

A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Arizona State Board of Physical Therapy

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Debra K. Davenport
Auditor General

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May 31, 2013

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Ms. Lisa Akers, President
Arizona State Board of Physical Therapy

Mr. Charles Brown, Executive Director
Arizona State Board of Physical Therapy

Transmitted herewith is a report of the Auditor General, *A Performance Audit and Sunset Review of the Arizona State Board of Physical Therapy* (Board). This report is in response to an October 26, 2010, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board agrees with all of the findings and plans to implement all of the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Debbie Davenport
Auditor General



REPORT HIGHLIGHTS PERFORMANCE AUDIT

Board should continue to improve complaint resolution timeliness

Our Conclusion

Created in 1952, the Arizona State Board of Physical Therapy (Board) regulates the practice of physical therapy by licensing physical therapists and certifying physical therapist assistants, registering certain physical therapy businesses, investigating complaints, and imposing discipline for violations of board statutes and rules. The Board should continue to improve its complaint resolution timeliness. Although the Board resolved the majority of the complaints it received between fiscal years 2009 and 2011 within the 180-day standard for health regulatory boards, 43 percent of the complaints took between 181 days to 18 months to be resolved. Factors contributing to lengthy complaint resolution included lengthy investigations and delays in holding formal and informal hearings. The Board has taken steps to improve complaint resolution timeliness, which it should continue to monitor.

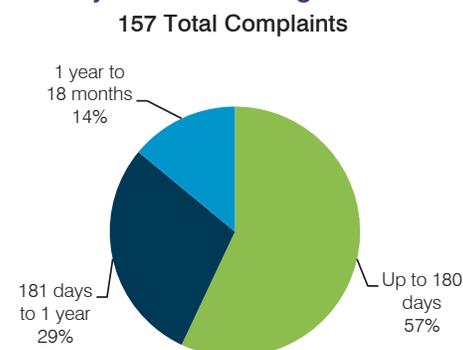


2013

Board did not resolve many complaints in a timely manner—

The Board is responsible for investigating complaints against physical therapists and physical therapist assistants and taking appropriate disciplinary action, as necessary. Complaints are either received from the public or initiated by the Board. In fiscal year 2012, the Board received or opened on its own 53 complaints for investigation. We analyzed 157 complaints the Board received or opened on its own between fiscal years 2009 and 2011. We found that 57 percent of these complaints were resolved within 180 days, which is the complaint resolution time frame standard we apply to health regulatory boards. However, 43 percent exceeded the standard, taking up to 18 months to resolve.

Length of time to resolve complaints Fiscal years 2009 through 2011



We sampled 20 of the 157 complaints, of which 13 took longer than 180 days to resolve and 7 took less than 180 days to resolve. For those 13 complaints, it took board staff a median time of 155 days to complete the investigations. In contrast, the 7 complaints took a median time of 32.5 days to investigate. Board staff explained that several factors can affect the length of an investigation, such as the number of potential violations to be investigated, the number of medical records and billing statements to be reviewed, and the number of interviews to be conducted. In addition, only a part-time investigator handles the investigations. Additional delays to the process are caused by delays in scheduling informal and formal hearings.

Lengthy complaint process can impact the public—Licensees who are under investigation can continue to practice during a complaint investigation, even though they may not be fit to do so. In one case, a complaint against a licensee accused of sexual misconduct with a patient took 12 months to resolve. Although the Board did not find sexual misconduct, it found that the licensee provided substandard care resulting in the Board administering 1 year of probation and continuing education.

Board should continue to improve complaint resolution timeliness—

The Board has taken steps to improve complaint resolution timeliness by scheduling a formal hearing when the licensee does not respond to an informal hearing request. In addition, board staff reported that they are in the process of developing complaint database reports to monitor timeliness. The Board has also proposed to increase the part-time investigator to a full-time position.

Recommendation

The Board should continue to monitor the time it takes to resolve complaints and take additional actions if necessary, such as continuing to assess the efficiency of its complaint resolution process and analyzing its investigative staffing needs.



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INTRODUCTION

Scope and Objectives

The Office of the Auditor General has conducted a performance audit and sunset review of the Arizona State Board of Physical Therapy (Board) pursuant to an October 26, 2010, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq. This performance audit and sunset review focused on the timeliness of the Board's complaint resolution process and includes responses to the statutory sunset factors.

Board regulates physical therapists and physical therapist assistants

Board's mission

The Board was created in 1952 and its mission is to protect the public from incompetent, unprofessional, and unlawful physical therapy practices. The Board accomplishes this mission by licensing qualified physical therapists and certifying qualified physical therapist assistants (see textbox), investigating and resolving complaints, disciplining violators, and providing information to the public.

Board-regulated professionals

Physical therapists—Examine, evaluate, and test persons who have mechanical, physiological, and developmental impairments, functional limitations and disabilities, or other health- and movement-related conditions.

Physical therapist assistants—Assist physical therapists by performing physical therapy procedures and related tasks that have been selected and delegated by a supervising physical therapist.

Source: Auditor General staff analysis of A.R.S. §32-2001.

The Board was originally established to regulate only physical therapists. However, the Legislature expanded the Board's authority in 1998 to also regulate physical therapist assistants. In September 2011, the Board also began registering certain business entities that provide physical therapy services (see page 2 for additional information).

Licensing and registration requirements

General requirements for licensure are similar for both physical therapists and physical therapist assistants and include: (1) completion of an approved professional education program; (2) passing the applicable National Physical Therapy Examination; and (3) passing the Arizona Jurisprudence Examination. According to board records, the Board had 3,934 licensed physical therapists and 1,061 certified physical therapist assistants as of April 2013.

Professionals licensed in another state who wish to practice in Arizona may apply for licensure or certification by endorsement. According to A.R.S. §32-2026, the Board may issue licenses or certificates by endorsement to physical therapists and physical therapist assistants who are currently licensed or certified in another jurisdiction of the United States, provided that the qualification requirements of the applicant's current license or certificate meet the requirements set for initial licensure or certification in Arizona. A.R.S. §32-2022 also requires foreign-educated applicants to provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs as determined by the Board.

In addition, Laws 2010, Ch. 120, added A.R.S. §32-2030, which requires businesses that offer physical therapy services but are not entirely owned by a licensed physical therapist or other licensed medical professional to register with the Board. The Board reported that it sought this legislation at the request of stakeholders who were concerned about how patient records at these businesses were retained, released, and destroyed. The law became effective in September 2011 and requires these businesses to develop a records protocol in addition to registering with the Board. According to board staff, this requirement helps ensure that patient records are handled with the same standards that would be required if the business were owned by a licensed physical therapist or other licensed medical professional. As of August 2012, 14 physical therapy businesses not entirely owned by a licensed physical therapist or other licensed medical professional had registered with the Board.

Complaint investigation and discipline

The Board is responsible for investigating complaints against licensed physical therapists, certified physical therapist assistants, and registered businesses, and taking appropriate nondisciplinary or disciplinary action, as necessary. A.R.S. §32-2045 authorizes the Board to investigate (1) written complaints received from the public, and (2) complaints opened by the Board when it has reason to believe that a violation of board statutes or rules may have occurred. Additionally, A.R.S. §32-2044 identifies numerous violations for which the Board can take disciplinary action. These include licensees or certificate holders engaging in sexual misconduct with a patient, providing substandard care, failing to maintain adequate patient records, being convicted of a felony, and physical therapists improperly supervising physical therapist assistants. According to board records, the Board received and/or opened for investigation 53 complaints against physical therapists and physical therapist assistants in fiscal year 2012. The Board reported that it had not received any complaints against registered physical therapy businesses as of December 2012.

After completing an investigation, the Board may dismiss the complaint or take nondisciplinary or disciplinary actions authorized by statute (see textbox, page 3). Auditors analyzed 157 complaints that the Board received or opened on its own in fiscal years 2009 through 2011 and found that the majority of the complaints resulted in disciplinary action.¹ Specifically, 81 complaints resulted in a

¹ According to its complaint database, the Board received or opened on its own a total of 178 complaints between fiscal years 2009 through 2011. However, auditors were able to analyze only 157 of these complaints to assess the Board's complaint resolution timeliness because 21 complaints had incomplete data or were still open as of August 2012.

disciplinary action, 55 complaints resulted in a nondisciplinary action, and 21 complaints resulted in dismissal. See Finding 1, pages 7 through 10, for auditors' analysis of the Board's timeliness in resolving these 157 complaints.

In addition, the Board provides the public with information about licensed physical therapists and certified physical therapist assistants on its Web site. A search by name or license number retrieves the licensee's or certificate holder's status and disciplinary history, including any board orders or consent agreements. The Web site also informs the public that they may call the board office to obtain additional information about dismissed complaints and nondisciplinary actions taken against a licensee or certificate holder, as required by statute.

Board's nondisciplinary and disciplinary options

Nondisciplinary options

- Issue an advisory letter
- Require continuing education

Disciplinary options

- Issue a decree of censure
- Impose civil monetary penalties of up to \$10,000 per violation
- Impose a probation term
- Accept the voluntary surrender of a license
- Suspend, revoke, or deny licensure

Source: Auditor General staff review of A.R.S. §§32-2045 and 32-2047.

Organization and staffing

The Board consists of seven governor-appointed members, including four physical therapists, one physical therapist assistant, and two public members. Board members are eligible to serve two consecutive 4-year terms. The Board is assisted by staff led by an executive director. The Board was appropriated 3.8 full-time equivalent (FTE) staff positions for fiscal year 2013.¹ In addition to the executive director, the Board employs a licensing administrator, an officer manager, and a half-time investigator.

Budget

The Board does not receive any State General Fund monies. Rather, the Board's revenue comes primarily from initial and renewal license application fees. The Board has a biennial renewal process that ends on August 31 of even-numbered years for physical therapists and physical therapist assistants, which causes the Board's revenues in odd-numbered fiscal years to be much higher than the revenues in even-numbered fiscal years. The Board's initial license application fee for physical therapists is \$260 if the applicant applies more than 12 months before the next fixed renewal date, and \$190 if the applicant applies less than 12 months before the next fixed renewal date.² The initial

¹ Although the Board was appropriated 3.8 FTEs, according to its Executive Director, the Board was appropriated funding to cover only 3.5 FTEs.

² The initial license application fee is discounted to \$190 if the applicant applies within 12 months of the fixed renewal date because all physical therapists' licenses expire on the same date, August 31 of even-numbered years, regardless of when they applied for licensure.

license application fees for physical therapist assistants are \$160 and \$120 for the same time frames. The fee for biennial renewal is \$160 for physical therapists and \$55 for physical therapist assistants. The Board also has a biennial renewal process that ends on August 31 of odd-numbered years for business registration. The initial and renewal business registration fee is \$50.

The Board is required to remit 100 percent of all collected penalties and 10 percent of all other revenues to the State General Fund. As shown in Table 1 (see page 5), during fiscal year 2012, the Board received approximately \$231,700 in gross revenues and remitted nearly \$25,500 to the State General Fund. Its estimated fiscal year 2013 gross revenues are \$657,800. The Board's expenditures were approximately \$346,700 in fiscal year 2012 and are estimated to be \$360,000 in fiscal year 2013. Personnel costs accounted for the majority of these expenditures. Finally, the Board's end-of-year fund balance fluctuates because of its biennial renewal process and was approximately \$405,200 at the end of fiscal year 2012, which was not a renewal year. The Board estimates that its fund balance will increase to approximately \$628,400 by the end of fiscal year 2013.

**Table 1: Schedule of revenues, expenditures, and changes in fund balance
Fiscal years 2010 through 2013
(Unaudited)**

	2010 (Actual)	2011 (Actual)	2012 (Actual)	2013 (Estimate)
Revenues				
Licenses ¹	\$ 208,508	\$ 619,829	\$ 203,251	\$ 620,800
Sales of goods and services	19,410	17,010	16,705	18,500
Fines, forfeits, and penalties	4,150	5,265	3,150	12,700
Other	8,440	9,228	8,627	5,800
Gross revenues	240,508	651,332	231,733	657,800
Net credit card transaction fees ²	1,527	(2,745)	1,668	(3,000)
Remittances to the State General Fund ³	(26,082)	(66,743)	(25,469)	(65,600)
Net revenues	215,953	581,844	207,932	589,200
Expenditures and transfers				
Personal services and related benefits	221,596	226,488	254,220	252,300
Professional and outside services	26,453	29,435	38,874	39,200
Travel	3,710	4,461	3,911	5,500
Other operating	50,531	54,245	49,280	60,600
Equipment	17,725	5,128	416	2,400
Total expenditures	320,015	319,757	346,701	360,000
Transfers to the State General Fund ⁴	400	9,400	5,900	
Transfers to the Office of Administrative Hearings	1,161	7,176		6,000
Total expenditures and transfers	321,576	336,333	352,601	366,000
Net change in fund balance	(105,623)	245,511	(144,669)	223,200
Fund balance, beginning of year	410,007	304,384	549,895	405,226
Fund balance, end of year	\$ 304,384	\$ 549,895	\$ 405,226	\$ 628,426

¹ License revenue fluctuates yearly because licenses are renewed every 2 years.

² According to the Board, amounts fluctuate because of timing issues between collecting fees and paying the various parties involved with the process.

³ As required by A.R.S. §§32-2004 and 32-2048, the Board remits to the State General Fund 100 percent of all collected penalties and 10 percent of all other revenues.

⁴ Amount consists of transfers to the State General Fund in accordance with Laws 2010, 7th S.S., Ch. 1, §148, and Laws 2011, Ch. 24, §§108, 129, and 138, to provide support for state agencies.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2010 through 2012; the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2010 through 2012; and board-prepared estimates for fiscal year 2013.

FINDING 1

The Arizona State Board of Physical Therapy (Board) should continue its efforts to improve complaint resolution timeliness. Although the Board resolved the majority of its complaints within the 180-day standard used to evaluate Arizona health regulatory boards, approximately 43 percent of the complaints received in fiscal years 2009 through 2011 were not resolved within this time frame. Lengthy investigations and other factors contributed to untimely complaint resolution, which can put public safety at risk because licensees can continue practicing unchecked until the Board takes action. The Board has taken steps to improve its complaint resolution timeliness, but should continue to monitor the time it takes to resolve complaints and take additional actions if necessary, such as continuing to assess the efficiency of its complaint resolution process and analyzing its investigative staffing needs.

Board should continue its efforts to improve complaint resolution timeliness

Board responsible for investigating complaints

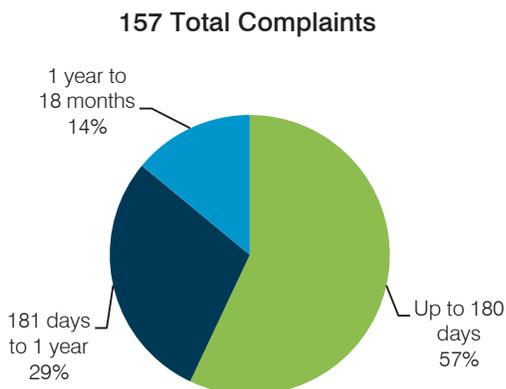
As discussed in the Introduction (see pages 2 through 3), the Board is responsible for investigating complaints against licensed physical therapists and certified physical therapist assistants (licensees) and taking appropriate nondisciplinary or disciplinary action, as necessary. After a complaint has been investigated by board staff, the Board reviews the investigation at a board meeting. Based on its review, the Board can either resolve the complaint at that meeting or move the complaint to informal or formal hearings. During these processes, the Board may dismiss the complaint or take nondisciplinary action, such as issuing an advisory letter or requiring the licensee to complete additional education courses. If the Board finds a violation at an informal hearing, the Board may impose any of the following disciplinary actions: issue a decree of censure, restrict a license or certificate, or impose a civil penalty of \$250 to \$500. Statute requires the Board to hold a formal hearing for some disciplinary options, such as suspending or revoking a license or imposing a civil penalty that exceeds \$500.

Board did not resolve many complaints in a timely manner

Although the majority of complaints the Board received or opened on its own in fiscal years 2009 through 2011 were resolved in a timely manner, approximately 43 percent of the complaints it received were not resolved in a timely manner. Lengthy investigations and other factors have contributed to untimely complaint resolution. Untimely complaint resolution can put the public at risk because licensees under investigation continue to practice unchecked. Conversely, if the complaint proves to be unwarranted, untimely resolution can adversely affect the licensee because information about the existence of an open complaint may affect his/her practice.

Majority of complaints resolved in a timely manner, but many are not—The Office of the Auditor General has found that Arizona health regulatory boards should resolve complaints within 180 days of receiving them, which includes the time to both investigate and adjudicate complaints. This is the standard against which Arizona health regulatory boards are evaluated. Auditors' analysis of board data for 157 complaints the Board received or opened on its own in fiscal years 2009 through 2011 showed

**Figure 1: Length of time to resolve complaints
Fiscal years 2009 through 2011
(Unaudited)**



Source: Auditor General staff analysis of 157 complaints received between fiscal years 2009 through 2011.

that the median time to resolve these complaints was 152 days.¹ As shown in Figure 1, approximately 57 percent of these complaints were resolved within 180 days. However, approximately 43 percent of the complaints took between 181 days to 18 months to resolve, the majority of which were complaints that resulted in discipline.

Lengthy investigations and other factors contributed to untimely complaint resolution—To determine what factors contributed to the delays, auditors reviewed a judgmental sample of 20 of the 157 complaints auditors analyzed between fiscal years 2009 and 2011. Specifically, auditors selected 13 complaints that took longer than 180 days to resolve and 7 complaints that took less than 180 days to resolve. Auditors found that board staff took a median time of 155 days to complete the investigations for the 13 complaints that took more than 180 days to resolve and 32.5 days to complete the investigations for the 7 complaints that were resolved

in under 180 days. For 8 of the 13 complaints, the time taken to complete the investigations accounted for the majority of total time taken to resolve the complaints.

According to board staff, several factors can affect the length of an investigation, such as the number of potential violations to be investigated, the number of medical records and billing statements to be reviewed, and the number of interviews to be conducted. Board staff also reported that an increase in the number of complex complaints received in the summer of 2010 affected the ability of its half-time investigator to complete investigations in a timely manner and created an investigative backlog that the Board was still addressing during the audit.² As of November 2012, the Board had 21 complaints under investigation, of which 9 complaints had been open between 6 months and 1 year.

Board staff also identified other factors contributing to untimely complaint resolution that auditors noted in some cases. Specifically:

- **Formal hearing scheduling delays**—For the few complaints that go to a formal hearing, scheduling formal hearings can delay complaint resolution. For example, in March 2010, the Board moved to schedule a formal hearing with the Office of Administrative Hearings for two related complaints that were processed together, but the hearing did not begin until August 2010, which prolonged complaint resolution by several months. These two complaints took over 500 days to resolve.
- **Licensees' failure to attend informal hearings**—Complaint resolution is delayed when licensees fail to attend informal hearings. Arizona Administrative Code R4-24-306(C) requires

¹ According to its complaint database, the Board received or opened on its own a total of 178 complaints between fiscal years 2009 through 2011. However, auditors were able to analyze only 157 of these complaints to assess the Board's complaint resolution timeliness because 21 complaints had incomplete data or were still open as of August 2012.

² According to board staff, the investigator actively works through one investigation at a time until it is either completed or she cannot move any further without additional information.

that the licensee attend the informal hearing for it to be held. If the licensee does not attend, the Board can reschedule the informal hearing, move to a formal hearing, or take nondisciplinary action. In one complaint auditors reviewed, the licensee did not attend the informal hearing and the Board decided to reschedule it, which resulted in another 28 days to resolve the complaint. This complaint took 252 days to resolve.

Lengthy complaint processing can affect public safety and licensees—Delays in resolving complaints can affect public safety. Licensees alleged to have violated board statutes and rules can continue to practice while under investigation, even though they may be unfit to do so or may need supervision. In such instances, lengthy investigations may delay board actions that protect the public.¹ For example:

- **Board took 12 months to investigate a complaint and discipline a licensee for substandard care of a patient**—This complaint involved allegations that a licensee engaged in sexual misconduct by coming into contact with a patient’s genital region without following standard procedures. The Board did not find the licensee in violation of sexual misconduct, but determined that the licensee provided substandard care and failed to maintain adequate patient records. The Board took approximately 6 months to complete the investigation and another 6 months to conduct the hearings and administer discipline, which included 1 year of probation, 6 hours of continuing education, and an audit of patient records.

Conversely, if complaints turn out to have no merit, licensees themselves can be affected by a lengthy resolution process. For example, a board member said that it may be difficult for those with open complaints to find a new job or get licensed in another state.

Board should continue efforts to improve complaint resolution timeliness

The Board has taken steps to improve complaint resolution timeliness. Specifically, in September 2012, the Board implemented a new procedure for scheduling informal hearings. The Board gives licensees 20 days to respond to an informal hearing notice indicating whether they will be in attendance. If licensees do not respond, board staff will instead notify the licensee that it will be holding a formal hearing at the scheduled time, which does not require the licensee to be in attendance. If licensees respond that they will not be in attendance, but request a new informal hearing date, board staff will reschedule the informal hearing. In addition, board staff reported that they regularly discuss the status of open complaints and that they are in the process of developing complaint database reports to monitor timeliness. Finally, in its fiscal years 2014 and 2015 budget request, the Board requested authority and an additional appropriation of approximately \$29,000 to increase its half-time investigator position to a full-time position. The Board made this request because it believes that the volume and complexity of complaints has increased the time it takes to

¹ Although licensees can continue to practice while under investigation, the Board may “take emergency action ordering the summary suspension of a license or certificate or the restriction of the licensee’s practice or certificate holder’s employment pending proceedings by the Board,” according to A.R.S §32-2045.

investigate and resolve them; however, the Board did not perform a workload analysis to support this request.

The Board should continue to monitor the time it takes to resolve complaints. If complaints continue to be resolved in an untimely manner, the Board should continue to review its complaint resolution process and make changes to ensure that this process is as efficient as possible. In addition, regardless of whether the Board is appropriated a full-time investigator position in fiscal year 2014, the Board should continue to assess its investigative staffing needs. This assessment should include a documented workload analysis that compares the Board's investigative workload, including an estimate of future workload, with its staff resources. The Board should then take appropriate action based on the results of this analysis. For example, if the Board determines that additional staff resources are needed, it could seek additional funding through the appropriations process. Alternatively, if additional staff resources are occasionally needed to address workload fluctuations, the Board could consider using contract investigators as needed and seek additional funding for contractors if necessary.

Recommendations:

- 1.1 The Board should continue to monitor the time it takes to resolve complaints. If complaints continue to be resolved in an untimely manner, the Board should:
 - a. Continue to review its complaint resolution process and make changes as needed to ensure that it is as efficient as possible.
 - b. Continue to assess its investigative staffing needs. This assessment should include a documented workload analysis that compares the Board's investigative workload, including an estimate of future workload, with its staff resources. The Board should then take appropriate action based on the results of this analysis.

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the factors included in this report in determining whether the Arizona State Board of Physical Therapy (Board) should be continued or terminated.

This analysis includes recommendations for the Board to develop and implement policies and procedures regarding requests for information by the public and to develop a method to identify physical therapy businesses that meet the criteria for registration but are not registered (see Sunset Factor 2, pages 12 through 14).

1. The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.

The Board was created in 1952 and its mission is to protect the public from incompetent, unprofessional, and unlawful physical therapy practices. The Board accomplishes this mission by licensing qualified physical therapists and certifying qualified physical therapist assistants, investigating and resolving complaints, disciplining violators, and providing information to the public. The Board was originally established to regulate physical therapists. However, the Legislature expanded the Board's authority in 1998 to also regulate physical therapist assistants who assist physical therapists by performing physical therapy procedures and related tasks that have been selected and delegated by a supervising physical therapist. In addition, A.R.S. §32-2030 requires businesses that offer physical therapy services but are not entirely owned by a licensed physical therapist or other licensed medical professional to register with the Board. The Board reported that it sought this law, which became effective in September 2011, at the request of stakeholders who were concerned about how patient records at these businesses were retained, released, and destroyed.

Auditors did not identify any states that met the objective and purpose of the Board through private enterprises. According to the Federation of State Boards of Physical Therapy (Federation), all 50 states regulate the practice of physical therapy through a state agency, of which all 50 states regulate physical therapists and 48 states regulate physical therapist assistants.

2. The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

The Board has met its statutory objective and purpose, but should continue to improve in some areas. Some examples in which the Board has efficiently met its objectives and purposes include:

- **Board licenses and certifies qualified applicants in a timely manner**—Auditors reviewed a sample of 30 board-approved or -denied license or certification applications received in fiscal years 2011 and 2012 and found that the Board issued licenses or certifications only to qualified applicants. Board staff use a checklist form to document that applicants submitted all necessary paperwork,

and they also maintain a database that generates notices of deficiency, completeness, pre-approval, and approval. In addition, board data indicated that licenses are processed within the overall time frame allowed by board rules. Arizona Administrative Code (AAC) R4-24-209 requires the Board to complete its overall review of licensing applications within 75 days. Auditors' analysis of the Board's licensing database showed that applications received in fiscal years 2011 and 2012 were processed within the overall time frame allowed by board rules.

- **Board has implemented pre-approval process to streamline licensure and certification process**—In February 2012, the Board authorized a pre-approval licensure and certification process in response to a change regarding when license and certification exams are offered. To become licensed or certified, applicants must pass the National Physical Therapy Examination developed by the Federation. During fiscal year 2012, the Federation switched from offering the exams on demand to fixed-date testing. Prior to this change, board management reported the Board required applicants to graduate from their education programs prior to taking the exams. In response to the change in the exam schedule, the Board sought a statutory change to allow applicants to take the exams up to 120 days prior to graduation (see Sunset Factor 8, page 15, for additional information). The Board also implemented a process to pre-approve applications pending the Board's receipt of passing test scores or other required documentation such as final transcripts. Once the documentation is received, board staff may then issue the credential without waiting for subsequent board approval.
- **Board disciplined acts of unprofessional conduct for complaints reviewed**—Auditors reviewed a judgemental sample of 20 complaints received between fiscal years 2009 and 2011 and found that the Board appropriately dismissed complaints without merit and took disciplinary action when complaint allegations and associated violations were substantiated. Auditors also found that the Board takes progressive discipline against licensees who have prior disciplinary history. In addition to the sample, auditors analyzed two licensees who had multiple disciplinary actions taken against them between 2007 and 2011. Auditors found in both instances that the Board considered the licensee's prior violations and disciplinary history when determining the type and severity of discipline for the most recent complaint. Lastly, auditors analyzed three additional complaints with similar violations that the Board received between fiscal years 2009 and 2011 to evaluate the consistency of the Board's discipline. Auditors found that the Board disciplined each of the three licensees consistently.
- **Board provides appropriate public information**—Auditors' review of the Board's public information practices found that its staff generally provided appropriate public information over the phone and that its Web site also provides appropriate public information. Auditors placed four anonymous phone calls to the Board in August and October 2012 to request information about specific licensees and found that board staff generally provided appropriate information, including the status of a physical therapist's license and any disciplinary actions taken against the physical therapist. However, board staff did not provide disciplinary actions for one call, but told auditors that they needed to submit a written or online electronic request for this information. For this call, the staff person

responsible for taking public calls was out of the office, and it was taken by another staff person. Although the Executive Director stated that he trains staff on how to respond to phone requests, the Board does not have written policies and procedures indicating what information should be provided. To help ensure appropriate information is provided by all staff taking calls, the Board should develop and implement policies and procedures regarding information that should be provided and train all staff accordingly.

In addition, auditors reviewed the Board's Web site for information about specific licensees and found that the information complied with A.R.S. §32-3214, which prohibits state agencies from providing information on their Web sites regarding dismissed complaints and nondisciplinary actions or orders taken against licensees.

However, the audit found that the Board can better meet its statutory objectives by:

- **Continuing to improve the timeliness of its complaint resolutions**—As discussed in Finding 1 (see pages 7 through 10), the Board should continue its efforts to improve complaint resolution timeliness. Although the Board resolved the majority of complaints within the 180-day standard used to evaluate the timeliness of complaint processing by Arizona health regulatory boards, approximately 43 percent of the 157 complaints received in fiscal years 2009 through 2011 were not resolved within this time frame.¹ Lengthy investigations, fluctuations in the Board's investigative caseload, and issues related to scheduling hearings have contributed to untimely complaint resolution.

To address these issues, the Board has taken steps to streamline its complaint resolution process and has requested increasing its half-time investigator position to a full-time position in its fiscal years 2014 and 2015 budget request. The Board should continue to monitor the time it takes to resolve complaints and take additional actions if complaints continue to be resolved in an untimely manner. Specifically, if necessary, the Board should continue to assess the efficiency of its complaint resolution process and make changes as needed and continue to assess its investigative staffing needs by conducting a complaint workload analysis.

- **Taking steps to better identify and register physical therapy businesses**—In 2010, the Board sought legislation that would require businesses that offer physical therapy services but are not entirely owned by a licensed physical therapist or other licensed medical professional to be registered by the Board. As stated previously, the Board reported that it sought this legislation at the request of stakeholders who were concerned about how patient records at these businesses were retained, released, and destroyed. As a result, the Legislature added A.R.S. §32-2030 in the 2010 legislative session, which requires these businesses to develop a records protocol in addition to registering with the Board. According to board staff, this requirement helps ensure that patient records are handled with the same standards that would be required if the business were owned by a licensed physical therapist or other licensed medical professional.

¹ According to its complaint database, the Board received or opened on its own a total of 178 complaints between fiscal years 2009 through 2011. However, auditors were able to analyze only 157 of these complaints because 21 complaints had incomplete data or were still open as of August 2012.

However, as of August 2012, only 14 businesses had registered with the Board, and the Board's Executive Director believes that more businesses should be registered. According to the Executive Director, the Board does not have a way to identify additional businesses that should be registered. To help ensure that the Board registers all necessary businesses, the Board should develop a method to identify businesses that meet the criteria but are not registered. For example, the Board could survey physical therapists and physical therapist assistants on their renewal applications for their employer information. Alternately, the Board could contact physical therapists and physical therapist assistants to advise them of the business registration requirement and ask them if they work for a business that may need to be registered.

3. The extent to which the Board serves the entire State rather than specific interests.

The Board serves physical therapy professionals, their clients, and the public throughout the State by ensuring that physical therapists and physical therapist assistants are qualified to practice physical therapy. In addition, it receives and investigates complaints filed by the public against physical therapists and physical therapist assistants. Further, the Board provides the public with information on its Web site regarding physical therapy professionals' licensing or certification status and disciplinary history. The Web site also informs the public that it may call the board office to obtain information about dismissed complaints and nondisciplinary actions taken against a physical therapy professional, as required by statute.

4. The extent to which rules adopted by the Board are consistent with the legislative mandate.

General Counsel for the Auditor General has analyzed the Board's rule-making statutes and believes that the Board has fully established rules required by and that are consistent with statute.

5. The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

Auditors found that the Board has encouraged input from stakeholders before adopting rules. Specifically, the Board submitted its proposed rule changes concerning inactive and retired license statuses in February 2012 to the Arizona Administrative Register and sought stakeholder input before adopting the rules.

Auditors assessed the Board's compliance with various provisions of the State's open meeting law for its July through October 2012 board meetings and found the Board to be in compliance. For example, as required by open meeting law, the Board posted meeting notices and agendas on its Web site at least 24 hours in advance and posted the notices and agendas at the physical locations where the Board's Web site states they will be posted. The Board also posted written meeting minutes on its Web site, and audio recordings of meetings were available within 3 business days following the board meeting. Auditors determined that these meeting notices

and written minutes complied with statute. Further, the Board also provided a call to the public during the board meetings auditors observed, inviting members of the public and professional stakeholders to address board members regarding items on the agenda or professional concerns.

Finally, the Board has notified licensees of changes in its practices, such as newly changed rules or statutes, through its Web site and written correspondence.

6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.

The Board has statutory authority to investigate and resolve complaints within its jurisdiction and has various nondisciplinary and disciplinary options available to use, such as issuing an advisory letter, and suspending or revoking a license. However, as discussed in Finding 1 (see pages 7 through 10), auditors found that the Board did not resolve all complaints in a timely manner. Although the Board has taken steps to improve timeliness, it should continue monitoring the time it takes to resolve complaints and take additional actions if necessary.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

A.R.S. §32-2048(C) states that the Board may apply for an injunction to prevent someone from violating the physical therapist laws through the Attorney General or the appropriate county attorney. On all other matters, the Attorney General serves as the Board's legal advisor and provides legal services as the Board requires according to A.R.S. §41-192(A)(1).

8. The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

The Board reported that both it and stakeholders have sought statutory changes to address deficiencies in its statutes. These include the following:

- Laws 2012, Ch. 24, amended A.R.S. §32-2024 to allow physical therapists and physical therapist assistants to take the national examination for licensure or certification up to 120 days prior to their scheduled graduation date. According to the Executive Director, this allows applicants to enter the workforce more quickly by receiving pre-approval for licensure or certification contingent on receiving a passing examination score and graduating from an approved program.
- Laws 2011, Ch. 138, added A.R.S. §§32-2031 and 32-2032 and amended A.R.S. §32-2042 to allow physical therapists and physical therapist assistants to put their license on retired or inactive status when they present a written affidavit to the Board. The retired status allows retired licensees or certificate holders to still use the initials "PT" or "PTA" after their name if they include "(Retired)" or "(Ret.)" after the initials. The inactive status is intended for use by physical therapy professionals who have temporarily stopped practicing or working in Arizona. According to the Executive Director, this status allows the professionals to avoid

having their licenses or certifications lapse and become administratively suspended and allows them to renew their licenses or certifications when they return to work without having to reapply to the Board.

- Laws 2010, Ch. 120, added A.R.S. §32-2030, which prohibits a business from offering physical therapy services that is not entirely owned by a licensed physical therapist or other licensed medical professional unless it is registered with the Board and the physical therapy services are performed by a licensee or certificate holder. As discussed in Sunset Factor 2 (see pages 13 through 14), this law requires businesses that offer physical therapy services, but are not entirely owned by a licensed physical therapist or other licensed medical professional, to register with the Board and to develop a records protocol.
- Laws 2010, Ch. 35, amended multiple board statutes to allow the Board to establish committees to carry out its duties, add reasons for which the Board may deny a license or certificate, allow the Board to administratively suspend and reinstate licenses, and permit the Board to impose a civil penalty of \$250 to \$500 at an informal hearing.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the sunset law.

The audit did not identify any needed changes to board statutes.

10. The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.

Terminating the Board would affect the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board protects the public by licensing or certifying physical therapists and physical therapist assistants who meet Arizona's qualifications to practice physical therapy, by receiving and investigating complaints against licensees alleging incompetence or unprofessional conduct, and by taking appropriate disciplinary action against licensees when allegations have been substantiated. The Board also provides information to the public about physical therapy professionals' licensing status and disciplinary history. These functions help protect the public from potential harm. For example, auditors reviewed complaints investigated by the Board alleging actions by physical therapy professionals that posed a threat to the public, including sexual misconduct, substance abuse, and improper treatment.

11. The extent to which the level of regulation exercised by the Board compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.

The audit found that the level of regulation exercised by the Board appears appropriate and is generally similar to that in other states. As stated in Sunset Factor 1 (see page 11), according to the Federation of State Boards of Physical Therapy (Federation), all 50 states regulate physical therapists, and 48 states also regulate physical therapist assistants. According to the Federation, Arizona is the only state that registers physical therapy businesses that are not

entirely owned by a licensed physical therapist or other licensed medical professional.¹ According to board staff, the reason for this law is to ensure that patient records are handled with the same standards that would be required if the business were owned by a licensed physical therapist or other licensed medical professional.

The audit did not identify areas where more or less stringent levels of regulation would be appropriate.

12. The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Board contracts for some administrative services and one regulatory function. Specifically, the Board contracts with other state government agencies for administrative functions, such as accounting and information technology services. With regard to its regulatory function of testing applicants for licensure, the Board contracts with the Federation to administer the National Physical Therapy Examination (NPTE). According to a Federation official, all 50 states use the NPTE for its licensing examination. In addition, the Board also uses the Federation to administer its jurisprudence examination for physical therapists and physical therapist assistants as do seven other jurisdictions, according to the Federation.

Auditors identified one additional area where the Board could potentially use private contractors. As discussed in Finding 1 (see pages 7 through 10), if complaints continue to be resolved in an untimely manner, the Board should analyze its investigative staffing needs based on its complaint workload to ensure complaints are resolved in a timely manner. If the Board determines that additional staff resources are occasionally needed to address workload fluctuations, the Board could consider using contract investigators and seek additional funding for contractors as needed.

¹ Federation of State Boards of Physical Therapy. (2011). *Jurisdiction licensure reference guide: Level of autonomy*. Alexandria, VA: Author.

APPENDIX A

Methodology

This appendix provides information on the methods auditors used to meet the audit objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Arizona State Board of Physical Therapy (Board), its Executive Director, and staff for their cooperation and assistance throughout the audit.

Auditors used various methods to study the issues in this report. These methods included reviewing board statutes, rules, and policies and procedures; interviewing a board member, staff, and various stakeholders; and reviewing information from the Board's Web site.

In addition, auditors used the following specific methods to meet its audit objectives:

- To assess whether the Board's processes and practices helped ensure that complaints are handled appropriately and in a timely manner, and that discipline is administered in accordance with statute and rule, auditors analyzed data from the Board's complaint database to assess the Board's timeliness in resolving 157 complaints that were received between fiscal years 2009 through 2011.¹ Auditors also reviewed a judgmental sample of 20 complaints that were received between fiscal years 2009 through 2011, including 11 complaints filed by the public and 9 complaints opened by the Board. Auditors selected these cases to represent public and board-opened complaints; cases that resulted in dismissal, nondisciplinary action, and disciplinary action; and cases that met or exceeded the 180-day complaint resolution standard.
- To determine whether the Board's processes and practices helped ensure that licenses and certificates are issued in a timely manner to qualified applicants, auditors analyzed board data for board-approved or -denied license and certification applications that were received in fiscal years 2011 and 2012. In addition, auditors reviewed a sample of 30 applications approved or denied during fiscal years 2011 and 2012, including 15 that were pre-approved and 15 that were not pre-approved. The sample included applications for both physical therapists and physical therapist assistants and for both licensure by examination and licensure by endorsement. Auditors also reviewed the Board's license application materials and a report by the Governor's Regulatory Review Council for fiscal year 2011 regarding the Board's timeliness in approving or denying licenses. Finally, auditors analyzed board data from the 2012 renewal period and issuance of business entity registrations to determine the timeliness of those processes.

¹ According to its complaint database, the Board received or opened on its own a total of 178 complaints between fiscal years 2009 through 2011. However, auditors were able to analyze only 157 of these complaints to assess the Board's complaint resolution timeliness because 21 complaints had incomplete data or were still open as of August 2012.

- To assess whether the Board shares appropriate information regarding licensees with the public, auditors placed four anonymous phone calls to board staff in August and October 2012 requesting information about four licensees and compared the information provided to the Board's database. Auditors also reviewed licensing and complaint history information about specific licensees on the Board's Web site and assessed whether the information provided was consistent with statutory requirements.
- To obtain information used in the Introduction section, auditors compiled and analyzed unaudited information from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2010 through 2012 and the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2010 through 2012, and analyzed estimated fiscal year 2013 revenues and expenditures provided by board staff. In addition, auditors reviewed board records regarding the number of licenses and certifications.
- To obtain information used in the sunset factors, auditors reviewed the *Jurisdiction Licensure Reference Guide* from the Federation of State Boards of Physical Therapy, and interviewed representatives from professional organizations.¹ In addition, to assess the Board's compliance with the State's open meeting law, auditors attended three board meetings held in July through October 2012 and reviewed the associated public meeting notices, agendas, and meeting minutes. Auditors also tested whether board staff posted public notices and agendas for these meetings in compliance with the open meeting law.
- Auditors' work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with board statutes and rules and testing its compliance with these policies and procedures. For example, auditors reviewed policies and procedures and tested the Board's compliance with various policies and procedures and/or board statutes and rules for complaint handling, licensing and certification, and providing information to the public. Auditors' conclusions on these internal controls are reported in Finding 1 and the Sunset Factors. In addition, auditors conducted data validation work to assess the reliability of the Board's database information used to assess complaint resolution and licensing/certification timeliness. Specifically, auditors interviewed board staff, reviewed data policies and procedures, and compared information in the database against electronic complaint files. Although auditors found that, in some instances, the Board's database contained incomplete or erroneous data, auditors determined that the Board's database was sufficiently reliable for the purposes of the audit.

¹ Federation of State Boards of Physical Therapy. (2011). *Jurisdiction licensure reference guide: Level of autonomy*. Alexandria, VA: Author.

AGENCY RESPONSE

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CHARLES D. BROWN
Executive Director

May 13, 2013

Debra K. Davenport
Auditor General
2910 North 44th Street
Suite 410
Phoenix, AZ 85018

Dear Ms. Davenport,

Please find the Board's response to the agency performance audit and sunset review. Please accept the Board and staff's appreciation for a thorough and open audit process.

Response to Finding:

1.1 The Board should continue to monitor the time it takes to resolve complaints. If complaints continue to be resolved in an untimely manner, the Board should:

- a. Continue to review its complaint resolution process and make changes as needed to ensure that it is as efficient as possible.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. While the majority of the Board's complaints are resolved in a timely manner, the Board and staff have continually reviewed its processes of investigating complaints and holding disciplinary hearings and have worked to address identified timeliness issues. As noted in the audit report, several factors can affect the length of an investigation, some of which are beyond Board control. Nevertheless, the Board has an ongoing commitment to improving the process for those complicated complaints that are resolved in lengthier time frames.

For example, in April 2013, the Board formalized for its complaint triage process, including classification of complaint types and defined goals for staff to meet in the investigative process.

The Board has also instituted a new procedure for scheduling informal complaints to help alleviate issues due to a licensee's failure to attend a hearing. The Board is also in the process of implementing a complaint database report to monitor timeliness of complaints.

Lastly, the Board has requested additional appropriation authority from its fund for FTE staffing needs in FY 2014 and FY 2015. That is, in order to address the increasing number and severity of complaints the Board is currently experiencing, the additional FTE related appropriation would allow the Board to have a full time investigator, as opposed to the part time position that is presently funded.

- b. Continue to investigate staffing needs. This assessment should include a documented workload analysis that compares the Board's investigative workload, including an estimate of future workload, with staff resources.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. In April 2013, staff added new tracking parameters to the complaint portion of the licensee database to allow closer tracking of the Investigator's time spent actively investigating a complaint rather than tracking the time between opening a complaint and concluding the investigation only. Due to the dynamic nature of the complaint process and the multitude of complaints the Investigator works during any given day, the tracking will primarily monitor the time taken to perform primary analysis of the information collected and the time taken to create an investigative report of the investigation. The Board will track the information for the remainder of the calendar year 2013. Based on the results, the Board will conduct an analysis of the data and the impacts on future workload in order to determine if additional resources are needed beyond what has been requested to date.

Response to Sunset Factor Analysis:

Recommendations:

1. The Board should implement a policy and procedure regarding requests for information by the public regarding complaints and disciplinary action.

The recommendation of the Auditor General is agreed to and the audit recommendation has been implemented. Board staff makes every effort to quickly provide information requested by the public regarding all Board activities and responsibilities, as allowed by statute and rule. As of May 8, 2013, the Board has implemented a new policy and procedure to ensure a consistent method of responding to inquiries made by telephone and electronic mail ("email") to the Board regarding the complaint and disciplinary history of licensees or certificate holders. The policy and procedure has been provided to both the Board and its staff. In order to track compliance with the policy and procedures, Board staff will continue monitoring the Board's customer satisfaction survey for reports for any dissatisfaction with the reporting of public information.

2. The Board should develop a method to identify physical therapy businesses that meet the criteria for registration but are not registered.

The recommendation of the Auditor General is agreed to and the audit recommendation will be implemented. In 2010, legislation was passed by stakeholders to register businesses that offer

physical therapy services but which are not entirely owned by a licensed physical therapist or other licensed medical provider. Stakeholders were concerned about the retention, maintenance, and destruction of patient records at such unregulated facilities. During the legislative process, the Board made interested parties aware of the potential requirement on the main (home page) of its website. After the enactment of the legislation, the Board continued to highlight the new requirement on the home page of its website until the end of 2011 (a total of 18 months). The Board also provided information about the law in its 2010 newsletter to licensees to help educate these types of businesses about the new requirement. The Board continues to provide the registration information and necessary documents on its website. The Board will make additional efforts to identify the business entities as suggested by the Auditor General. Efforts under consideration include direct communications to all licensee and certificate holders' work addresses with information on how to determine if an entity they may work for should register.

In closing, the Board and staff appreciate the opportunity to respond to the audit findings and recommendations. In addition, please accept the Board's appreciation for the audit staff's professionalism and approach to the audit process. The Board recognizes that the recommendations are intended to improve the agency's ability to meet its regulatory responsibilities of protecting the public.

Regards,

Charles D. Brown
Executive Director

Performance Audit Division reports issued within the last 24 months

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11-04	Arizona Medical Board	12-02	Arizona Health Care Cost Containment System—Medicaid Eligibility Determination
11-05	Pinal County Transportation Excise Tax	12-03	Arizona Board of Behavioral Health Examiners
11-06	Arizona Department of Veterans' Services—Veteran Home	12-04	Arizona State Parks Board
11-07	Department of Corrections—Oversight of Security Operations	12-05	Arizona State Schools for the Deaf and the Blind
11-08	Department of Corrections—Sunset Factors	12-06	Arizona Health Care Cost Containment System—Medicaid Fraud and Abuse Prevention, Detection, Investigation, and Recovery Processes
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11-10	Arizona Department of Veterans' Services and Arizona Veterans' Service Advisory Commission—Sunset Factors	13-01	Department of Environmental Quality—Compliance Management
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11-12	Arizona Board of Regents—Sunset Factors		
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Future Performance Audit Division reports

Registrar of Contractors

