

EXECUTIVE SUMMARY

Proposed Changes to ACJA § 7-201

Reorganization

- The existing ACJA § 7-201, the General Requirements for all Certification and Licensing Programs, is 50 pages long. It is organized in a way that results in no spacing between provisions making it difficult to navigate.
- The proposal creates a new Article 1 (General Requirements) under ACJA Part 7, Chapter 2 (Certification and Licensing Programs). The new Article 1 takes the existing § 7-201 and breaks it into 40, user-friendly sections numbered 7-201.01 through 7-201.40.
- Following the adoption of the new Article 1, we propose to create an additional Article for each of the existing program sections. Each Article will contain multiple sections specific to that program.

Restyling

- The proposed sections are written in plain English.
- Antiquated language is updated.
- Ambiguous words are eliminated (or at least avoided)
- Defined terms are used to avoid unnecessary repetition and eliminate the problems associated with saying the same thing in a different way each time.
- Instead of having to repeat “certification,” “certificate,” or “certificate holder” as well as “licensing,” “license,” or “licensee,” the proposal defines “license” to include “certificate.” This avoids the constant repetition of both alternatives in favor of the consistent use of “license” and its variations.
- The definitions and provisions in the proposed Article 1 will automatically apply to all programs unless the program-specific Article says otherwise.
- The proposal avoids using lists that are exclusive or limited to increase flexibility.

Examples of the Proposal’s Substantive Changes

- Board Members
 - Members of the regulated profession can’t be in the majority.
 - Addresses holdover members.
 - Requires the active participation of board members, explains what it means to actively participate.
 - Clarifies the process for addressing non-participating board members or board members with an attendance problem.

- Clarifies that board members are subject to Rule 2.11 (Personal Interests) of ACJA § 1-303, Code of Conduct for Judicial Employees.
 - Clarifies what board members must do if they have a conflict.
- Standardizes the methods for providing “written notice” to applicants and licensees in ACJA § 7-201.08.
- Fixes problems in the current section involving the board’s lack of jurisdiction.
 - Specifies that the Board may authorize its attorney to file legal action (for declaratory and injunctive relief) in superior court in cases of:
 - The unauthorized practice of the profession or occupation without a license; and
 - Former licensees violating a consent agreement.
 - Allows the board to dismiss complaints after a finding of probable cause where the board loses jurisdiction due to the death or incapacity of the licensee.
- Increases efficiency by giving the Division Director additional discretion and not requiring a vote of the board for, for example:
 - Granting “good cause” extensions under proposed § 7-201.07(B).
 - Granting an extension of time to file an answer to formal statement of charges (where there is no time to go to board).
 - Administratively approving a “squeaky clean” licensing application where there are zero issues under proposed § 7-201.10(H).
- Does not allow deficient applications to linger indefinitely by providing for the administrative termination of an application if it is not completed within 90 days after receiving a written notice of deficiency or an extended deadline.
- Emphasizes that the purpose of the licensing process is protecting the public.
- Corrects problems with how boards evaluate prior convictions.
- Eliminates problematic references to the board conducting informal or formal interviews and replacing it with a process where:
 - Applicants and licensees may request the opportunity to address the board in response to a recommendation of denial or a finding of probable cause.
 - The board may ask questions of those who have requested the opportunity to appear.
 - The board may request that a licensee appear to answer board questions about a complaint.
- Replaces the director-initiated complaint with a division-initiated complaint by the division director.

- Provides for mandatory and discretionary denial of licensing applications. In addition to listing specific grounds for discretionary denial, proposed § 7-201.12(B) it gives the board discretion to deny licensing whenever, in the board's judgment of the facts and circumstances of applicant's conduct, denial is necessary to protect the public.
- Provides that violations discovered after a licensee has surrendered their license would have to be addressed if the former licensee applies for a license under any CLD program.
- Proposed § 7-201.22(A)(1) imposes a 3-year statute of limitations on complaints unless the time is extended by the division director for good cause. The 3-year limitation is in line with how long licensees must keep records. This prevents wasting scarce investigative resources in search of non-existent evidence on stale complaints.
- Provides clear authority to investigate complaints against trainees as part of the licensing process.
- Provides civil immunity to complainants and witnesses for communications to the division or hearing officer, including testimony provided in a disciplinary hearing or statements in an affidavit or declaration. This is based on Supreme Court Rule 48.
- Provides that additional violations discovered during the complaint investigation are treated as part of the original complaint.
- Allows an advisory letter to be issued even if a minor violation is found. The current provision only allows an advisory letter to be issued if no violation is found but there is behavior that should be corrected.
- Cleans up the emergency license suspension process to make it workable. Modeled on the *Revised Model State Administrative Procedure Act (2010)* by the National Conference of Commissioners on Uniform State Laws.
- Under proposed § 7-201.31(A)(2)(d)(2), when the board orders discipline, the board may defer the filing of the formal statement of charges to offer the licensee a proposed consent agreement for acceptance. The licensee would be given a deadline to accept or the board files the charges. This should provide an avenue to streamline the disciplinary process.
- Provides additional clarity on hearing procedures and limited discovery.
- Addresses the assignment of a hearing officer if the PDJ is unable to handle a matter due to their Rule 51 duties. In that case, a hearing officer would be assigned from the other judges appointed to serve at the pleasure of the supreme court under Rule 51(a).