

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Editor's Note: The following two Notices of Proposed Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1051.)

[R14-55]

PREAMBLE

- 1. Articles, Parts, and Sections Affected (as applicable)**

R2-8-120	New Section
R2-8-123	New Section
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 38-714(E)(4)
Implementing statute: A.R.S. §§ 38-755, 38-760, and 38-776
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 20 A.A.R. 1008, May 2, 2014 (in this issue)
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name:	Patrick M. Klein, Assistant Director
Address:	Arizona State Retirement System 3300 N. Central Ave., Suite 1400 Phoenix, AZ 85012-0250
Telephone:	(602) 240-2044
Fax:	(602) 240-5303
E-mail:	PatK@azasrs.gov
Web site:	www.azasrs.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

Effective July 1, 2013, ASRS statutes changed to require an ASRS member to name the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account and, at the time of retirement, to choose a joint and survivor annuity that names the current spouse as 50 percent contingent annuitant. The statutes also provide a means for the current spouse to waive this right and consent to an alternative. This rulemaking implements the statutory change.

In a five-year-review report approved by the Council on July 13, 2013, the ASRS intentionally allowed R2-8-123, Actuarial Assumptions and Actuarial Value of Assets, to expire. ASRS has determined that some of the information in that rule is valuable so a new R2-8-123 is made in this rulemaking.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely**

Notices of Proposed Rulemaking

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:

ASRS did not review or rely on any study in its evaluation of or justification for this rulemaking.

7. 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

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

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

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

Name: Patrick M. Klein, Assistant Director
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2044
Fax: (602) 240-5303
E-mail: PatK@azasrs.gov
Web site: www.azasrs.gov

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: Tuesday, June 3, 2014
Time: 9:00 a.m.
Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012

11. 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:

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:

Neither of the rules requires a permit.

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

Federal law applies to retirement programs. However, there is no federal law specifically applicable to this rulemaking.

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

No analysis was submitted.

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

No materials are incorporated by reference.

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

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

R2-8-123. ~~Expired~~ Actuarial Assumptions and Actuarial Value of Assets

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

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

A. In addition to the definitions at A.R.S. § 38-711, the following apply to this Section unless otherwise specified:

1. "Beneficiary" means a person designated to receive money or other benefits when someone dies.
2. "Contingent annuitant" means the person that a member designates to receive continued annuity payments after the member dies.
3. "Joint and survivor annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
5. "Period certain and life annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
4. "QDRO" means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.
6. "Spouse" means the individual to whom a member is married under Arizona law.

B. Effective July 1, 2013, a married member:

1. Who is not retired, shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless the spouse consents to an alternate beneficiary; and
2. Who retires, shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.

C. Application of subsection (B).

1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

D. Changing a beneficiary designation:

1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
2. If a married member who retired before July 1, 2013, and:
 - a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
 - b. Chose a period certain or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).

E. Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:

1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).

F. Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.

G. Survivor benefits:

1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified subsection (B); and
2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the require-

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ments specified in subsection (B), the ASRS shall, at the time of the member's death:

- a. Notify both the spouse and designated beneficiary and:
 - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
 - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
- b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.

H. Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.

I. Spousal waiver and consent; consent revocation

1. The current spouse of a member has a right to:
 - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
 - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of an incapacitating mental or physical condition, a person with power of attorney or a guardian may complete the spousal consent form on behalf of the current spouse.
3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

R2-8-123. ~~Expired~~ **Actuarial Assumptions and Actuarial Value of Assets**

A. The following definitions apply to this Section unless otherwise specified:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities.
2. "Board" means the same as in A.R.S. § 38-711.
3. "Investment yield rate" means a percentage of return on an asset.
4. "Market value" means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.

B. The Board adopts the following actuarial assumptions:

1. The interest and investment yield rate is eight percent per annum, compounded annually.
2. The actuarial value of assets equals the market value of assets:
 - a. Minus, for years in which actual investment return exceeds expected investment return, a 10-year (five-year for fiscal years before fiscal year 2002) phase-in of the excess; and
 - b. Plus, for years in which actual investment return falls short of expected investment return, a 10-year (five-year for fiscal years before fiscal year 2002) phase-in of the shortfall.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

[R14-57]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-15-101	Amend
R4-15-102	Amend
R4-15-103	New Section
R4-15-201	Amend
R4-15-203	Amend
R4-15-204	Amend
R4-15-205	Amend
R4-15-207	Amend
Table 1	Amend
R4-15-301	Amend
R4-15-302	Amend
R4-15-303	Amend

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

Authorizing statute: A.R.S. § 32-4203(A)(7)

Implementing statutes: A.R.S. §§ 32-4203(A)(1), 32-4203(A)(2), 32-32-4203(A)(3), 32-4203(A)(5), 32-4203(B)(3), 32-4222, 32-4223, 32-4225(E), 32-4226, 32-4227, 32-4228, 32-4251(B), Table I

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

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

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

Name: Kathleen Phillips, Executive Director

Address: 1400 W. Washington, Suite 300
Phoenix, AZ 85007

Telephone: (602) 542-8604

Fax: (602) 542-8804

E-mail: kathleen.phillips@massageboard.az.gov

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

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

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

6. A reference to any study relevant to the rules that the agency reviewed and either proposes 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:

The Board did not review or rely on any study.

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

Not applicable

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

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

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

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

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

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

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

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

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

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

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

Name: Kathleen Phillips, Executive Director
Address: 1400 W. Washington, Suite 300
Phoenix, AZ 85007
Telephone: (602) 542-8604
Fax: (602) 542-8804
E-mail: kathleen.phillips@massageboard.az.gov

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

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony on the proposed rules from members of the public:

Date: June 9, 2014
Time: 10:00 a.m.
Location: 1400 W. Washington, Room 300

The public record on the proposed rulemaking will close at 5:00 p.m. on June 9, 2014.

11. 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

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to the following questions:

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

The Board issues a license, which falls within the definition of general permit.

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

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

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

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

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section

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

ARTICLE 2. LICENSING

Section

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

ARTICLE 3. CONTINUING EDUCATION

Section

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

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

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

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
2. "Applicant" means an individual requesting a regular, ~~provisional, temporary,~~ renewal, or reciprocity license from the Board or recognition of an out-of-state school.
3. No change
4. ~~"Board-approved school" means the same as "Board recognized school" in A.R.S. § 32-4201.~~

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

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R4-15-102. Fees

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

R4-15-103. Ethical Standards

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

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

ARTICLE 2. LICENSING

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

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

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- by the applicant at a Board-recognized school;
 - h. Whether the applicant has passed the examination administered by the NCBTMB or FSTMB and if so, the name of the entity and date the examination was taken;
 - i. Whether the applicant, ~~within the five years before the date of the application,~~ has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a ~~similar related~~ offense or entered into a plea of no contest and, if so:
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - j. Whether the applicant currently holds or has held a massage therapy license issued by another state and if so, the name of each state;
 - ~~j.k.~~ Whether the applicant has ~~within five years before the date of the application~~ ever voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another ~~similar related~~ license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
 - l. No change
 - ~~m.~~ Whether the applicant is requesting a temporary license; and
 - ~~m.~~ Whether English is the applicant's native language and, if not:
 - ~~i.~~ What the applicant's native language is, and
 - ~~ii.~~ Whether the applicant has met the requirements in subsection (C); and
 - n. No change
2. Documentation of citizenship or alien status that meets the requirements in A.R.S. § 41-1080;
~~2-3.~~ No change
~~3-4.~~ No change

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

- 1. The internet-based TOEFL with the following minimum scores:
 - a. For the writing section, 25;
 - b. For the speaking section, 25;
 - c. For the reading section, 25; and
 - d. For the listening section, 25; or
- 2. The TOEIC with the following minimum scores:
 - a. For the speaking section, 150;
 - b. For the writing section, 150;
 - c. For the listening section, 300;
 - d. For the reading section, 350.

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

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

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

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

- 1. Submit an application ~~form~~ packet that contains the information in ~~R4-15-201(A)(1)(a), (b), and (c)~~ R4-15-201 (B)(1)(a), (b), (c), (d), (e), (i), (j), (k), (m), (n), (B)(2), and photograph required by R4-15-201(B)(1)(d) and:
 - a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), the name of ~~each~~ the state where the applicant was licensed continuously for five years immediately before the date of the application;
 - b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), whether the applicant holds a current certification from the ~~National Certification Board for Therapeutic Massage and Bodywork~~ NCBTMB or another agency that meets the standards of the National Commission for ~~Competency Assurance~~ Certifying Agencies; and

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- e. ~~Whether the applicant has within five years before the date of the application voluntarily surrendered a massage therapy license or had a massage therapy license or another similar license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline in this state under this Chapter; and~~
- ~~d.c.~~ No change
- 2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S § 32-4223(A)(1), ~~submit a copy of the state's massage therapy statutes and rules and~~ arrange to have verification of the license or certificate in the jurisdiction in the other state sent directly to the Board from the jurisdiction including:
 - a. No change
 - b. No change
 - c. No change
- 3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have:
 - a. ~~a~~ A verification of certification as a massage therapist sent directly to the Board from the ~~National Certification Board for Therapeutic Massage and Bodywork NCBTMB~~ or other agency that meets the standards of the National Commission for ~~Competency Assurance~~ Certifying Agencies; and
 - b. Academic transcripts from the Board recognized school from which the applicant completed the course of study;
- 4. No change
- 5. No change
- B.** ~~In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board from the issuing entity;~~
 - 1. ~~A copy of the applicant's high school diploma or general equivalency diploma, and~~
 - 2. ~~Academic transcripts from the Board approved school from which the applicant graduated.~~

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

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

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

An applicant for a renewal license shall submit:

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

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- R4-15-303(B); and
- 1. Signature and date of submission; and
- 2. ~~The information required in R4-15-303; and~~
- 3. ~~The fee required in R4-15-102(A).~~

R4-15-207. Licensing Time-frames

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
- D. The Board shall consider an application withdrawn if within ~~360~~ 365 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).
- E. An applicant who does not wish an application withdrawn may request a denial in writing within ~~360~~ 365 days from the application submission date.
- F. No change

Table 1. Time-frames (in Days)

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

ARTICLE 3. CONTINUING EDUCATION

R4-15-301. Required Continuing Education Hours

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

R4-15-302. Approval of Continuing Education

The following continuing education is approved by the Board:

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

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

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

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