NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

PREAMBLE

1.

Sections Affected	**Rulemaking Action**
R4-15-101	Amend
R4-15-102	Amend
R4-15-201	Amend
R4-15-205	New Section
Table 1	Amend
Article 3	New Article
R4-15-301	New Section
R4-15-302	New Section
R4-15-303	New Section
Article 4.	New Article
R4-15-401	New Section

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

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

Implementing statute: A.R.S. §§ 32-4203(A)(1), 32-4203(A)(3), 32-4203(A)(5), 32-4205, 32-4222(B)(1), 32-4225, 32-4226, 32-4227, 41-1062, 41-1073

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: Submitted to the Secretary of State's Office on November 23, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the proposed rules:

Name: Dr. Craig Runbeck, Executive Director

Address: 1400 W. Washington, Suite 230
Phoenix, Arizona 85007

Telephone: (602) 542-8604

Fax: (602) 542-3093

E-mail craig.runbeck@npbomex.az.gov

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

The Board is changing the entry level educational requirement for a massage therapist as stated in R4-15-201(A)(1)(g) and (B)(3) from 500 hours of classroom hours of supervised training at a Board-approved school to 700 hours. When the statutes for licensing massage therapists were passed, the legislature supported a minimum of 500 hours of education. However, the law included a provision that stated on or after July 1, 2005, the Board may increase the minimum number of classroom hours of supervised instruction at a Board recognized school that an applicant for licensure must successfully have completed to qualify for licensure. The Board received a formal request from the American Massage Therapy Association asking that the hours be increased to 700 classroom hours to enable massage therapists to continue to serve the public safely. The nationwide trend has been to increase to this level or more. The effective date of this change is January 1, 2007.

The Board is establishing standards for continuing education in a new Article 3; adding requirements for renewal applications, including time-frames for Board approval or denial of a license and a fee for license renewal and delinquent license renewal; and adding provisions for rehearing or review in a new Article 4. The Board is also reducing its fee for an application for a regular license. The Board originally established this fee in rules that became effective on June 8, 2004. Because the Board was newly established, the Board projected it would receive 3000 applications for a regular license and charged the application fee that it believed was necessary to sustain operations. The Board actually received over 6900 applications causing revenue surpluses for the Board. Thus, the Board has determined it is appropriate to reduce the fee for a regular license.

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 rule is necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision:

Not applicable

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

As used in this summary, minimal means less than $1,000, moderate means between $1,000 and $10,000, and substantial means greater than $10,000.

The proposed rules affect the Board, an applicant for a massage therapy license, a licensee, a Board-approved school, a provider of continuing education, a business that
The fee reduction for a regular application affects the Board. In its original rulemaking, which became effective on June 8, 2004, the Board stated it anticipated licensing 3000 individuals and charged the application fee it believed was necessary to sustain operations. The Board received many more license applications than expected, which resulted in more than 6900 individuals being licensed. The fees submitted by these individuals resulted in revenue surpluses for the Board. The Board has determined it is appropriate to reduce its regular application fee. In the future, the Board anticipates receiving 500 applications for a regular license each year. The fee reduction will cause the Board to lose $425,000 each year. However, the purpose of the fee reduction is to bring the Board in line with the amount needed each year for Board operations.
The fee reduction for a regular application will minimally affect an applicant for a regular license, who will be required to submit a $165 application fee instead of $250.
The Board is charging a renewal fee of $75 and a delinquent renewal fee of $40. Licenses expire every two years on the licensee's birthday. Thus, a licensee will pay $37.50 a year to retain a license. The Board expects to renew between 3,000 and 4,000 licensees every year.
The change in R4-15-201, which increases the number of classroom hours an applicant must complete to qualify for licensure from 500 to 700, affects an applicant who submits a license application after January 1, 2007 and a Board-approved school that provides the classroom instruction. The amount of the increase depends on how many classroom hours the Board-approved school currently requires to complete a massage therapy program. Many Board-approved schools have already instituted programs that require 700 or more classroom hours of supervised instruction. The rule should not cause an increase in tuition for an applicant attending one of these schools. An applicant attending a Board-approved school that currently requires less than 700 classroom hours of could realize an increase in tuition and the school will benefit from the increase in tuition. The amount will vary depending on the number of classroom hours that need to be increased. An applicant attending a Board-approved school that is currently requiring no more than 500 classroom hours for completion of a massage therapy program could be required to pay as much $2,600 in additional tuition. A Board-approved school's increased revenue depends on the number of applicants attending the Board-approved school.

Unless a licensee's employer pays for continuing education, the licensee will bear the costs of obtaining a minimum of 25 hours of continuing education for the two-year period immediately preceding license expiration. However, it is the statute in A.R.S. § 32-4225(E) that imposes this requirement. The rule's purpose is to implement the statute. The continuing education requirement benefits a provider of continuing education who should receive moderate revenue from the provision of continuing education. Providers of continuing education charge approximately $15 to $30 an hour and each licensee is required to complete 25 hours of continuing education every two years. The amount of the increase in revenue ranges from minimal to substantial, depending on how much continuing education is provided by each provider. Some businesses that hire massage therapists may pay for continuing education.

The Board bears moderate costs for writing rules to implement its statutes and related economic, small business, and consumer impact statement and mailing the new rules to interested persons.

Businesses that hire licensed massage therapists will benefit from the rules because they will have only qualified massage therapists working for them.

A business that chooses to pay for continuing education for its employees may pass the cost onto consumers of massage therapy services. Consumers benefit from the rules because only massage therapists that meet the requirements contained in the rules and statutes will be allowed to practice in Arizona.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	Dr. Craig Runbeck, Executive Director
Address:	1400 W. Washington, Suite 230
	Phoenix, Arizona 85007
Telephone:	(602) 542-8604
Fax:	(602) 542-3093
E-mail	craig.runbeck@npbomex.az.gov

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of 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 and providing adequate discussion on the proposed rules from members of the public.

Date: February 27, 2006

Time: 1:00

Location: 1400 W. Washington, B-1 Conference Room
Phoenix, Arizona 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on February 27, 2006.

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

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

R4-15-102. Fees

ARTICLE 2. LICENSING

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

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

Table 1. Time-frames (in days)

ARTICLE 3. CONTINUING EDUCATION

R4-15-301. Required Continuing Education Hours

R4-15-302. Approval of Continuing Education

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

ARTICLE 4. REGULATORY PROVISIONS

R4-15-401. Rehearing or Review of Board's Decision

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CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

1. No change

2. **"**Applicant" means an individual requesting a regular, provisional, temporary, renewal or reciprocity license from the Board.

3. No change

4. No change

5. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to massage therapy.

6. "Correspondence" or "distance learning format" means an instructor of a continuing education and individual receiving the instruction are not located in the same room in which the continuing education is being provided.

~~**5.**~~ **7.** No change

~~**6.**~~ **8.** No change

~~**7.**~~ **9.** No change

~~**8.**~~ **10.** No change

~~**9.**~~ **11.** No change

~~**10.**~~ **12.** No change

~~**11.**~~ **13.** No change

~~**12.**~~**14.** No change

~~**13.**~~ **15.** No change

~~**14.**~~ **16.** No change

~~**15.**~~ **17.** No change

~~**16.**~~ **18.** No change

~~**17.**~~ **19.** No change

R4-15-102. Fees

A. The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:

1. Application for a license, ~~$250~~ $165

2. No change

3. No change

4. License renewal, $75

5. Delinquent renewal of a license, $40

B. No change

C. No change

D. No change

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, 2007 shall complete 500 classroom hours of supervised instruction at a Board-approved school.

2. On and after January 1, 2007 shall complete 700 classroom hours of supervised instruction at a Board-approved school.

~~A.~~ B. No change

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. Whether the applicant has successfully completed ~~500~~ the classroom hours of supervised instruction required under subsection (A) at a Board-approved school;

h. No change

i. No change

j. No change

k. No change

l. No change

m. No change

n. No change

2. No change

3. No change

~~B.~~ C. No change

1. No change

2. No change

3. To show proof of completion of ~~500~~the classroom hours of supervised instruction at a Board-approved school required in subsection (A), academic transcripts from the Board-approved school from which the applicant graduated.

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:

   a. Name,

   b. Residence and practice addresses, and

   c. Residence and practice telephone numbers;

2. The information required in R4-15-303; and

3. The fee required in R4-15-102(A).

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	90	90
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 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 have completed 25 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.

R4-15-302. Approval of Continuing Education

The following continuing education is approved by the Board:

1. Continuing education taught by an individual or provided by an organization that has been designated as an approved provider of continuing education by the:
   a. NCBTMB,
   b. International Massage Association,
   c. American Organization for Bodywork Professionals of Asia,
   d. Associated Bodywork Massage Professionals, or
   e. Any organization that is a constituent of the entities in subsections (1) (a), (b), (c), or (d);
2. Continuing education sponsored by a massage therapy school or bodywork therapy school that is:
   a. Affiliated with a community college located in the state of Arizona, or
   b. Approved by the Arizona State Board for Private Postsecondary Education;
3. Continuing education offered by a regionally accredited post-secondary institution in a state other than Arizona; or
4. Continuing education offered by an institution approved by a post secondary educational entity in a state other than Arizona.

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

When renewing a license, a licensee shall submit with a renewal application documentation of completion of 25 hours of continuing education that includes:

1. The name of the licensee,
2. The title of the continuing education,
3. The subject matter of the continuing education,
3. The date of the continuing education,
4. The hours completed,
5. The location where the continuing education took place,
6. The name of the instructor providing the continuing education, and

7. Signature of the licensee.

ARTICLE 4. REGULATORY PROVISIONS

R4-15-401. Rehearing or Review of Board's Decision

A. Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered served when personally delivered to the party's last known address or mailed by certified mail to the party at the party's last known address or the party's attorney.

B. A party filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.

C. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:

1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprived the party of a fair hearing;
2. Misconduct of the Board or 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 penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
7. That the findings of fact or decision is not supported by the evidence or is contrary to law.

D. The Board may affirm or modify its decision or grant a rehearing or review to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify the grounds for the rehearing or review and the rehearing or review shall cover only those matters specified.

E. No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reasons in subsection (C).

An order granting a rehearing or review shall specify the grounds for the rehearing or review.

F. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues the decision as a final decision without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 41-1092.02.