

## Coppersmith Briefs

# **UPDATED:** Arizona Health Profession Boards Respond to COVID-19

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COVID-19 is making it impossible to run business as usual in Arizona's health profession board and agencies. Governor Ducey's Executive Order 2020-16 instructed Arizona hospitals to increase their capacity 50 percent by April 24, 2019 in order to meet the expected surge in COVID-19 patients. As part of that effort, hospitals across the state are feverishly searching for additional physicians, nurses, respiratory therapists and other professionals to care for the anticipated patients. Out-of-state and retired practitioners, among others, will be needed to fill the ranks. In addition, currently licensed practitioners are understandably concerned about missing administrative and licensure deadlines while they devote their energy and attention to the surge.

In an attempt to get at the regulatory obstacles to bringing health professionals on line, the Arizona Department of Health Services (ADHS) instructed the state's health profession boards "to identify licensure requirements" for which a temporary waiver is necessary to adequately address the State of Emergency, explain why, and notify ADHS of any waivers.<sup>1</sup> The instruction was directed to regulatory requirements, not statutory law.

More specifically, ADHS instructed the boards to "establish requirements for registering providers with out-of-state licenses who will be permitted to provide services in Arizona under their out-of-state licenses."

Several of Arizona's health profession boards have responded. This Client Alert catalogues and summarizes the board responses, which are anything but uniform.

But first, we summarize the Governor's blanket professional licensure waivers in Executive Order 2020-17 (Continuity of Work), which cover some of the same ground. State licensing boards and agencies must:

- Defer requirements to renew licenses that have an expiration date between March 1, 2020 and September 1, 2020, by 6 months from the license expiration date, unless renewal requirements can be completed online.

<sup>1</sup> Arizona Department of Health Services Administrative Order 2020-01 (Emergency Measures for COVID-19).

- Defer requirements to complete continuing education by six months, unless the requirements can be completed online.
- Suspend rules that would prevent or limit the amount of online or alternative learning hours permitted for licensure.
- “Make every attempt” to implement electronic or remote format exams for licensure where feasible.
- Issue a provisional license to an applicant who has met all requirements other than completing an examination, if the examination cannot be provided via electronic or remote format and the applicant cannot take the test because of current closure of private testing centers, under these conditions:
  - The applicant meets all other requirements;
  - The provisions license is valid for six months from date of issuance;
  - The provisional license is suspended 20 days after in-person testing centers reopen or the examinations otherwise become available.
- Licensing boards and agencies may waive licensure fees in their discretion.

Within these parameters, here is where things stand in the Arizona health profession boards:

### **Arizona Medical Board**

The Arizona Medical Board has issued an application for a Temporary Medical License in Response to COVID-19, which allows physicians licensed in other states to apply for an expedited temporary license in the State of Arizona during the state of emergency. The temporary license is also available to physicians with an inactive Arizona license and retired physicians if the physician has been on inactive status or retired for four years or less, and the physician submits an attestation that they have the physical and mental capability to safely practice medicine. Finally, medical school graduates of an approved school of medicine who have completed twelve months of post-graduate training within the last six months are eligible for the temporary emergency license.

All temporary licenses expire after 90 days or at the time the state of emergency is declared to be over; however, a renewal process may be established if the state of emergency continues beyond 90 days. The application is available [here](#).

### **Arizona Board of Osteopathic Examiners**

The Arizona Board of Osteopathic Examiners issued an “Application for Temporary Osteopathic Licensure in Response to COVID-19 Emergency,” authorizing osteopathic physicians licensed in other states to engage temporarily in telemedicine encounters with Arizona patients for the diagnosis and treatment of COVID-19. The Board will expedite processing the application. The temporary license does not authorize the osteopathic physician to practice medicine in Arizona, apart from telemedicine encounters for the limited purpose of diagnosis and treatment of COVID-19. The application is available [here](#).

The Osteopathic Board has also issued a notice urging second, third and fourth year residents to obtain licenses.<sup>2</sup> This could provide an additional pool of physicians to care for COVID-19 patients.

### **Arizona State Board of Nursing**

The Nursing Board has implemented a “48 Hour Emergency Temporary License,” a truncated, expedited licensure process for nurses who can prove they have an offer to begin work within seven days. Nurses must have had 960 hours of nursing practice in the past five years, and must meet disciplinary requirements. This application process should allow both out-of-state and retired nurses to join the effort.

The Nursing Board website also displays a chart of the certification extension and waiver policies of a list of advance practice nursing certification organizations.<sup>3</sup>

Notably, on March 24, Governor Ducey took separate action to exempt Arizona from the federal requirement that a certified registered nurse anesthetist (CRNA) be supervised by a physician.<sup>4</sup> However, the state law requirement that a CRNA practice “under the direction of and in the presence of a physician or surgeon” remains in place.<sup>5</sup>

### **Arizona State Board of Respiratory Care Examiners**

<sup>2</sup> [https://www.azdo.gov/MinutesUploads/Press/DO\\_202004021256\\_99f09e333f494b87b94c9af6194401ea.pdf](https://www.azdo.gov/MinutesUploads/Press/DO_202004021256_99f09e333f494b87b94c9af6194401ea.pdf).

<sup>3</sup> <https://www.azbn.gov/news-and-events/aprn-certification-extensionwaiver-policies-covid-19-update>.

<sup>4</sup> [https://azgovernor.gov/sites/default/files/crna\\_opt-out\\_letter\\_03.24.2020.pdf](https://azgovernor.gov/sites/default/files/crna_opt-out_letter_03.24.2020.pdf).

<sup>5</sup> A.R.S. § 32-1634.04(A).

The Respiratory Care Board has taken numerous actions to make it easier for respiratory therapists to care for COVID-19 patients during the Emergency:

- It issued a six-month license renewal extension for all licenses set to expire between March 1, 2020 and September 2020.
- It waived the requirements for live continuing education hours until Executive Order 2020-17 is revised or repealed.
- It granted a six-month temporary license to new graduates that are unable to obtain their NBRC RRT credential because testing centers are closed, as long as all other license application requirements are met.
- The Board temporarily waived the requirement that applicants holding a license from another state have an RRT examination or equivalent competency examination, until the Governor's Declaration of Emergency is terminated or the licensee obtains permanent licensure.
- It ordered that a respiratory care practitioner holding a license in another U.S. state may obtain a six-month temporary license upon submitting an application (available [here](#)), as long as the licensee is in good standing in all states where the licensee is currently or previously licensed, and has met all applicable requirements in the original state of licensure.
- Finally, the Board waived the late renewal requirements to renew an expired license pursuant to Ariz. Admin Code R4-45-207, thus allowing retired or inactive license holders with an expired license to practice. The Board may issue a temporary six-month license to those individuals that held a license that expired over 90 days ago but not more than ten years ago.

### **Arizona State Board of Pharmacy**

The Pharmacy Board activated its already-existing emergency statutes and rules. Specifically:

- Pursuant to A.R.S. § 32-1910 and Ariz. Admin Code R4-23-412, pharmacists are authorized to dispense emergency refill prescriptions if the medication is essential to the maintenance of life or the continuation of therapy and the pharmacist, among other requirements.
- Pharmacists not licensed in Arizona but licensed in another state may dispense prescription medications if the pharmacist is engaged in a legitimate relief effort during the state of emergency.



- Ariz. Admin Code R4-23-413, titled “Temporary Recognition of Nonresident Licensure,” provides additional requirements for pharmacy technicians and pharmacy interns not licensed in this state, but currently licensed and registered in another, to assist a pharmacist in dispensing prescription medications to patients in Arizona during a state of emergency, including requiring direct supervision of a pharmacist. In order for an out-of-state pharmacist, intern, or pharmacy technician to physically work in Arizona, the applicant will need to go through the NABP passport process, available [here](#).
- Ariz. Admin. Code R4-23-617 provides that pharmacies may arrange to temporarily locate to a temporary pharmacy facility or mobile pharmacy if the pharmacist-in-charge ensures that the pharmacy is under the control or management of the pharmacist-in-charge, the pharmacy is located within or adjacent to the declared disaster area, the Board is notified of the pharmacy’s location, the pharmacy is properly secured to prevent theft and diversion of drugs, the pharmacy’s records are maintained in accordance with Arizona law, and the pharmacy stops providing pharmacy services when the declared state of emergency ends.
- Pharmacists and technicians may work remotely or from home pursuant to Ariz. Admin. Code R4-23-621(F). An individual pharmacist licensed in Arizona, who is an employee of or under contract with a pharmacy, or an Arizona-licensed graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee, working under the supervision of the pharmacist, may access that pharmacy’s electronic database from inside or outside the pharmacy and perform the order processing functions permitted by the pharmacy act, if the pharmacy establishes controls to protect the confidentiality and integrity of patient information, and none of the database is duplicated, downloaded, or removed from the pharmacy’s electronic database.

The full text of the Arizona State Board of Pharmacy’s emergency statutes and regulations, along with a series of helpful FAQs, is available [here](#).

### **Arizona Regulatory Board of Physician Assistants**

The Arizona Regulatory Board of Physician Assistants has issued an application for a Temporary Physician Assistant License in Response to COVID-19 Emergency, which permits physician assistants licensed in other states to apply for expedited temporary licensure. Recently graduated physician assistants who have not yet taken and passed the PANCE may also apply for a temporary emergency license. All temporary licenses expire after 180 days or when the state of emergency is declared to be over, and a renewal process may be established if the state of emergency continues beyond 90 days. The application is available [here](#).

In addition, the Board has waived the requirement to have a written delegation agreement with a supervising physician during the state of emergency; however, recent graduates who obtain a temporary license are required to have a signed delegation agreement with a supervising physician.

### **Arizona Board of Psychologist Examiners**

This Board has put into place extensive waivers covering aspects of psychologist and behavior analyst practice:

- It extends the 20-day licensure exemption for out-of-state psychologists so that the exemption last for the duration of the Emergency. This waiver applies to both psychologists and behavior analysts.
- The Board will grant provisional licenses to psychologist applicants if they are ready for exam and licensure.
- It will grant temporary unrestricted licenses to practice for the duration of the Emergency. This waiver applies to both psychologists and behavior analysts.
- It will waive restrictions on telepractice that includes audio and video for the duration of the emergency.
- It extends the length of temporary licenses of post-doctoral psychologist applicants.
- It waives fees and continuing education requirements for most psychologists and behavior analysts holding retired status licenses within the last ten years who seek to reactivate their licenses. This waiver lasts for the duration of the Emergency.
- It also waives fees and continuing education requirements for psychologists and behavior analysts holding voluntary inactive status licenses and seeking to reactivate them. This waiver also lasts for the duration of the Emergency.
- It allows the executive director to approve continuing education deadline extension requests in individual cases.
- It suspends the time restrictions on telesupervision and telepractice with respect to candidates for licensure who are in pre-internships, internships, supervised postdoctoral experiences and residences.
- It **allows** supervision to be conducted by telepractice without restriction.

- It allows for a series of time extensions related to applications.

#### **Arizona State Board of Behavioral Health Examiners**

The Behavioral Health Board will consider accommodations when testing resumes for those applicants who are unable to take and pass the licensure examination within their previously authorized period.

#### **Arizona State Board of Dental Examiners**

The Dental Board has not waived any licensure rules or taken steps to implement the blanket waivers ordered by the Governor in Executive Order 2020-17. Instead, the Dental Board “urges” its licensees to continue to be available as needed for essential and/or emergency care and services, while taking appropriate and enhanced precautionary measures for patient, staff and personal safety. The Dental Board also states that patients should be screened for active disease prior to providing dental care in the office.

#### **Arizona Board of Occupational Therapy Examiners**

The Occupational Therapy Board has taken the following actions:

- It is giving six-month license extensions to occupational therapists who cannot complete their continuing education in time for renewal because of Covid-19.
- It is issuing six-month provisional licenses to new graduates who cannot take the licensure examination because testing centers are closed.
- It is issuing six-month provisional licenses to persons applying for a new license who cannot obtain fingerprints.
- It is considering individual requests for fee waivers.

#### **Arizona State Board of Podiatry Examiners**

The Arizona Board of Podiatry Examiners has stated that licensees can now obtain all continuing medical education hours electronically, [here](#).

#### **Arizona State Board of Chiropractic Examiners**

The Chiropractic Board has not waived any licensure rules or taken steps to implement the blanket waivers ordered by the Governor in Executive Order 2020-17. It does recommend that “its licensees understand and comply with Governor Ducey’s current, and any future, directives to control the spread of the COVID-19 virus in Arizona and nationally.”

### **Boards That Have Not Taken Action So Far**

These health profession boards have not presented any waivers to date:

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

Arizona Acupuncture Board of Examiners

Arizona State Board of Chiropractic Examiners

Arizona State Board of Dispensing Opticians

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Arizona Board of Nursing Care Institution Administrators and Assisted Living Facility Managers

Arizona State Board of Optometry

Arizona State Board of Physical Therapy

Arizona Naturopathic Physicians Medical Board

Obviously, it will be necessary for hospitals and professionals to become familiar with the applicable emergency rules. Stay tuned for further developments.

Karen Owens’ practice focuses on health care administrative, regulatory, operations, and litigation matters. She regularly represents health care systems, hospitals, clinics, and other institutions in matters of quality management, medical staff peer review, practitioner credentialing, hospital and medical staff structure, and confidentiality. She also counsels hospitals and health care entities with respect to Medicare certification, state licensure, EMTALA compliance, and many other regulatory matters touching clinical operations. Karen advises



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health care clients in antitrust, contracting, and other disputes related to hospital and medical staff relationships. She has substantial experience handling contested matters before administrative bodies including private peer review panels, Medicare QIOs, AHCCCS, the Joint Commission, and various state professional boards. She also works actively on patient-related legal issues including refusal of treatment and advance directives.

Marki Stewart has a special focus and interest in telemedicine, including licensing, reimbursement, credentialing, and security issues. She has represented various health care providers before regulatory boards and bodies, including the Arizona Medical Board, health insurance disciplinary committees, and the Office for Civil Rights. She has also conducted hearings before government agencies.

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