



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2020

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 9, 2020

SUBJECT: STATE BOARD OF DENTAL EXAMINERS (F20-0703)
Title 4, Chapter 11, Articles 11, 12, 14, 15, and 18, State Board of Dental Examiners

Summary

This Five Year Review Report (5YRR) from the State Board of Dental Examiners (Board), relates to rules in Title 4, Chapter 11, Articles 11, 12, 14, 15, and 18. The Board states that it protects the health, safety, and welfare of the citizens of Arizona by regulating the practice of dentistry.

The rules address the following:

- **Article 11: Advertising;**
- **Article 12: Continuing Dental Education and Renewal Requirements;**
- **Article 14: Dispensing Drugs and Devices;**
- **Article 15: Complaints, Investigations, Disciplinary Action; and**
- **Article 18: Business Entities.**

In the previous 5YRR for these rules, which the Council approved in July 2015, the Board did not propose a course of action for the rules under review, except for R4-11-1405 (Compliance). For that rule, the Board proposed to amend it to make it consistent with 21 CFR

1301.76(b) (Other security controls for practitioners). The Board states that it did not complete this course of action due to limited resources and agency turnover.

Proposed Action

In this 5YRR, the Board is proposing to amend the following rules for the reasons stated in the report and complete a rulemaking by December 2020:

- R4-11-1102 (Advertising as a Recognized Specialist);
- R4-11-1202 (Continuing Education Compliance and Renewal Requirements);
- R4-11-1203 (Dentists and Dental Consultants);
- R4-11-1208 (Retired Licensees or Certificate Holders);
- R4-11-1405 (Compliance);
- R4-11-1502 (Complaint Investigator Qualifications); and
- R4-11-1503 (Initial Complaint Review).

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Board cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that the economic impact does not differ from what was originally determined when the rules were previously amended in 2014.

The stakeholders include: the Board, dentists, dental applicants, and the general public.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that the rules have minimal cost(s). While there are administrative costs associated with enforcing the rules, the interests of public health outweigh these costs. The standards outlined in the rules promote consistency of service and improve outcomes within the profession.

The Board intends to revise a portion of the rules for consistency with federal law (R4-11-1405) and clarity (R4-11-1503).

The Board also conducted an analysis of its continuing education requirements for dentists and dental hygienists compared to other states. That analysis is attached for the Council Members' review.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Board has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Board states that the rules under review are clear, concise, understandable, and effective. The Board also states that the rules are consistent with other statutes, except for the following rules, for the reasons stated in the report:

- R4-11-1102 (Advertising as a Recognized Specialist) ;
- R4-11-1202 (Continuing Education Compliance and Renewal Requirements);
- R4-11-1203 (Dentists and Dental Consultants);
- R4-11-1405 (Compliance);
- R4-11-1502 (Complaint Investigator Qualifications); and
- R4-11-1503 (Initial Complaint Review).

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board indicates that the rules are enforced as written without incident.

7. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Board states that there is no corresponding federal law for the rules under review, except for R4-11-1405 (Compliance) and R4-11-1406 (Dispensing for Profit Registration and Renewal). The corresponding federal regulation for these two rules is 21 CFR 1300 (Definitions). The Board states that these two rules are not more stringent than the corresponding federal regulation.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The only rule under review adopted after July 29, 2010 that requires a permit is R4-11-1202 (Continuing Education Compliance and Renewal Requirements). The Board states that this rule is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(2) because “[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.” In this instance, the Board cites A.R.S. Title 31, Chapter 11, Article 2. Upon review of these statutes, Council staff agrees with the Board and finds that it is exempt from the general permit requirement.

9. Conclusion

Council staff finds that the Board prepared an adequate report that meets the criteria of A.R.S. § 41-1506(A). Council staff finds that the rules under review are mostly clear, concise, understandable, and effective. Council staff further notes that the December 2020 timeframe to amend the rules identified in the report is acceptable.

As such, while Council staff recommends approval of the report submitted, Council staff encourages the Council to discuss with the Board why Arizona's continuing education requirements for dentists and dental hygienists exceed the national average, and whether exceeding the national average affects the Board's analysis that the rules impose the least burden to the regulated population.