



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 20, 2021

**SUBJECT: BOARD OF DENTAL EXAMINERS**  
Title 4, Chapter 11, Articles 1-4

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### Summary

This Five-Year Review Report (5YRR) from the Board of Dental Examiners (Board) relates to all rules in Title 4, Chapter 11, Articles 1-4 regarding the licensure of dental examiners. Specifically, the Articles under review relate to the following:

- Article 1: Definitions
- Article 2: Licensure by Credential
- Article 3: Examinations, Licensing Qualifications, Application and Renewal, Timeframes
- Article 4: Fees.

In the previous 5YRR for Article 1, approved by the Council in November 2016, the Board indicated that unnecessary definitions could be removed for: nonsurgical periodontal treatment, patient of record, periodontal examination and assessment, and public member. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

In the previous 5YRR for Article 2, approved by the Council in November 2016, the Board indicated for some rules that some portions of the rules were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

The previous 5YRR for Article 3 was originally due in 2016, but was rescheduled to 2021 and is included in the current report.

In the previous 5YRR for Article 4, approved by the Council in November 2016, the Board indicated that internal references in Sections R4-11-402 and 406 needed to be updated and the title for R4-11-405 needed to be changed from “Other Fees” to “Charges for Board Services.” The Board indicates that these changes were completed in a 2017 rulemaking.

### **Proposed Action**

In the current report, as outlined above, the Board intends to amend rules in Articles 1 and 2 by completing a rulemaking by December 2021. Additionally, the Board indicates that HB2235, which passed through legislation and was signed into law on May 16, 2018, created a new mid-level dental profession in Arizona known as Dental Therapy that includes requirements to obtain and maintain a license for Dental Therapy services such as educational requirements, experience requirements, continuing education requirements, etc. The Board indicates it has received approval from the Governor's office to proceed with rulemaking to update its rules to account for this new dental profession and the corresponding statutory requirements. The Board indicates it is currently working on updating its rules to address Dental Therapy.

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

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

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

The Board estimates that the economic impact of the reviewed rules is minimal. According to the Board, the main costs of the rulemaking are incurred by the Board and include staff time to process new and renewal applications. Establishing standards of practice is also beneficial to society.

The Board currently licenses approximately 5,464 dentists, 5,124 dental hygienists, 356 business entities, 14 dental consultants, zero restricted permits, and 12 denturists, totaling approximately 10,614 dental professionals and 356 business entities. The economic impact has not differed from that projected when the rules were amended effected November 8, 2003, January 5, 2014, April 3, 2016, and February 6, 2017.

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 Board indicates the rules impose the least burden and probable costs to regulated persons, which are outweighed by the probable benefits of the rules. After follow-up from Council staff, the Board further indicates that the rules simply clarify how licensees can meet the statutory requirements to obtain and maintain various dental licenses. As such, the Board does not believe the rules impose any additional requirements on licensees, and therefore, the rules are the least burdensome to ensure dental professionals are meeting the statutory requirements to practice safely in Arizona. The Board also indicates it regularly reviews its rules and makes appropriate changes when necessary to ensure that they remain the least burdensome, but still ensure licensees are meeting statutory requirements to practice safely. Thus, the Board maintains the benefits of the rules outweigh the costs to licensees to become licensed and maintain that license.

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

The Board indicates it received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates that the rules are clear, concise and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board indicates that the rules are generally consistent with other rules and statutes with the exception of the following rules, which must be updated to account for statutory changes relating to the regulation of Dental Therapy in Arizona, as outlined above: R4-11-301, 303, 401, 403

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates that the rules are effective in achieving their regulatory objectives.

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

The Board indicates that the rules are currently enforced as written.

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

Not applicable. The Board indicates that there is no corresponding federal law.

**10. 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?**

Pursuant to A.R.S. § 41-1037, if a rule requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

Here, the Board indicates the licenses issued under these rules are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature. As such, Council staff believes the Board is in compliance with A.R.S. § 41-1037.

**11. Conclusion**

This 5YRR from the Board relates to all rules in Title 4, Chapter 11, Articles 1-4 regarding the licensure of dental examiners. The Board indicates the rules are clear, concise, understandable, effective, and enforced as written.

The Board indicates that the rules are generally consistent with other rules and statutes except that some rules must be updated to be consistent with recent 2018 statutory changes which created a new mid-level dental profession in Arizona known as Dental Therapy that includes requirements to obtain and maintain a license for Dental Therapy services such as educational requirements, experience requirements, continuing education requirements, etc. The Board indicates it has received approval from the Governor's office to proceed with rulemaking to update its rules to account for this new dental profession and the corresponding statutory requirements. The Board indicates it is currently working on updating its rules to address Dental Therapy.

The Board also intends to amend rules in Article 1 to remove unnecessary definitions and amend rules in Article 2 to remove portions of the rules that are duplicative. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

Council staff recommends approval of this report.