifies based on an assessment of the knowledge and skill inadequacies causing the individual to fail.

R4-26-405. Coursework Requirement

- A.** As required under A.R.S. § 32-2091.03(A)(3), an applicant for licensure shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under A.R.S. § 32-2091.03(A)(1), 225 classroom hours of graduate-level instruction. The applicant shall ensure that the classroom hours include the following content areas:
 - 1. Ethical and professional conduct: 15 hours;
 - 2. Definitions and characteristics; principles, processes, and concepts: 45 hours;
 - 3. Behavioral assessment; selecting intervention outcomes and strategies: 30 hours;
 - 4. Experimental evaluation of interventions: 20 hours;
 - 5. Measurement of behavior; displaying and interpreting behavioral data: 20 hours;
 - 6. Behavioral change procedures; systems support: 45 hours; and
 - 7. Discretionary content related to behavior analysis: 50 hours.
- B.** The Board shall accept only classroom hours of graduate-level instruction taken at an institution accredited by a recognized accrediting agency.

R4-26-406. Ethical Standard

The Board incorporates by reference BACB Guidelines for Responsible Conduct for Behavior Analysts, July 2010, published by the BACB and available for review at the Board office and online at www.BACB.com. The incorporated material includes no later editions or amendments.

R4-26-407. License by Reciprocity

An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-403 and submitting evidence that the individual:

- 1. Obtained a graduate degree from an institution of higher learning accredited by a recognized accrediting agency;
- 2. Completed a minimum of 1,500 hours of supervised experience;
- 3. Completed a minimum of 225 classroom hours of graduate-level instruction in the content areas listed in R4-26-405; and
- 4. Passed the examination referenced in R4-26-404.

R4-26-408. License Renewal

- A.** A license issued by the Board, whether active or inactive, expires on May 1 of every odd-numbered year unless renewed.
- B.** The Board shall provide a licensee with 60 days notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C.** To renew a license, a licensee shall, on or before April 30 of every odd-numbered year, submit to the Board a renewal application form, which is available from the Board office and on its website, and provide the following information:
 - 1. License number;
 - 2. Name;
 - 3. Other names by which the licensee is or ever has been known;
 - 4. Home address and telephone number;
 - 5. Business name and address;
 - 6. Work telephone and fax number;
 - 7. E-mail address;
 - 8. Date of birth;
 - 9. Social Security number;
 - 10. BACB certificate number;
 - 11. A statement of whether the licensee:
 - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;
 - b. Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;
 - c. Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;
 - e. Is currently a member of a professional association and if so, the name of the professional association;

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- f. Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;
 - i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;
 - j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Currently uses alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis safely and competently;
12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;
13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and
14. The licensee's signature attesting that the information provided is true in every respect.
- D.** Additionally, to renew a license, a licensee shall submit:
- 1. The license renewal fee required under R4-26-402;
 - 2. If the documentation previously submitted under R4-26-403(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
 - 3. The Board's Mandatory Confidential Information form.
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before April 30 of an odd-numbered year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board on or before June 30 of the year in which the license expired:
- 1. The license renewal application required under subsection (C) and the document required under subsection (D)(2).
 - 2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
 - 3. The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
- 1. Complying with subsections (G)(1) through (3) on or before the following April 30th, and
 - 2. Providing proof of competency and qualifications to the Board.
- I.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

R4-26-409. Continuing Education Requirement

- A.** A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.
- B.** During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the

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number of whole months from the month of license issuance to the end of the license period by 1.25.

- C.** A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:
1. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation;
 2. Courses that directly relate to behavior analysis and are provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;
 3. Self-study, online, or correspondence course that is directly related to behavior analysis and offered by BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider;
 4. Teaching a continuing education program offered by a BACB-approved provider or approved or offered by an accredited educational institution: One hour of continuing education for each hour taught;
 5. Credentialing activities approved for continuing education by the BACB: One hour of continuing education for each hour of participation;
 6. Publication of a peer-reviewed article or text book on the practice of behavior analysis: 15 hours of continuing education; and
 7. Attending a Board meeting: Two hours for attending a morning or afternoon session of a Board meeting and four hours for attending a full-day Board meeting.
- D.** The number of hours of continuing education is limited as follows:
1. No more than 25 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(4). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than two times during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
 2. No more than 25 percent of the required hours may be obtained from continuing education under subsections (C)(3) and (5).
 3. No more than six of the required hours may be obtained under subsection (C)(7). Hours obtained under subsection (C)(7) may be used to complete the ethics requirement under subsection (A).
 4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
1. Name of the licensee;
 2. Title of the continuing education;
 3. Name of the continuing education provider;
 4. Date, time, and location of the continuing education; and
 5. Number of hours of continuing education obtained.
- F.** A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.

R4-26-410. Voluntary Inactive Status

- A.** A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:
1. The behavior analyst no longer provides behavior analysis services in Arizona,
 2. The behavior analyst is retired, or
 3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B.** To place a license on inactive status, a licensee shall comply with R4-26-408.
- C.** To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before April 30 of every odd-numbered year.

R4-26-411. License Reinstatement

A licensee seeking reinstatement from an inactive to an active license shall:

1. Comply with the provisions of R4-26-408(C) and (D);
2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

R4-26-412. Client Records

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- A. A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B. A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C. A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.
- D. Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E. A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F. A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G. The provisions of this Section apply to all licensees including those on inactive status.

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number

- A. The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.
- B. A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

R4-26-414. Complaints and Investigations

- A. Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:
 1. An individual licensed under this Article; or
 2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B. Complaint requirements. A complainant shall:
 1. Submit the complaint to the Board in writing; and
 2. Provide the following information:
 - a. Name and business address of licensee or other individual who is the subject of complaint;
 - b. Name and address of complainant;
 - c. Allegations constituting unprofessional conduct;
 - d. Details of the complaint with pertinent dates and activities;
 - e. Whether the complainant has contacted any other organization regarding the complaint; and
 - f. Whether complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

R4-26-415. Informal Interview

- A. As authorized by A.R.S. § 32-2091.09(H), the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.
- B. The Board shall ensure that the written notice of informal interview contains the following information:
 1. The time, date, and place of the informal interview;
 2. An explanation of the informal nature of the proceedings;
 3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
 4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
 5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
 6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
 7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C. The Board shall ensure that an informal interview proceeds as follows:
 1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
 2. Introduction of the Board members, staff, and Assistant Attorney General present;
 3. Swearing in of the respondent, complainant, and witnesses;
 4. Brief summary of the allegations and purpose of the informal interview;
 5. Optional opening comment by the respondent and complainant;

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6. Questioning of the respondent and witnesses by the Board;
7. Questioning of the complainant by the respondent through the Chair;
8. Optional additional comments by the respondent and complainant; and
9. Deliberation by the Board.

R4-26-416. Rehearing or Review of Decision

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or an administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 7. The findings of fact or a decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
- I.** An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

R4-26-417. Licensing Time-frames

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames:
 1. Initial license.
 - a. Overall time-frame: 120 days.
 - b. Administrative completeness review time-frame: 30 days, and
 - c. Substantive review time-frame: 90 days; and
 2. Renewal license.
 - a. Overall time-frame: 150 days.
 - b. Administrative completeness review time-frame: 60 days, and
 - c. Substantive review time-frame: 90 days; and
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25% of the overall time-frame.
- C.** The administrative completeness review time-frame begins when the Board receives the application materials required under R4-26-403 or R4-26-408(C) and (D). During the administrative completeness review time-frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D.** An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time-frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E.** Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time-frame listed in subsection (A)(1)(b) or (A)(2)(b).

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- F. The substantive review time-frame begins on the date of the Board's notice of administrative completeness.
- G. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H. An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time-frames are suspended from the date of the Board's request until the Board receives the additional information.
- I. An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.
- J. Within the overall time-frame listed in subsection (A), the Board shall:
 - 1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
 - 2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- K. If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).
- L. If the Board denies a license, the Board shall send the applicant a written notice explaining:
 - 1. The reason for denial, with citations to supporting statutes or rules;
 - 2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
 - 3. The time for appealing the denial; and
 - 4. The applicant's right to request an informal settlement conference.
- M. If a time-frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

R4-26-418. Mandatory Reporting Requirement

- A. As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.
- B. A list of reportable misdemeanors is available on the Board's website.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2510.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 26, 2012.

[R12-189]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action:**
 - R9-28-604 Amend
 - R9-28-606 Amend
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
 - Authorizing statute: A.R.S. § 36-2932(M)
 - Implementing statute: A.R.S. §§ 36-2944(B)
- 3. The effective date of the rule:**
 - November 13, 2012
 - 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**

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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 final rulemaking package:

Notice of Rulemaking Docket Opening: 18 A.A.R. 1149, May 18, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 1117, May 18, 2012

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson St.
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.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:

A.R.S. § 36-2906 authorizes the Administration to adopt rules for the RFP process and the award of contracts. The Administration is proposing revisions to several rules in Article 6 to streamline and clarify the RFP and contract award process, correct inaccurate references, and eliminate redundant language. The proposed rules are more clear, concise, and understandable. In particular, the proposed rules more clearly delineate the process for filing a protest alleging improprieties in an RFP or an amendment to the RFP. Additionally the proposed rules specify the legal bases for hearings as well as contract performance disputes. The term "procurement file" is defined in the proposed rule, and the term sanction is clarified to include actions beyond monetary sanctions and enrollment restrictions.

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:

A study was not referenced or relied upon when revising the regulations for Contracts and RFPs.

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

Not applicable.

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

The Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. The contractors, members, providers, and AHCCCS are nominally impacted by the changes to the rule language. These rules set forth the request for proposal and contract process pertaining to covered services under the AHCCCS Program as referenced in the procurement. The Administration is amending these rules to make the rules more clear, concise, and understandable. In addition, the proposed rules eliminate redundant language, update incorrect cross references, and streamline the RFP process.

It is anticipated that the private sector, including small businesses or political subdivisions, will be minimally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the protest process. The Administration, contractors, and providers will benefit because the changes provide clarification of the rule.

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

No significant changes were made between the proposed rulemaking and the final rulemaking.

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

No comments were received as of the close of the comment period of June 18, 2012.

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:

No other matters are applicable.

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- 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:**
Not applicable.
 - 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 rules:**
None
14. **Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**
Not applicable.
15. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 6. RFP AND CONTRACT PROCESS

Section

- R9-28-604. Contract or Proposal Protests; Appeals
- R9-28-606. Contract Compliance Sanction

ARTICLE 6. RFP AND CONTRACT PROCESS

R9-28-604. Contract or Proposal Protests; Appeals

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34, Article 8 of this Chapter.

R9-28-606. Contract Compliance Sanction

- A. The Administration shall follow sanction provisions ~~if criteria~~ under A.A.C. R9-22-606 ~~are met.~~
- B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective ~~May 17, 1999~~ January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.