

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). Within the new Article 1, the existing § 7-201 is broken into 40, user-friendly sections numbered 7-201.01 through 7-201.40.
- Following the adoption of the new Article 1, an additional Article will be added for each of the existing program sections. Each of those Articles will contain multiple sections specific to that program. Those sections will not repeat information contained in Article 1. They will focus, instead on provisions unique to the individual programs and any deviations from Article 1.

Restyling

- The proposed sections redraft existing language in plain English and according to updated standards for writing rules or legislation.
- 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 provide the flexibility to address the unexpected.

— New Sections —

7-201.01: Definitions

- The proposed § 7-201.01 automatically applies these definitions to all other licensing code sections unless those sections state otherwise.

- Corrects the definition of “accredited agency” to provide a definition of accredited schools or programs qualified to provide education and training. The current definition mistakenly defines what it means to be an accrediting agency.
- “Good cause” definition revised to state what IS a legally sufficient basis for a decision (i.e., fact based and not arbitrary, capricious, or an abuse of discretion).
- “Person” includes both individuals and entities.

7-201.02: Jurisdictions

- Clarifies that the essential purpose of the licensing and disciplinary processes is protection of the public.
- Provides the AOC director, deputy director, division director, and division staff with immunity from civil suit and liability for conduct.

7-201.03: Administration

- Cleans up language; makes no substantive changes.

7-201.04: Professional and Occupational Boards

- Provides that board members serve at the pleasure of the chief justice.
- Provides for regular 3-year terms
- Adds a requirement that the regulated profession not be in the majority of a board.
- Addresses when vacancies are created.
- Adds a requirement that the order making an appointment to fill a vacancy state whose unexpired term is being filled and when that term expires to ensure that staggered terms are maintained.
- Provides for holdover members until a successor is appointed.
- Provides that the boards may authorize legal action (i.e., seeking declaratory and injunctive relief) against those engaging in the unauthorized practice of the profession or occupation without a license and against those violating the terms of a consent agreement.
- Expressly provides for the dismissal of a complaint if the division loses jurisdiction over the licensee, including the licensee’s death or incapacity.

7-201.05: Meetings and Actions

- Clarifies the rules of procedure for meetings.
- Better addresses board member recusal.

7-201.06: *Board Member Conduct*

- Provides for active participation (paying attention and being prepared) by board members during board meetings.
- Proposes that the division director or staff address a member's attendance problem with the member instead of the board chair.
- Addresses board member communication requirements in more detail and more closely aligns with state open meeting law.

7-201.07: *Deadlines*

- Corrects the quotation of Rule 6(a), Rules of Civil Procedure.
- Provides a mechanism for obtaining an extension for good cause applicable throughout the chapter.

7-201.08: *Notice to Applicants and Licensees*

- Provides the manner of giving "written notice" whenever it is required in the chapter. This allows other sections to state that written notice must be given without having to detail what that entails.
- Also specifies how "notice by mail" must be given whenever required.

7-201.09: *Licensing Eligibility*

- Summarizes the existing professional requirements and personal qualifications to be eligible for licensing.
- Adds the factors the board will use to determine eligibility of applicants who may pose a risk to the public. This change more clearly links grounds for denial to a failure to meet the requirements for entry into the profession or occupation.

7-201.10: *Initial Licensing; Application Process*

- Provides for the administrative termination of an application that remains incomplete within 90 days of a written notice of deficiency (or within 90 days of an extended deadline) with no right to a hearing. To continue the licensing process, the applicant would have to submit a new application.
- Provides for administrative license approval by the division director if the application has no issues and the division recommends licensing without reservation.
- The rest of the section primarily reorganizes and redrafts existing requirements.

7-201.11: *Examinations*

- Language is changed to recognize that some programs require the examination to be passed before submitting the licensing application.
- Changes examination content and prep materials approvals from the board to the AOC Executive Director.
- Increases the number of times an examination can be taken without board approval from 3 to 4. Approval would be needed to take an exam for the 5th time.

7-201.12: *Grounds for Denial*

- With administrative termination of an incomplete application under § 7-201.10, the current language about board denial of an incomplete application is deleted.
- Provides that the board may deny an application if, in the board's judgment, the facts and circumstances of applicant's conduct means that denial is necessary to protect the public and lists examples of such conduct.
- Revises the criteria for the board to use when considering an applicant's criminal convictions; removes language that might allow a board to re-weigh the evidence in a criminal case.

7-201.13: *Decision on Licensing Application*

- Adds a process for the board to ask questions of the applicant during the meeting at which the board is considering their application. This replaces the current reference to an informal interview.
- Authorizes the division director to determine that good cause exists for an applicant's late request for a hearing on their application denial. The current provision requiring board approval is unworkable in most cases because the boards do not meet frequently enough to consider the issue before a motion to dismiss must be filed. Under the proposal, the division director who finds good cause for the late filing may direct the attorney general to forego filing a motion to dismiss.

7-201.14: *Reapplication After Denial*

- If division staff determines that a reapplication has not overcome the board's initial reason for denial and recommends denial of the reapplication, the applicant may request an opportunity to address the board in response. The board may also ask questions of the applicant.

7-201.15: *License*

- This new section contains existing information on license duration, expiration, and unauthorized practice without a license.

7-201.16: *Voluntary License Surrender*

- Eliminates existing language allowing the board to sanction someone who has already surrendered their license.
- Provides that violations discovered after a licensee has surrendered their license will have to be addressed if the former licensee applies for a license under any CLD program.

7-201.17: *License Transfer to Inactive Status*

- This section primarily reorganizes and redrafts existing requirements.

7-201.18: *License Reinstatement After Suspension or Revocation*

- This section primarily reorganizes and redrafts existing requirements.

7-201.19: *License Renewal*

- Fills in gaps and clarifies the process for requesting permission to file an untimely renewal application.
- Puts the burden on the licensee to supply documentation showing good cause for the failure to timely file.
- Provides that an incomplete request to file an untimely renewal application, the request will be denied without issuing a notice of deficiency and an opportunity to supply the missing information.

7-201.20: *Licensee Conduct*

- This section primarily reorganizes and redrafts existing requirements.

7-201.21: *Grounds for Discipline*

- This section primarily reorganizes and redrafts existing provisions.

7-201.22: *Complaints*

- Introduces a 3-year statute of limitations on complaints except where good cause is shown to extend the time. The 3-year limitation is in line with how long licensees must keep records.
- Provides that complaints against pre-licensing trainees be handled as part of the licensing process.

- Changes the existing director-initiated complaint process to a division-initiated process when the division director finds that further investigation is warranted.

7-201.23: *Complainants*

- Provides immunity from civil suit or discipline for their communications to the division, hearing testimony, affidavits, or declarations. This is like the protections the court gives to State Bar complainants.

7-201.24: *Administrative Review; Dismissal*

- Gives the division an additional 15 days to triage complaints.
- Establishes a consent agenda process for the board's consideration of complaints dismissed by the division director. The board may remove individual dismissals from the consent agenda for separate consideration.
- Provides that if a complainant requests board review of a director dismissal, the board's consideration is a separate agenda item and not included on the consent agenda.

7-201.25: *Complaint Investigations*

- Clarifies that additional violations discovered during the investigation of a complaint may be incorporated in the existing complaint investigation.

7-201.26: *Compliance Audits*

- Clarifies that compliance audits may occur for administrative purposes, as part of an investigation, when ordered as part of the resolution of a disciplinary matter, or as required by law.

7-201.27: *Probable Cause*

- This section primarily reorganizes and redrafts existing provisions.
- 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.

7-201.28: *Licensee Appearance; Board Questions*

- After probable cause findings are transmitted to the board, the licensee may request an opportunity to address the board, or the board may request the licensee's appearance to answer the board's questions under oath.

- Deletes the current process for the board's "formal interview" of a licensee to determine if a complaint can be resolved outside the formal disciplinary process.

7-201.29: *Emergency License Suspension*

- Revises the emergency license suspension provisions to address: the duration of the emergency order, giving notice, and scheduling the post-order hearing are changed to make the process more workable.
- Changes are modeled on the *Revised Model State Administrative Procedure Act* (2010) by the National Conference of Commissioners on Uniform State Laws.

7-201.30: *Informal Discipline*

- This section primarily reorganizes and redrafts existing provisions.

7-201.31: *Formal Discipline*

- Would allow the board to defer preparation of the formal statement of charges and offer the licensee a proposed consent agreement for acceptance within 15 days or another time specified by the board. If not accepted by the deadline, the board files the already-approved formal statement of charges with the disciplinary clerk. This should provide an avenue to streamline the disciplinary process.
- Provides that the division director may, for good cause, grant extensions of time to file an answer to a formal statement of charges instead of the board. Boards do not always meet often enough to address requests for extensions before the answer deadline.

7-201.32: *Hearing*

- Specifies when there is a right to a hearing and when there is no such right.
- Specifies the content of a request for hearing.
- Specifies the process for the disciplinary clerk to issue a notice of hearing and how that notice is served on the applicant or licensee and the board.
- Provides for assignment of the presiding disciplinary judge as the hearing officer or assignment of a hearing officer appointed to serve at the pleasure of the supreme court under Rule 51(a).

7-201.33: *Pre-Hearing Procedures*

- Provides for a mandatory exchange of information by the parties and for some additional information to be provided on request to another party.

- Reiterates that there is no formal discovery, but provides that, in extraordinary circumstances, the hearing officer may order limited discovery, to be conducted under the Arizona Rules of Civil Procedure, on petition of a party and for good cause.

7-201.34: *Pre-Hearing Conference*

- Redrafts existing provisions.

7-201.35: *Hearing Procedures*

- Redrafts existing provisions.

7-201.36: *Hearing Officer Recommendation*

- Redrafts existing provisions.

7-201.37: *Rehearing*

- Redrafts existing provisions.

7-201.38: *Board Action on Hearing Officer Recommendation*

- Provides that when reviewing the hearing officer's findings of fact, the board should consider the hearing officer's opportunity to observe the demeanor and attitude of witnesses and give greater weight to the hearing officer's findings about the credibility of witnesses.
- Provides that the board may not consider matters outside the hearing record when reviewing the hearing officer's recommendation report.
- The board may deviate from the hearing officer's findings of fact and conclusions of law only if the board has reviewed all pertinent portions of the hearing record.

7-201.39: *Final Decisions and Orders*

- Provides that the board must make its final decision based only on the hearing record.
- Provides that if the board's adopted findings of fact and conclusions of law modifies or rejects the hearing officer's findings and conclusions, the board must state the reason for each modification or rejection and include evidence from the record supporting each modification or rejection.

7-201.40: *Judicial Review*

- Specifies that an applicant or licensee does not have to request rehearing before seeking judicial review by special action.