



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>December 6, 2016</p>	<p>No. I16-012 (R16-016)</p> <p>Re: Board of Technical Registration Jurisdiction over Trained Geologists</p>
---	--

To: E. LeRoy Brady, Chairman
Board of Technical Registration

Questions Presented

1. What jurisdiction, if any, does the Arizona State Board of Technical Registration (“Board”) have over “trained geologists”?
2. Do Arizona Revised Statutes (“A.R.S.”) § 32-122.01 and Arizona Administrative Code (“A.A.C.”) R4-30-208, which define the Board’s requirement for degree recognition and qualifying experience, apply to a “trained geologist”?
3. Does the Board have the authority to require a person claiming to be a “trained geologist” to provide documented proof of education and experience?
4. Can the Board regulate the practice of “trained geologists” in Arizona if they fail to practice with minimum competence and harm the public?
5. A.R.S. § 32-106.02 gives the Board the authority to investigate allegations of unlicensed practice and impose civil penalties upon unlicensed individuals if the work they performed should have been performed by a licensed professional. Will the Board be able to investigate and impose civil penalties upon “trained geologists” pursuant to this statute if it receives complaints from the public and substantiates them?

Summary Answer

1. The Board has jurisdiction over those trained geologists who have voluntarily registered with the Board, and those who failed to comply with the requirements in § 32-144(F).

2. A.R.S. § 32-122.01 and A.A.C. R4-30-208 apply only to trained geologists who have voluntarily registered.
3. While the Board has the authority to condition professional registration upon proof of education and experience, it does not have the authority to generally require such documentation from individuals exempt from registration. In the context of a complaint alleging an individual does not meet the education and experience requirements for a trained geologist, the Board may require proof in order to resolve that complaint.
4. No, the Board's disciplinary authority is limited to registrants or those who are required to be registrants with the Board.
5. Yes, if the Board receives a complaint that a trained geologist improperly engaged in geology work for which registration is required, the Board has the authority to investigate and impose civil penalties for substantiated allegations.

Background

The Arizona State Board of Technical Registration is a regulatory body tasked with reviewing applications to practice certain trades, determining whether applicants are qualified for licensure or certification, and investigating complaints lodged against practitioners of those trades. Historically, the Board has been tasked with regulating the practice of engineering, architecture, geology, assaying, land surveying, landscape architecture, home inspection, the alarm industry, and environmental remediation. A.R.S. § 32-106 defines the Board's powers and duties, which include, in pertinent part, to:

3. Consider and act on or delegate the authority to act on applications for registration or certification.
4. Conduct examinations for in-training and professional registration except for an alarm business or an alarm agent.
5. Hear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.

A.R.S. § 32-106(A)(3)-(A)(5). With regard to complaints, the Board may investigate allegations made against "a person who is not exempt" from the Board's authority, and who "is not registered or certified . . . [but] is practicing, offering to practice or by implication purporting to

be qualified to practice any board regulated profession or occupation.” A.R.S. § 32-106.02(A). Further, the Board’s disciplinary authority allows it to “take disciplinary action against the holder of a certificate or registration” A.R.S. § 32-128(C). The Board’s investigatory and prosecutorial jurisdiction does not apply to individuals who are exempt from registration with the Board.

In 2016, the Arizona Legislature passed, and the Governor signed, House Bill 2613, modifying the statutes dealing with the regulation of the trades within the Board’s jurisdiction. In particular, whereas the previous statutory scheme dealt only with “professional geologists” who must register with the Board, these recent statutory amendments added the category of “trained geologists” to those individuals who are exempt from the Board’s registration requirements. A.R.S. § 32-144(F) (“A trained geologist may engage in a geological practice without being registered under this chapter.”). The statute sets forth conditions, under which a trained geologist may not practice geology, including:

A trained geologist may not engage in a geological practice if any of the following applies:

1. The trained geologist has been convicted of a felony in this state or any other state.
2. The trained geologist has been registered or licensed in this state or any other state and has had the registration or license suspended or revoked by this state or the other state.
3. The trained geologist has been prohibited from engaging in a geological practice in this state or any other state due to any private, civil or professional complaint related to an ethical or technical violation while engaged in the practice of geology.
4. The trained geologist fails to disclose to a person employing or hiring the trained geologist:
 - (a) Any disciplinary action taken against the trained geologist in this state or any other state due to any private, civil or professional complaint that is

related to an ethical or technical violation while engaged in the practice of geology.

- (b) That the trained geologist is not a registered geologist pursuant to this title.
- 5. The trained geologist is required to be registered by another law in this state or by federal law.
- 6. State or federal law conditions the issuance of a license or permit, including permits issued under title 27, 37, 45 or 49, on the issuance of a report that is sealed by a registered geologist.

A.R.S. § 32-144(F) (footnote omitted)

Trained geologists must have “[e]arned a geology degree from an accredited educational institution” and “[p]articipated in geological work experience outside of an educational institution for at least four years.” A.R.S. § 32-144(G). The Board’s general administrative regulations set forth the manner in which it calculates credit for education and work experience requirements. A.A.C. R4-30-208. With regard to work experience credit, the regulations require applicants to obtain substantiation from relevant employers. *Id.* at R4-30-208(B).

Analysis

I. What jurisdiction, if any, does the Board have over “trained geologists”?

The practice of geology is well-understood throughout Title 32, Chapter 1, as falling within the ambit of the Board’s regulatory charge. *See, e.g.*, A.R.S. §§ 32-101 (B)(14). As noted above, the Board is authorized to accept and act on applications submitted for registration as a licensed geologist; to conduct related examinations; and to hear, investigate, and act on complaints.

The Board has jurisdiction over trained geologists who choose to register with the Board, and thus may pursue investigations and disciplinary actions against such individuals as registrants. The Board also has jurisdiction over individuals engaging in geological practice who fail to meet the education or work experience requirements for trained geologists in § 32-144(F),

and thus are not entitled to the registration exemption. *See* A.R.S. § 32-106.02(A) (granting authority to investigate complaints and impose civil penalties against a person who is not exempt from registration and is “practicing, offering to practice or by implication purporting to be qualified to practice” geology).

II. Do A.R.S. § 32-122.01 and A.A.C. R4-30-208, which define the Board’s requirement for degree recognition and qualifying experience, apply to a “trained geologist”?

Section 32-122.01 and R4-30-208 both apply to a trained geologist who applies for professional registration with the Board. § 32-122.01(A) provides that an applicant for professional registration as a geologist (1) be of good moral character and repute, (2) have eight years of education, experience, or both in the field of geology, and (3) pass in-training requirements and professional examinations. A.R.S. § 32-122.01(A). By its very terms, this statutory provision applies only in the context of an application for registration, a process from which trained geologists are exempted.

R4-30-208 elaborates on the manner of calculating education and experience requirements by defining how many months of credit the Board should assign for various forms of education and experience. *See, e.g.*, R4-30-208(A)(2)(d) (“In determining pro rata credit, 30 semester hours or 45 quarter hours shall equal 12 months credit.”); R4-30-208(B)(1) (“One hundred and thirty hours or more of work per month is equal to one month of work experience.”). The requirements for professional registration as a geologist are a combined total of eight years education and experience; there is no degree requirement. A.R.S. § 32-122.01(A)(2). In determining whether an applicant meets the professional registration requirements for a geologist, the Board will still look to § 32-122.01 and R4-30-208.

A trained geologist must specifically have a degree issued by an accredited institution plus “at least four years” of experience in the practice of geology. A.R.S. § 32-144(G). Because the education requirements for a trained geologist do not require calculation (the individual either has a degree or does not), the administrative regulation directing the calculation of time spent in education has no relevance.

The statutory work experience requirement for a trained geologist is that he or she “[p]articipated in geological work experience outside of an educational institution for at least four years.” The plain terms of this requirement are different from the professional registration work experience description that an applicant must “[b]e actively engaged in education or experience, or both . . . for at least eight years.” A.R.S. § 32-122.01(A)(2). The new exemption does not employ the standard statutory language of “actively engaged in” but rather uses “participated in.” The Board promulgated R4-30-208 as an implementing regulation for its general statutory scheme and incorporated stringent calculation requirements. The statutory language departure in the context of the trained geologist exemption divorces that provision from this implementing regulation. As a result, R4-30-208 does not apply to a trained geologist.

III. Does the Board have the authority to require a person claiming to be a “trained geologist” to provide documented proof of education and experience?

The Board has the authority to condition registration upon documented proof of education and experience (see the discussion above regarding the Board’s jurisdiction over registration of trained geologists). The Board does not have the authority to affirmatively require such documentation from individuals not seeking registration as trained geologists; to infer such a general requirement would be to administratively adopt a *de facto* registration requirement for a category of individuals the Legislature explicitly exempted from registration.

The Board can require proof of education and experience in the context of a complaint alleging that an individual engaged in the practice of geology but failed to meet the education or experience requirements for a trained geologist (which would render that respondent ineligible for the registration exemption). A.R.S. § 32-106.02.

IV. Can the Board regulate the practice of “trained geologists” in Arizona if they fail to practice with minimum competence and harm the public?

The Board has the authority to investigate complaints lodged against trained geologists for engaging in the practice of geology without a license while failing to meet the education and experience requirements of § 32-144(G). If the allegations in such a complaint are substantiated, the respondent would not qualify as a trained geologist and thus would not be entitled to the exemption. Outside of this context, however, the Board’s regulatory authority as to geologists is limited to those who are registered with the Board: “The Board may take disciplinary action against *the holder of a certificate or registration*[.]” A.R.S. § 32-128(C) (emphasis added); *see also* R4-30-301 (“All *registrants* shall comply with the following rules of professional conduct[.]”) (emphasis added).

V. Will the Board be able to investigate and impose civil penalties upon “trained geologists” pursuant to A.R.S. § 32-106.02 if it receives complaints from the public and substantiates them?

As explained more fully above, the Board’s authority to investigate and impose penalties on trained geologists is limited to substantiated complaints alleging that an individual is not entitled to the trained geologist exemption by virtue of a failure to comply with or meet the requirements of the exemption as set forth in A.R.S. § 32-144(F)-(G). The Board does not have the authority to investigate or impose civil penalties on trained geologists pursuant to any other complaints. *See* A.R.S. § 32-106.02(A) (specifically limiting the board’s authority under this section to complaints against “a person who is not exempt.”).

Conclusion

In summary, the statutory amendments adopted in 2016 explicitly exempt trained geologists from registration with the Board, and thereby largely exempt such individuals from the Board's jurisdiction. Absent allegations that an individual is improperly claiming this exemption, the Board lacks jurisdiction over trained geologists.

Mark Brnovich
Attorney General