



## Notice of Permanent Adoption

### Office of the Secretary of State Notary Program Rules 8 CCR 1505-11

May 15, 2018

#### I. Adopted Rule Amendments

As authorized by Colorado Revised Uniform Law on Notarial Acts (RULONA)<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the Notary Program Rules<sup>3</sup> are adopted on a permanent basis.

The Secretary of State considered the amendments at the April 17, 2018 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>4</sup>.

Please note: our office initially adopted rules on May 10<sup>th</sup>, 2018, however we later discovered that an additional revision would help streamline the timeframe for new applicant and renewal training. We are readopting the following rules with an additional edit to Current Rule 2.1.2.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
<del>Strikethrough</del>	Deletions
<i>[Italic blue font text]</i>	Annotations and publication notes

*[Current 8 CCR 1505-11 is amended as follows:]*

*Amendments to Rule 1 concerning definitions:*

*[Current Rule 1.4 is amended.]*

- 1.4 “DAN” means the unique document authentication number issued by the Secretary of State and required by ~~sections 12-55-106.5, 12-55-111(4), and 12-55-112(4.5)(b)~~; SECTION 24-21-520(3), C.R.S., for electronic notarizations.

<sup>1</sup> Article 21 of Title 24, Part 5, C.R.S. (2017).

<sup>2</sup> Section 24-4-103(3)(a), C.R.S. (2017).

<sup>3</sup> 8 CCR 1505-11.

<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2017).

*[New Rules 1.7 and 1.8.]*

- 1.7 “LEGAL PROCEEDING OR DISCIPLINARY ACTION BASED ON THE APPLICANT’S OR NOTARY PUBLIC’S FRAUD, DISHONESTY, OR DECEIT” IN SECTION 24-21-523(1)(D), C.R.S., MEANS ANY CIVIL OR CRIMINAL MATTER CONDUCTED EITHER JUDICIALLY OR ADMINISTRATIVELY CONCERNING ACTIVITIES INVOLVING FRAUD, DECEIT, OR THE OTHER VIOLATIONS LISTED IN RULE 1.8.
- 1.8 “MISDEMEANOR INVOLVING DISHONESTY” IN SECTION 24-21-523(1)(C), C.R.S., MEANS A VIOLATION OF, OR A CONSPIRACY TO VIOLATE, A CIVIL OR CRIMINAL LAW INVOLVING FRAUD, DISHONESTY, BRIBERY, PERJURY, LARCENY, THEFT, ROBBERY, EXTORTION, FORGERY, COUNTERFEITING, EMBEZZLEMENT, MISAPPROPRIATION OF PROPERTY, OR ANY OTHER OFFENSE ADVERSELY AFFECTING A PERSON’S FITNESS TO SERVE AS A NOTARY PUBLIC.
- ~~1.7~~-1.9 “New applicant” means a person seeking a commission as a Colorado notary for the first time or a formerly commissioned notary in Colorado whose commission has been expired for more than 30 days.

*Amendments to Rule 2 concerning notary commissions:*

*[Regarding filing and training requirements: Amendments to Current Rule 2.1.2. New Rule 2.1.3. Current Rules 2.1.3, 2.1.4, and 2.1.5 are renumbered as Rules 2.1.4, 2.1.5, and 2.1.6. New Rule 2.1.6(a) is amended.]*

- 2.1.2 No more than ~~six months~~ 90 DAYS before applying for a commission, a new applicant must successfully complete training and pass the exam administered by the Secretary of State.
- 2.1.3 NO MORE THAN 90 DAYS BEFORE RENEWING A COMMISSION, A NOTARY MUST SUCCESSFULLY COMPLETE THE RENEWAL TRAINING AND PASS THE EXAM ADMINISTERED BY THE SECRETARY OF STATE.
- ~~2.1.3~~-2.1.4 The Secretary of State will grant credit only for completion of courses offered by an approved vendor, an approved course provider, or the Secretary of State.
- ~~2.1.4~~-2.1.5 The Secretary of State may require a notary who has committed misconduct meriting a disciplinary proceeding to retake and successfully complete the training and exam.
- ~~2.1.5~~-2.1.6 Examination. The Secretary of State’s open book examination will test the applicant’s understanding of notary duties contained in the following:
- (a) Title ~~42-24~~, Article ~~55-21~~, PART 5 (~~The Notaries Public Act~~ REVISED UNIFORM LAW ON NOTARIAL ACTS) of the Colorado Revised Statutes;
  - (b) Title 38, Article 30 (Titles and Interests) of the Colorado Revised Statutes;

- (c) Title 1, Article 40 (Initiative and Referendum) of the Colorado Revised Statutes; and
- (d) The Official Notary Handbook published by the Secretary of State.

*[Amendments to current Rule 2.2.1, concerning electronic notarization]*

2.2.1 A notary must submit a notice of intent on the approved form and receive approval from the Secretary of State before the notary may electronically notarize a document. A new applicant may file the intent at the time of application but may only electronically notarize a document after he or she has been commissioned and approved. A NOTARY MAY CHOOSE TO EITHER USE A DAN AS THE NOTARY'S ELECTRONIC SIGNATURE OR ADOPT A DIFFERENT ELECTRONIC SIGNATURE WHICH THE NOTARY MUST ALWAYS USE IN CONJUNCTION WITH A DAN. If the applicant intends to use a different electronic signature than a DAN, the applicant must attach an example of the electronic signature, a description of the electronic signature technology, and contact information for the technology's supplier or vendor. A notary must notify the Secretary of State of all electronic signature changes.

*[Current Rules 2.2.2 and 2.2.3 are repealed. Current Rules 2.2.4 and 2.2.5 are renumbered as Rules 2.2.2 and 2.2.3]*

~~2.2.2 A notary must include his or her notary identification number in an electronic notarization.~~

~~2.2.3 For purposes of section 12-55-106.5(1), C.R.S., a notary's name means the notary's printed legal name.~~

~~2.2.4~~2.2.2 A notary must:

- (a) Use a different DAN for each electronic notarization;
- (b) Take reasonable measures to secure assigned DANs against another person's access or use and must not permit such access or use; and
- (c) Request new DANs to replace lost or stolen DANs after notifying the Secretary in the same manner as for a journal or seal.

~~2.2.5~~2.2.3 A notary must verify that the document signer has adopted an electronic signature to function as his or her signature before electronically notarizing a document.

*[Current Rule 2.2.6 is renumbered as Rule 2.2.4 and amended.]*

~~2.2.6~~2.2.4 Expiration of the Secretary of State's approval to notarize electronically

- (a) Approval automatically expires:

- (1) Upon revocation, expiration, or resignation of the notary's commission;
  - (2) 30 days after the notary's name changes unless the notary previously submitted a name change.
  - (3) Upon conviction of a felony;
  - (4) UPON CONVICTION OF A MISDEMEANOR INVOLVING DISHONESTY;
  - ~~(4)~~(5) If the notary ~~moves out of Colorado~~ NO LONGER HAS A PLACE OF EMPLOYMENT OR PRACTICE OR A RESIDENTIAL ADDRESS IN THE STATE OF COLORADO; or
  - ~~(5)~~(6) Upon the expiration or revocation of the technology described in the notification.
- (b) If approval expires, the notary or the notary's authorized representative must destroy all electronic notarization software and unused DANs unless:
- (1) The notary's commission expired; and
  - (2) Within 30 days of the commission's expiration, the Secretary of State recommissions the notary and the notary reregisters his or her electronic signature.

*Amendments to Rule 3, concerning notary trainer requirements:*

*[Amendments to current Rule 3.1.1(b), concerning course provider applicant requirements:]*

3.1.1 A course provider applicant must:

*[No amendments to current Rule 3.1.1(a)]*

- (b) Attend IN-PERSON OR ONLINE training provided by the Secretary of State.

*[Amendments to current Rule 3.2.1(a), concerning vendor-specific requirements:]*

3.2.1 The Secretary of State must approve a vendor's proposed curriculum before a vendor may offer a notary training course. Curriculum must be based on:

- (a) The Colorado ~~Notaries Public Act~~ REVISED UNIFORM LAW ON NOTARIAL ACTS including but not limited to: the physical presence requirement, duty not to notarize a blank document, duty to use a notarial certificate, disqualifying interest, application procedures, resignation requirements, duty to maintain a journal of notarial acts, revocation proceedings, liability, identification of signers, role of the notary, and official misconduct; and

*[No amendments to current Rule 3.2.1(b)]*

*[Current Rule 3.2.2(c), concerning seal of accreditation, is amended.]*

- (c) A seal of accreditation expires four years after issuance. To renew accreditation, a vendor must submit FOR REAPPROVAL A DETAILED CURRICULUM; COPIES OF ANY COURSE HANDOUT MATERIALS, WORKBOOKS, AND TESTS; AND the required form and fee.

*[Current Rule 3.5 is amended.]*

- 3.5 Duty to revise training. Approved vendors and course providers must revise approved courses of instruction as necessary to ensure that the courses accurately reflect current Colorado law. APPROVED VENDORS AND COURSE PROVIDERS MUST SUBMIT NOTICE OF REVISED TRAINING AND COPIES OF THE REVISIONS TO THE SECRETARY OF STATE FOR REVIEW AND APPROVAL IN A FORMAT THAT SATISFIES RULE 3.4, BEFORE OFFERING THE REVISED TRAINING TO THE PUBLIC.

*[New Rule 4.]*

#### **RULE 4. NOTARY JOURNAL REQUIREMENTS**

- 4.1 IF A CURRENT OR FORMER NOTARY LEAVES THE NOTARY JOURNAL WITH THE NOTARY'S FIRM OR EMPLOYER, AS AUTHORIZED BY SECTION 24-21-519(10)(A), C.R.S., THE NOTARY MUST NOTIFY THE SECRETARY OF STATE BY ELECTRONICALLY SUBMITTING THE REQUIRED FORM WITHIN 30 DAYS. THE NOTARY MUST PROVIDE THE NOTARY'S FIRM OR EMPLOYER WITH A COPY OF THE REQUIRED FORM AT THE TIME OF ELECTRONIC SUBMISSION TO THE SECRETARY OF STATE.
- 4.2 A FIRM OR EMPLOYER IN POSSESSION OF A NOTARY'S JOURNAL HAS THE SAME RESPONSIBILITY AS A NOTARY TO:
  - 4.2.1 KEEP THE JOURNAL SECURE AS DETAILED IN SECTION 24-21-519(4), C.R.S.;
  - 4.2.2 PROVIDE A COPY OF A REQUESTED TRANSACTION TO A MEMBER OF THE PUBLIC PER SECTION 24-21-519(5), C.R.S, BUT WITHOUT CERTIFYING THE COPY OR CHARGING A NOTARY FEE;
  - 4.2.3 PROVIDE THE JOURNAL TO THE SECRETARY OF STATE FOR AUDITING OR INSPECTION WITHOUT RESTRICTION PER SECTION 24-21-519(6), C.R.S.;
  - 4.2.4 PROVIDE THE JOURNAL TO A CERTIFIED PEACE OFFICER PER SECTION 24-21-519(7), C.R.S.; AND
  - 4.2.5 NOTIFY THE SECRETARY OF STATE IF THE JOURNAL IS LOST OR STOLEN PER SECTION 24-21-519(8), C.R.S.
- 4.3 A FIRM OR EMPLOYER IN POSSESSION OF A NOTARY'S JOURNAL MAY:

4.3.1 RETAIN THE JOURNAL INDEFINITELY; OR

4.3.2 TRANSMIT THE JOURNAL TO THE COLORADO STATE ARCHIVES AND NOTIFY THE SECRETARY OF STATE PER SECTION 24-21-519(10)(A)(I) AND (B), C.R.S.

**II. Basis, Purpose, and Specific Statutory Authority**

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

**III. Effective Date of Adopted Rules**

These new and amended rules will become permanently effective on July 1, 2018

Dated this 15<sup>th</sup> day of May, 2018,



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Suzanne Staiert  
Deputy Secretary of State

For

Wayne W. Williams  
Colorado Secretary of State



## **Statement of Basis, Purpose, and Specific Statutory Authority**

### **Office of the Secretary of State Notary Program Rules 8 CCR 1505-11**

**May 15, 2018**

#### **I. Basis and Purpose**

This statement explains proposed amendments to the Colorado Secretary of State Notary Program Rules. The Secretary is considering other amendments to ensure uniform and proper administration, implementation, and enforcement of the Revised Uniform Notarial Law on Notarial Acts (RULONA) (SB 17-132)<sup>1</sup>, which becomes effective July 1, 2018, and to answer questions arising under the RULONA. Specifically, the recodification is intended to:

- Correct statutory citations and add needed definitions of statutory terms.
- Revise current provisions concerning training requirements and clarify electronic notarization requirements.
- Clarify requirements for course provider applications, accreditation renewal, and course approval.
- Specify obligations for both a notary and the notary's employer if and when a notary chooses to leave his or her notary journal with the employer, as authorized by RULONA.

On March 2, 2018, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: [www.sos.state.co.us/pubs/rule\\_making/notaryRuleComments.html](http://www.sos.state.co.us/pubs/rule_making/notaryRuleComments.html) and are incorporated into the official rulemaking record.

The Secretary proposes the following rule revisions:

- Amendments to Current Rule 1 include correcting statutory citations and adding definitions:
  - Current Rule 1.4 is amended to cite the relevant provisions of the Revised Uniform Law on Notarial Acts (RULONA).
  - New Rule 1.7 defines “legal proceeding or disciplinary action based on the applicant’s or notary public’s fraud, dishonesty or deceit”. Under RULONA, section 24-21-523(1)(d), C.R.S., “a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant’s or notary public’s fraud, dishonesty or deceit” is grounds for denial, suspension, revocation, or the

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<sup>1</sup> Part 5, Article 21, Title 24 of the Colorado Revised Statutes.

imposition of conditions on a notary's commission. New Rule 1.7 defines the term for enforcement purposes.

- New Rule 1.8 defines “misdemeanor involving dishonesty”. Under RULONA, section 24-21-523(1)(c), C.R.S., “a conviction of the applicant or notary public of any felony or, in the prior five years, a misdemeanor involving dishonesty” is grounds for denial, suspension, revocation, or the imposition of conditions on a notary's commission. New Rule 1.8 defines the term for enforcement purposes.
- Current Rule 1.7 is renumbered as Rule 1.9.
- Amendments to Current Rule 2 include revising and clarifying current provisions concerning training and electronic notarization requirements and correcting statutory citations as follows:
  - Amendments to Current Rule 2.1.2 will help streamline training requirements for new applicants and the renewal training established in New Rule 2.1.3. Specifically, revisions establish that a new applicant must complete training and pass the Secretary of State's exam no more than 90 days (previously 6 months) before applying for a commission.
  - New Rule 2.1.3 requires commissioned notaries to complete training and pass the Secretary of State's exam no more than 90 days before renewal of their commission. The Colorado Secretary of State's notary enforcement program has reviewed a substantial number of notary complaints received over the past five years. Many of the complaints concern notary law violations by individuals who were commissioned before the Colorado General Assembly made substantial changes to the notary laws, such as requiring use of a notary seal containing specific content. Other violations occur because of confusion concerning fundamental notarial principles, such as the requirement of physical presence. These errors may negatively impact Colorado citizens as well as subject the notary to legal liability. The risk of increased violations is particularly significant given the adoption of an entirely new notary statute RULONA, which becomes effective July 1, 2018. The purpose of New Rule 2.1.3 is to reduce the number of notary law violations by requiring notaries to complete training and take an exam in order to renew. The Colorado Secretary of State currently offers free online notary training through its website. The current notary training course is approximately two hours in length. The notary can pause and restart the training course at his or her convenience, i.e., the course does not have to be completed in one session or sitting. The required exam is also free. Of course, renewing notaries also still have the option of taking course for a fee from one of several approved vendors.
  - Current Rule 2.1.4 is renumbered as Rule 2.1.5.
  - Current Rule 2.1.5 is renumbered as 2.1.6 and the statutory citation in Rule 2.1.6(a) is revised to correctly reference RULONA.
  - Current Rule 2.2.1 is revised concerning the use of an electronic notary's special electronic signature used in electronic notarizations. Like the repealed Notary Public Act, RULONA also authorizes a notary to receive Secretary of State approval to notarize electronic documents. Becoming certified to perform this type of notarization, which still requires physical presence of the signer, is completely optional and a Colorado notary is not required to perform electronic notarizations. However, if a Colorado notary does opt to become certified as an “electronic notary” or “e-notary,” Rule 2.2.1, as revised, clarifies both that: (1) the e-notary may choose to use a unique 11-digit Document



Authentication Number or DAN issued by the Secretary of State, per section 24-21-520(3), C.R.S., as the notary's electronic signature or may choose to use another electronic signature; and (2) even if the e-notary chooses a different electronic signature, the e-notary must still always include a DAN in an electronic notarization.

- Current Rule 2.2.2 is repealed as unnecessary. As enacted, section 24-21-520(3), C.R.S., of RULONA requires the notary to include his or her notary identification number in an electronic notarization. It is therefore unnecessary to also include this requirement in the Notary Program Rules.
- Current Rule 2.2.3 is repealed as unnecessary.
- Current Rule 2.2.4 is renumbered as Rule 2.2.2.
- Current Rule 2.2.5 is renumbered as Rule 2.2.3.
- Current Rule 2.2.6 is renumbered as Rule 2.2.4.
- New Rule 2.2.4(a) is amended to clarify when an electronic notary's commission expires, i.e., is no longer legally effective.
  - Amended Rule 2.2.4(a)(4) specifies that approval of the notary's authorization to perform electronic notarization expires if the notary is convicted of a misdemeanor involving dishonesty. The Rules currently already indicate that such approval expires if the notary is convicted of a felony. Revising the Rules to include a "misdemeanor involving dishonesty" fills in an existing gap and makes the Rules consistent with RULONA.
  - Current Rule 2.2.4(a)(4) is renumbered as Rule 2.2.4(a)(5) and amended to clarify that an electronic notary's authorization to electronically notarize expires if that notary either no longer maintains a place of employment or practice in Colorado or no longer maintains a residential address in Colorado. This harmonizes the Rules with RULONA's commission eligibility requirements in section 24-21-521(3)(c), C.R.S.
  - Current Rule 2.2.4(a)(5) is renumbered as New Rule 2.2.4(a)(6).
- Amendments to Current Rule 3 include clarifying requirements for course provider application, accreditation renewal, and course approval, and correcting statutory citations as follows:
  - Current Rule 3.1.1(b) is amended to clarify that a course provider applicant may complete in person or online training offered by the Colorado Secretary of State.
  - Current Rule 3.2.1(a) is amended to correctly reference RULONA.
  - Current Rule 3.2.2(c) is amended to clarify that in order to reapply for accreditation, a vendor must also submit a detailed curriculum and copies of any course handout materials, workbooks, and tests in addition to any required application form and fee. The purpose of this revision is to ensure that vendor course materials are accurate and consistent with applicable laws and rules.

- Current Rule 3.5 is amended. The Rule currently imposes a duty on already approved vendors and course providers to update their materials to ensure consistency with Colorado law. As amended, Rule 3.5 requires vendors and course providers to submit and obtain approval from the Colorado Secretary of State of all revisions in order to ensure that such revisions are accurate and consistent with applicable laws and rules.
- New Rule 4 sets forth the obligations for both a notary and the notary’s firm or employer if and when a notary chooses to leave his or her notary journal with the firm or employer as follows:
  - New Rule 4.1 requires a notary to notify the Colorado Secretary of State if the notary opts to leave his or her journal with the notary’s firm or employer when the notary resigns his or her commission or if the notary’s commission is revoked or expires. In passing RULONA in 2017, the General Assembly enacted provisions which authorize a notary to make two choices: instead of retaining the journal for ten years, then sending to the Colorado State Archives, while notifying the Colorado Secretary of State, a notary may choose to leave the journal with the notary’s firm or employer. Section 24-21-519(10)(a)(I) and (II). C.R.S. As a point of clarification, a notary is not obligated to leave the journal with his or her firm or employer and the firm and employer cannot require a notary to do so. However, if a notary does opt to leave the journal with the firm or employer, New Rule 4.1 clarifies that the notary must notify the Colorado Secretary of State electronically using the office’s required form within 30 days. This new rule also requires the notary to provide a copy of the form to the notary’s employer. The Secretary of State’s office often receives inquiries about a notary from an individual with an interest in a specific notarial act. Rule 4.1’s notification requirements will help ensure that interested stakeholders are aware of the journal’s location in cases when the notary has resigned, retired, or chosen to leave their journal with an employer.
  - New Rule 4.2 and sub-rules 4.2.1 through 4.2.5 impose the same statutory notary obligations and duties on the notary’s firm or employer concerning keeping the journal secure when the journal is left with the firm or employer, i.e., providing a copy of a transaction to a member of the public; providing the journal to the Secretary of State for auditing or inspection without restriction; providing a journal to a certified peace officer, as statutorily defined; and notifying the Secretary of State if the journal is lost or stolen.
  - New Rule 4.3 authorizes the firm or employer in possession of a notary journal to either retain the journal indefinitely or transmit the journal to the Colorado State Archives and notify the Colorado Secretary of State like a notary is required to do.
- Other changes to rules not specifically listed are entirely non-substantive. Some words and phrases are changed to simplify or clarify, but the meaning is not intended to be altered unless as described above. Cross-references in rules are also corrected or updated. Renumbering the rules is necessary for consistency with Department rulemaking format/style.

## **II. Rulemaking Authority**

The statutory authority is as follows:

- Section 24-21-521(1), C.R.S., (2018), which mandates that an “applicant shall comply with and provide the information required by rules established by the Secretary of State and pay any application fee.”

- Section 24-21-521(3)(f), C.R.S., (2018), which lists continuing eligibility requirements for obtaining and maintaining a notary commission, including the requirement that “an applicant for a commission as a notary public must . . . have passed the examination required under section 24-21-522(1).”
- Section 24-21-521(6), C.R.S., (2018), which provides that “on compliance with this section [which includes eligibility and application requirements], the secretary of state shall issue a commission as a notary public for a term of four years[.]”
- Section 24-21-522 (1) and (2), C.R.S., (2018), which mandates that an applicant for a notary public commission must pass an examination based on a course of study offered by the Secretary of State or an entity approved by the Secretary of State.
- Section 24-21-523(1)(a), C.R.S., (2018), which authorizes the Secretary of State to “refuse to renew a notary public commission for . . . failure to comply with [RULONA][.]”
- Section 24-21-523(1)(e), C.R.S., (2018), which authorizes the Secretary of State to “refuse to renew a notary public commission for . . . failure by the notary public to discharge any duty required of a notary public, whether by [RULONA] [or] . . . rules of the secretary of state[.]”
- Section 24-21-523(1)(g), C.R.S., (2018), which authorizes the Secretary of State to “refuse to renew a notary public commission for . . . violation by the notary public of a rule of the secretary of state[.]”
- Section 24-21-527(1)(a), C.R.S., (2018), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts regarding tangible and electronic records[.]”
- Section 24-21-527(1)(b), C.R.S., (2018), which authorizes the Secretary of State to “[i]nclude provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident[.]”
- Section 24-21-527(1)(c), C.R.S., (2018), which authorizes the Secretary of State to “[i]nclude provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures[.]”
- Section 24-21-527(1)(d), C.R.S., (2018), which authorizes the Secretary of State to “[p]rescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public, including rules for use of the electronic filing system[.]”
- Section 24-21-527(1)(e), C.R.S., (2018), which authorizes the Secretary of State to “[i]nclude provisions to prevent fraud or mistake in the performance of notarial acts[.]”
- Section 24-21-527(1)(f), C.R.S., (2018), which authorizes the Secretary of State to “[p]rovide for the administration of the examination under section 24-21-522(1) and the course of study under section 24-21-522(2).”