



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Arizona State Board of Respiratory Care Examiners

Board Appropriately Issued Licenses and Resolved Complaints
but Should Continue to Address Continuing-Education
Noncompliance and Improve Its Complaint Resolution
Timeliness and Provision of Public Information

June • 2016
REPORT NO. 16-103



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Auditor General

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June 9, 2016

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Jack Confer, Executive Director
Arizona State Board of Respiratory Care Examiners

Transmitted herewith is a report of the Auditor General, *A Performance Audit and Sunset Review of the Arizona State Board of Respiratory Care Examiners*. This report is in response to an October 22, 2014, 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 Arizona State Board of Respiratory Care Examiners 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

Attachment

cc: Arizona State Board of Respiratory Care Examiners Members



REPORT HIGHLIGHTS PERFORMANCE AUDIT

Board should continue to address continuing education noncompliance and track its licensing time frames

Our Conclusion

The Arizona State Board of Respiratory Care Examiners (Board) regulates the practice of respiratory care in the State. The Board issued licenses to applicants who met statutory and rule licensure requirements, but it should continue to take steps to address licensees' noncompliance with continuing-education requirements. Additionally, although the Board appears to issue licenses within the overall required time frame, it should track its compliance with all time frames for issuing licenses to help ensure they are issued in a timely manner. The Board adequately investigated and adjudicated the complaints reviewed and has established complaint investigation policies and procedures that guide board staff in processing complaints. However, the Board needs to improve its complaint resolution timeliness. We found that it took the Board more than 180 days to resolve 28 percent of the complaints reviewed. Finally, the Board should ensure that it provides all publicly available information about licensees over the phone.

Board issued licenses to applicants who met requirements—We reviewed a random sample of 30 initial licenses the Board issued between January 2013 and November 2015 and found that all 30 licenses were issued to applicants who met the statutory and rule requirements. The Board uses a checklist to help ensure that all required documentation has been submitted and reviewed prior to issuing a license.

Many licensees do not comply with continuing education requirements for license renewal—Licenses are valid for 2 years and licensees must complete 20 hours of required continuing education to renew their licenses. Board staff conduct quarterly random audits of licensees' continuing education to assess compliance. The Board's December 2015 audit found that more than 40 percent of audited licensees had not complied with the continuing-education requirements.

The Board has addressed continuing education noncompliance by imposing a \$10 civil penalty for each hour of uncompleted continuing education. However, this practice has not adequately deterred noncompliance. In fact, a board member reported that licensees stated that they would rather risk being audited and pay the civil penalty than take the continuing education. Therefore, the Board should consider increasing the civil penalty amount and/or suspending the license until the licensee comes into compliance and increasing the percentage of licensees it audits each quarter. The Board should also develop and implement a disciplinary matrix for continuing-education complaints to help ensure it addresses these complaints in a timely manner and escalates discipline when appropriate.

Board should track licensing time frames—The Board appears to issue most licenses in a timely manner. Specifically, the Board issued 28 of the 30 reviewed licenses within the overall required time frame. However, we could not determine if the Board was in compliance with its administrative completeness and substantive review time frames because the Board did not send administrative notices to the applicants. Administrative completeness refers to the receipt of required documents, while the substantive review determines the documents' statutory adequacy. Absent these notices, we could not assess the Board's timeliness in meeting the overall time frame for the remaining 2 licenses. As a result, the Board should develop and implement policies and procedures for tracking compliance with all licensing time frames, including issuing administrative notices when appropriate.

Recommendations

The Board should:

- Consider increasing the civil penalty amount and/or suspending the license and increasing the percentage of licensees who are audited each quarter to improve licensee compliance with its continuing-education requirements;
- Develop and implement a disciplinary matrix for addressing continuing-education complaints; and
- Develop and implement policies and procedures for tracking compliance with all licensing time frames, including the issuance of administrative notices.



2016

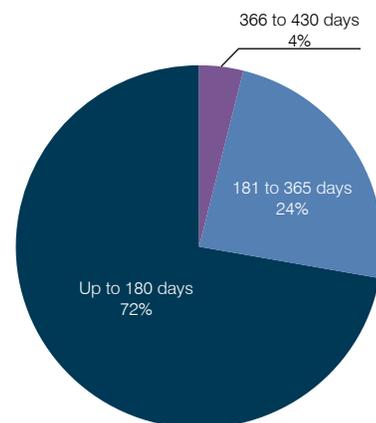
Board appropriately resolved complaints, but should improve complaint resolution timeliness

Board adequately investigated and adjudicated complaints—We reviewed a random sample of 29 complaints that the Board opened in calendar years 2013 through 2015 and found that board staff appropriately and thoroughly investigated all of these complaints. The Board has established policies and procedures and a complaint checklist to help guide its complaint investigations. Additionally, for these 29 complaints, the Board appropriately dismissed complaints with unsubstantiated allegations and took appropriate and consistent disciplinary and nondisciplinary actions when it found violations.

Board should improve complaint resolution timeliness—Nearly 28 percent of the complaints reviewed exceeded the recommended 180-day time frame for resolution (see Figure). Various factors have contributed to this untimeliness. Although the Board has established time frames to investigate and resolve complaints, its time frame for processing priority three complaints, which are less serious complaints, is 210 calendar days, which exceeds the recommended 180-day time frame. Additionally, the Board implemented a case checklist with time frames to guide investigations, but its staff inconsistently use and complete this checklist. Finally, the Board uses consent agreements to resolve some complaints, but considers a complaint resolved when it offers the agreement, not when the agreement has been signed by the licensee and the executive director, which can occur much later. However, a consent agreement is not considered valid until signed, and if not signed in a timely manner it could substantially increase the number of days to resolve a complaint.

Days to resolve complaints 2013 through 2015

29 total complaints



Recommendations

The Board should revise its complaint-handling policies and procedures to:

- Decrease the investigative and overall processing time frames for its priority three complaints;
- Require staff to use its case checklist; and
- Use the date that its consent agreements are signed as the resolution date and establish time frames for signing the agreements.

Board should improve its provision of public information

Although the Board provides appropriate information about licensees on its Web site, its practices limit the publicly available complaint history information it provides over the phone. These practices include only providing disciplinary history information over the phone and requiring callers to submit written requests for information on nondisciplinary actions and dismissed complaints.

Recommendations

The Board should develop and implement public information policies and procedures to guide staff on the information to provide about licensees over the phone, including information on nondisciplinary actions and dismissed complaints. The Board should also cease its practice of requiring callers to submit public information requests to obtain this information.

TABLE OF CONTENTS



Introduction	1
Licensing	5
Board issued licenses to applicants who met licensure requirements	5
Board should continue to address noncompliance with continuing-education requirements	5
Board should track its compliance with time frames for issuing licenses	8
Recommendations	9
Complaint resolution	11
Board adequately investigated and adjudicated complaints reviewed	11
Recommendations	15
Public Information	17
Board should improve its provision of public information	17
Recommendation	18
Sunset factor analysis	19
Recommendations	23
Appendix A: Methodology	a-1
Agency Response	

TABLE OF CONTENTS



Tables

1	Schedule of revenues, expenditures, and changes in fund balance Fiscal years 2014 through 2016 (Unaudited)	3
2	Board's initial and renewal licensing time frames As of March 2016	8
3	Complaint priority levels and investigation time frames	12

Figure

1	Days to resolve complaints 2013 through 2015	13
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Introduction

Audit scope

The Office of the Auditor General has conducted a performance audit and sunset review of the Arizona State Board of Respiratory Care Examiners (Board) pursuant to an October 22, 2014, 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 audit addresses the Board's licensing and complaint resolution processes and provision of information to the public. It also includes responses to the statutory sunset factors.

Mission and responsibilities

The Board was established in 1990 to protect the public from unauthorized and unqualified practice of respiratory care and unprofessional conduct by persons licensed to practice respiratory care. The Board's responsibilities include:

- **Issuing licenses to qualified applicants**—Statute authorizes the Board to issue a single license to respiratory care practitioners (RCPs) (see textbox).¹ To receive a license, applicants must meet the licensing requirements, which include completing a board-approved respiratory care training program and passing the national respiratory examination administered by the National Board of Respiratory Care. The Board renews licenses every 2 years, on the licensees' birthdays.

Respiratory Care Practitioners care for patients who experience trouble breathing from a chronic respiratory disease, such as asthma or emphysema. RCPs work with sophisticated medical equipment such as mechanical ventilators and analyze breath, tissue, and blood specimens to determine a patient's oxygen levels. RCPs can also provide emergency care to patients suffering from heart attacks, drowning, or shock.

Source: Auditor General staff summary of the *Fiscal Years 2015-2017 Master List of State Government Programs* and the American Association for Respiratory Care's Web site.

According to board records, as of February 2016, the Board had approximately 4,000 licensed RCPs. The Board issued 269 initial licenses and renewed 1,603 licenses in calendar year 2015.

- **Investigating and resolving complaints**—The Board investigates complaints against licensees and can take statutorily authorized nondisciplinary and disciplinary actions as needed, such as issuing a letter of concern or placing a licensee on probation (see page 11 for more information on nondisciplinary and disciplinary options). According to the Board's complaint records, the Board opened 143 complaints and closed 146 complaints in calendar year 2015.²

¹ The Board does not issue other types of licenses or certificates. Laws 2015, Ch. 156, eliminated the Board's ability to issue or renew a temporary license (See Sunset Factor 8, page 21, for additional information).

² Complaints may not be closed in the same calendar year they are received. In calendar year 2015, the Board closed some complaints it received in prior years.

- **Providing information to the public**—The Board maintains a Web site that provides information on each licensee, including the individual's license number and status, the license issuance and expiration dates, and whether the Board has taken any disciplinary action against the licensee. Additionally, the Board publishes public meeting agendas and minutes, approved continuing education programs, online license applications, renewal applications, and complaint forms on its Web site. Board staff also respond to requests for public information, including requests made by phone, regarding the license status and disciplinary history of RCPs (see Public information, pages 17 through 18).

Organization and staffing

As required by A.R.S. §32-3502, the Board consists of seven governor-appointed members, including three licensed RCPs, two public members, one licensed physician knowledgeable in respiratory care, and one hospital administrator. Board members serve a 3-year term. As of March 2016, the Board had six members. The one licensed physician member position has been vacant since July 2015. The Board is authorized four full-time equivalent staff positions for fiscal year 2016, three of which were filled as of March 2016.

Budget

The Board does not receive any State General Fund appropriations. Rather, its revenues consist primarily of license fees. Statute requires the Board to remit 10 percent of all revenues to the State General Fund and the remaining 90 percent to the Board of Respiratory Care Examiners Fund. However, the Board has been remitting 100 percent of monies collected from civil penalties to the State General Fund (see Sunset Factor 9, pages 21 through 22, for more information). As shown in Table 1 (see page 3), the Board's fiscal year 2016 net revenues are estimated to total approximately \$273,000 and its expenditures are estimated to total more than \$295,000, which includes an estimated \$236,000 for personnel costs. Finally, the Board's fiscal year 2016 ending fund balance is estimated to total nearly \$203,000.

**Table 1: Schedule of revenues, expenditures, and changes in fund balance
Fiscal years 2014 through 2016
(Unaudited)**

	2014 (Actual)	2015 (Actual)	2016 (Estimate)
Revenues			
Licenses and fees	\$ 297,205	\$ 291,000	\$ 290,000
Sales of goods and services	13,276	11,663	10,033
Fines, forfeitures, and penalties	4,075	8,107	6,286
Other	<u>1,426</u>	<u>1,778</u>	<u>1,000</u>
Gross revenues	315,982	312,548	307,319
Remittances to the State General Fund ¹	<u>(35,415)</u>	<u>(38,852)</u>	<u>(34,286)</u>
Net revenues	<u>280,567</u>	<u>273,696</u>	<u>273,033</u>
Expenditures and transfers			
Personal services and related benefits	226,400	211,323	236,238
Professional and outside services	9,888	2,661	4,384
Travel	1,724	1,159	1,815
Other operating	58,100	50,617	53,144
Furniture and equipment	<u>65</u>	<u>1,187</u>	<u></u>
Total expenditures	296,177	266,947	295,581
Transfers to other agencies	<u></u>	<u>7,427</u>	<u></u>
Total expenditures and transfers	<u>296,177</u>	<u>274,374</u>	<u>295,581</u>
Net change in fund balance	(15,610)	(678)	(22,548)
Fund balance, beginning of year	<u>241,574</u>	<u>225,964</u>	<u>225,286</u>
Fund balance, end of year	<u>\$ 225,964</u>	<u>\$ 225,286</u>	<u>\$ 202,738</u>

¹ The Board remits 100 percent of civil penalties and 10 percent of all other revenues to the State General Fund. See Sunset Factor 9, pages 21 through 22, for information on the Board remitting all of its civil penalties to the State General Fund.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* and the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2014 and 2015; and board-prepared estimates for fiscal year 2016.

Licensing

Board issued licenses to applicants who met licensure requirements

Although the Board issued licenses to applicants who met licensure requirements, the Board should continue to take steps to address licensees' noncompliance with the continuing-education requirements. Additionally, the Board should track its compliance with time frames for issuing licenses to help ensure they are issued in a timely manner.

The Arizona State Board of Respiratory Care Examiners' (Board) process for approving initial and renewal applications ensured applicants met the licensure requirements established in statute and rule. Auditors' review of a random sample of files for 30 initial licenses that the Board issued between January 2013 and November 2015 found that all 30 licenses were issued to applicants who met the respiratory care practitioner licensure requirements specified in statute and rule. For example, all files contained proof of the right to work in the United States, passing the national respiratory examination, completing an accredited respiratory training program, and submission of the required licensing fees. The Board used a checklist to help ensure that all required documentation has been submitted and reviewed prior to issuing a license. Further, auditors' review of a random sample of files for 12 renewal licenses approved between January 2014 and November 2015 found that all 12 renewal licenses were issued to applicants who met the renewal requirements specified in administrative rule (rule). Specifically, all 12 respiratory care practitioner renewal applications contained an attestation that the licensee completed the continuing-education requirements, current employment information, and a disclosure of any criminal activity since the last renewal/initial application.

Board should continue to address noncompliance with continuing-education requirements

The Board should continue to take steps to address licensees' noncompliance with continuing-education requirements. The Board's most recent continuing-education audit in December 2015 found that more than one-third of the audited licensees were not in compliance with the continuing-education requirements specified in rule. The Board's previous process for conducting continuing-education audits may have contributed to licensees' noncompliance. Although the Board has improved its continuing-education audit process, additional steps are needed to address licensees' noncompliance with the continuing-education requirements, including increasing the civil penalty amount for noncompliance and increasing the number of licensees who are audited.

More than 40 percent of audited licensees are not compliant with continuing-education requirements—To help ensure compliance with the Board's continuing-education requirements and identify licensees who are noncompliant, board staff audit a random sample of renewed licenses. The Board's rules require licensees to complete 20 hours of approved continuing education every 2 years. The rules define approved continuing-education as any training that the American Association for Respiratory Care or the Arizona Society for Respiratory

Care approves.¹ The Board publishes the continuing-education requirements on its Web site and sends licensees a notification approximately 60 days prior to their license expiration date reminding them to complete their continuing-education hours and to submit their renewal application prior to their license expiration date. As part of the renewal application, licensees are required to attest that they have completed the required 20 hours of continuing education, but they do not need to provide documentation of completed continuing-education hours.

To check for compliance with the continuing-education requirements, rule requires the Board to conduct audits of a random sample of licensees. If selected for an audit, a licensee would need to provide documentation showing that he/she completed the 20 hours of continuing education during the renewal period. If the Board determines that an audited licensee is noncompliant, the Board's practice is to issue a consent agreement to the licensee with a \$10 civil penalty for every deficient hour of continuing education, and a prescribed time frame for the licensee to make up the missing continuing-education hours. The maximum civil penalty would be \$200 if the licensee had not completed any of the 20 required hours of continuing education.

In the Board's most recent audit completed in December 2015, board staff found that more than 40 percent of the audited licensees were noncompliant with the continuing-education requirements. Specifically, the Board's audit of 93 of the 777 total license renewals found that 38 of the audited applicants did not meet the continuing-education requirements. The reasons for noncompliance included late submission of continuing-education documentation, providing less than 20 hours of continuing-education documentation, and providing documentation for continuing-education hours that were not board approved. The Board opened complaints against these licensees and adjudicated these complaints at its January 2016 meeting. Twenty-eight continuing-education complaints were on the agenda, and after individually reviewing the first 6 complaints, the Board grouped the remaining continuing-education audit complaints together and issued consent agreements to each licensee that included a \$10 civil penalty for every deficient hour of continuing education.

Board has revised its previous audit process that may have contributed to continuing-education noncompliance—According to board staff, prior to June 2013, the Board's continuing-education audit process consisted of posting the names of the licensees to be audited on the Board's Web site prior to the licensees' renewal date. However, by posting the names of the licensees on the Web site, the Board provided specific licensees with advance notice that they were going to be audited. As a result, board staff reported that licensees had little incentive to complete their continuing-education hours unless they were selected for an audit.

The Board reported that it changed its continuing-education audit process starting in June 2013. Specifically, the Board stopped the practice of notifying licensees prior to their license renewal and instead began notifying licensees that they were selected for an audit after they had renewed their license. In addition, the Board approved a continuing education audit policy in December 2015, which requires that future audits of licensees be conducted quarterly. However, as of April 2016, the Board had not yet completed its first quarterly audit of 2016.

¹ In addition, licensees can accrue continuing-education hours for attending other classes if the Board has approved the course curriculum. However, as of January 2016, board staff reported that no licensees have submitted courses for board approval.

The policy also requires the Board to open a complaint against a licensee who does not meet the audit requirements, such as failing to provide documentation for 20 hours of continuing education or providing the documentation after the audit deadline. Since making these changes to its audit process starting in 2013, the Board reported a marked increase in the number of licensees who were identified as noncompliant, as evidenced in the December 2015 audit.¹

Auditors compared the Board's continuing-education requirements and recently approved audit process to other states and found them to be similar. Specifically, auditors conducted interviews with three respiratory care boards from other states—California, Missouri, and North Carolina—and found that all three states required between 24 and 30 hours of continuing education every 2 years that were approved by similar national and state respiratory organizations. These states also conduct random audits of continuing education and then open complaints against licensees who are not in compliance.

Board should take additional steps to address continuing-education noncompliance—The Board should take additional steps to address the prevalence of noncompliance with its continuing-education requirements. Specifically, the \$10 per deficient hour civil penalty the Board has used to address noncompliance with continuing-education requirements may not adequately deter noncompliance. Auditors observed board members express concerns that the \$10 civil penalty amount may not serve as a sufficiently adequate deterrent. In fact, one board member indicated that licensees have told him they would rather take the risk of being audited and pay the civil penalty rather than complete their continuing education every 2 years. Therefore, the Board should consider alternative disciplinary actions to more effectively deter noncompliance, such as increasing the civil penalty amount and/or suspending the license until the licensee comes into compliance with the continuing-education requirements. In addition, the Board should determine whether further steps are necessary to deter noncompliance, such as increasing the percentage of licensees who are audited each quarter, or pursuing a rule change to allow the Board to require that all licensees submit continuing-education documentation when renewing their licenses, and then auditing a percentage of those renewals. Once the Board determines what options would best increase compliance with continuing-education requirements, the Board should implement those changes to its continuing-education audit policies and procedures as appropriate and train staff accordingly. Further, the Board should ensure that it adheres to its audit policy and conduct audits quarterly.

In addition, the Board should develop and implement a disciplinary matrix for its continuing-education audit complaints to reduce the number of these types of complaints the Board must individually hear and to reduce the time needed for adjudication. The Board has informally practiced this when it grouped the continuing-education complaints together and took the same action on all of them at its January 2016 board meeting. However, a formal disciplinary matrix would specify the civil penalty that should be assessed based on the number of hours the licensee was deficient and whether other disciplinary actions such as suspension should be taken, and prescribe the escalated disciplinary action the Board should take for repeat offenders. In addition, a standardized disciplinary matrix would allow board staff to develop and offer consent agreements to the licensees prior to the complaint being placed on the next board meeting agenda. Once the licensee has signed the consent agreement, board staff could place the complaint on the consent agenda for the Board's ratification at its next meeting. Auditors have found that other health

¹ Board staff were unable to provide documentation showing noncompliance for audits completed prior to the December 2015 audit.

regulatory boards in Arizona use disciplinary matrices, including the Arizona State Board of Cosmetology and the Arizona State Board of Physical Therapy.

Board should track its compliance with time frames for issuing licenses

The Board should track its compliance with time frames for issuing licenses to help ensure that they are issued in a timely manner. The Board's rules require the Board to process initial and renewal licenses within defined time frames (see Table 2). Specifically, the administrative completeness review time frame is the time board staff have available to ensure that the application is complete before it is submitted to the Board for review. The substantive review time frame is the time the Board has to review the applicant's

**Table 2: Board's initial and renewal licensing time frames
As of March 2016**

Review type	Time frames	
	Initial	Renewal
Administrative completeness	15 days	7 days
Substantive	<u>90 days</u>	<u>60 days</u>
Overall time frame	<u>105 days</u>	<u>67 days</u>

Source: Arizona Administrative Code R4-45-215 and R4-45-216.

qualifications for licensure and make the initial or renewal licensing decision. These time frames are important because they provide information and an assurance to the public about what to expect regarding having a license approved or denied, and increase the Board's accountability when time frames are not met. Further, if the Board does not meet the overall time frame for processing licenses, statute requires the Board to refund licensing fees to applicants and pay a penalty of 2.5 percent of the applicant's fees to the State General Fund for each month that licenses are not issued or denied within the established time frames.

Although the Board appears to process most licenses in a timely manner, its licensing practices do not allow it to adequately track its compliance with licensing time frames. Specifically, auditors reviewed a random sample of 30 initial licenses that the Board issued between January 2013 and November 2015 and found that the Board issued 28 of the licenses within the overall required time frame. Auditors were unable to assess the Board's timeliness in meeting the overall time frame for 2 of the initial licenses because the associated licensing files did not contain a notice of deficiency that was sent to the applicant. The administrative completeness review processing time frame stops when the Board sends a notice of deficiency to an applicant and resumes when the Board receives the deficient documentation. If this documentation is unavailable and other documentation does not indicate the overall time frame, the Board's overall time frame for processing licensing applications cannot be determined. Another 6 of the 28 licenses that the Board issued in a timely manner also did not contain a notice of deficiency; however, using other documentation, auditors determined that these licenses were issued in a timely manner.

Auditors were unable to determine the administrative completeness and substantive processing time frames for any of the 30 initial licenses because the Board does not send out the administrative completeness notices required by rule. Once the Board receives all the required documentation

and information for an initial application, it should send an administrative completeness notice informing the applicant that the Board has received all the necessary application documentation and information and will begin its substantive review. According to the Board's rules, these notices end the administrative completeness review processing time frame and start the substantive review processing time frame, and are therefore needed to evaluate the duration of each time frame. Further, although the Board appears to process most initial licensing applications in a timely manner overall, the Board lacks policies and procedures for tracking and monitoring its administrative, substantive, and overall time frames.

Auditors also reviewed a random sample of 12 renewed licenses—6 issued in 2014 and 6 issued in 2015—and found that the Board processed all of these licenses in a timely manner. Specifically, all 12 of the applications were processed and approved within 2 days. The Board's rules allow 67 days overall to process renewal applications. The timely processing of renewal applications is facilitated by the Board's online renewal system, which allows licensees to submit their application, supporting documentation, and renewal fee online. However, similar to its initial licensing process, the Board does not have policies and procedures for tracking its time frames for the renewal licensing process.

Because it does not track compliance with its required time frames for issuing licenses, the Board does not know whether time frames are being met, whether it should identify and address any problems that may be causing any untimely processing of licenses, and whether fees should be refunded to applicants and/or penalties should be paid to the State General Fund. Therefore, the Board should develop and implement policies and procedures that require its staff to track the Board's compliance with all licensing time frames, including the issuance of administrative notices when appropriate. Once policies and procedures have been developed and implemented, the Board should ensure all appropriate staff are trained on them.

Recommendations:

1. The Board should consider various options for increasing compliance with its continuing-education requirements, including:
 - a. Increasing the civil penalty amount for noncompliance and/or suspending the license;
 - b. Increasing the percentage of licensees who are audited each quarter; and
 - c. Pursuing a rule change to allow the Board to require that all licensees submit continuing-education documentation when renewing their licenses, and then auditing a percentage of those renewals.
2. Once the Board determines what options would best increase compliance with the continuing education requirements, the Board should implement those changes to its continuing-education audit policies and procedures as appropriate, and train staff accordingly.
3. The Board should ensure that it adheres to its audit policy and conduct continuing-education audits quarterly.

4. The Board should develop and implement a disciplinary matrix for its continuing-education audit complaints that specifies the civil penalty that should be assessed based on the number of hours the licensee was deficient and whether other disciplinary actions such as suspension should be taken, and prescribes the escalated disciplinary action that should be taken for repeat offenders to reduce the number of complaints the Board must individually hear and to reduce the time needed for adjudication.
5. The Board should develop and implement policies and procedures that require its staff to track the Board's compliance with all licensing time frames, including the issuance of administrative notices when appropriate. Once policies and procedures have been developed and implemented, the Board should ensure all appropriate staff are trained on them.

Complaint resolution

Although the Board adequately investigated and adjudicated complaints, it should take steps to better ensure timely complaint resolution. Specifically, the Board should revise its complaint policies and procedures to decrease its processing time for some complaints and require staff to use the investigation case checklist. The Board should also ensure that accurate complaint resolution dates are recorded and tracked for complaints resolved by consent agreement and prescribe the time frames for signing these agreements.

Board adequately investigated and adjudicated complaints reviewed

Auditors found that the Arizona State Board of Respiratory Care Examiners (Board) adequately investigated and adjudicated complaints. The Board is responsible for investigating complaints against licensed individuals and may dismiss complaints or take nondisciplinary or disciplinary action, as needed (see textbox). Statute authorizes the Board to investigate complaints that allege professional incompetence or allege that a respiratory care practitioner is or may be mentally or physically unable to engage safely in the practice of respiratory care. Auditors reviewed a random sample of 29 complaints that the Board opened in calendar years 2013 through 2015 and found that for all 29 complaints, board staff conducted appropriate and thorough investigations, including interviewing involved parties, and collecting and reviewing appropriate evidence.

To assist board staff in conducting complaint investigations, the Board has established complaint investigation policies and procedures, implemented a complaint case checklist to help guide board staff in processing complaints, and developed a database to track and monitor the status of complaint investigations. Specifically:

- **Policies and procedures for complaint investigation**—In December 2014, the Board approved policies and procedures to guide its complaint investigation process. For example, the Board’s procedures require a board investigator to determine if a submitted complaint is within its jurisdiction within 3 business days of receipt. If the investigator determines that a complaint is within the Board’s jurisdiction, he/she will assign a priority level to the complaint and open it for investigation. Additionally, the Board prioritizes its complaint investigations based on the nature of the complaint allegations by assigning a higher investigation priority to complaints with allegations that pose a potential danger to public health and safety. Further, the policies and procedures provide time frames that vary based on priority level for when the investigation should be completed as well as when the Board should initially review the complaint. Table 3 (see page 12) shows the Board’s complaint priority levels and investigation and initial review time frames.

Board’s nondisciplinary and disciplinary options:

Nondisciplinary options

- Letter of concern
- Order for continuing education units

Disciplinary options

- Letter of concern
- Decree of censure
- Restrict scope of practice
- Probation
- Suspension
- Revocation

Source: Auditor General staff analysis of Arizona Revised Statutes (A.R.S.) §32-3553.

Table 3: Complaint priority levels and investigation time frames

Complaint priority level	Examples of alleged licensee misconduct	Time frame to complete	
		Investigation	Board's initial review
Priority one	Sexual misconduct; habitual intemperance in use of alcohol, narcotics, or substances; gross incompetence	30 business days (42 calendar days)	60 business days (84 calendar days)
Priority two	Terminated for absenteeism; patient charting deviations; application investigations	60 business days (84 calendar days)	90 business days (126 calendar days)
Priority three	Working without a valid license; failure to update license; failure to self-report within required time frame	120 business days (168 calendar days)	150 business days (210 calendar days)

Source: Auditor General staff analysis and summary of the Board's complaint policies and procedures.

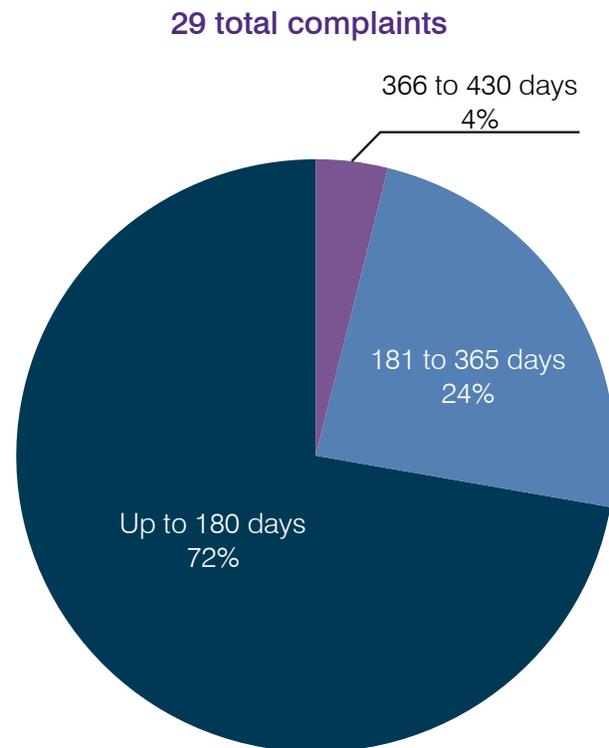
- Case checklist with specified time frames to guide investigations**—The Board implemented a case checklist in April 2015 to help guide board staff in completing key investigative steps in a timely manner and to quickly identify the complaint-processing steps that have been completed and the steps that are outstanding. Specifically, this checklist identifies the key steps in the complaint investigation and adjudication process and specifies associated time frames for completing these steps. For example, it specifies that a priority level should be assigned to a complaint within 5 business days of receipt.
- Database to monitor and track complaint timeliness**—In September 2013, the Board developed and implemented a database to track and monitor complaint timeliness. For each complaint the Board opens, staff record several key items in the database to help them monitor complaint timeliness, such as the dates the Board received and adjudicated a complaint. In addition to the information found in the case checklist, the database provides fields where board staff can provide notes on the case, summarize the licensee's response to the complaint allegations, and indicate if the licensee has a history of complaints filed with the Board.

Finally, based on auditors' review of the 29 complaints, observation of board meetings, and review of board meeting minutes, the Board appropriately dismissed complaints with unsubstantiated allegations and took appropriate and consistent disciplinary and nondisciplinary action when it found violations. Specifically, the Board appropriately dismissed complaints that lacked sufficient evidence of a violation of statute or rule. The Board also imposed discipline when it determined that a licensee violated statute or rule.

Board does not consistently resolve complaints in a timely manner—Although the Board investigated and adjudicated most of the complaints auditors reviewed in a timely manner, auditors found that nearly 28 percent of complaints reviewed exceeded the recommended time frame for resolving complaints. The Office of the Auditor General has found that Arizona regulatory boards should resolve complaints within 180 days of receiving them, which includes both the time to investigate and adjudicate complaints. Based on auditors’ review of a random sample of 29 complaints the Board opened in calendar years 2013 through 2015, the Board took more than 180 days to resolve 8 complaints, including 1 complaint that took more than a year to resolve (see Figure 1). The other 7 untimely complaints took between 181 days and 1 year to resolve, with an average time frame of approximately 264 days to resolve. According to board staff, inadequately monitoring and tracking complaints can adversely affect the length of complaint resolution. However, failure to resolve complaints in a timely manner does not protect public

health and safety because 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.

Figure 1: Days to resolve complaints 2013 through 2015



Source: Auditor General staff analysis of a random sample of complaints opened by the Board in calendar years 2013 through 2015.

Board should take additional steps to improve complaint resolution timeliness—

Although the Board has taken steps to improve the timeliness of complaint resolution, it needs to take additional action to ensure that all complaints are consistently resolved within 180 days. Specifically, the Board should:

- Decrease the time frames allowed to investigate and resolve priority three complaints—** As previously mentioned, the Board established complaint processing time frames as part of its policies and procedures; however, some of those time frames may result in the untimely resolution of complaints. Specifically, the Board’s time frames for processing priority three complaints allow board staff 168 calendar days to investigate a complaint and 210 calendar days for the Board to conduct its initial review. However, the investigative time frame of 168 calendar days would likely not allow sufficient time for the Board to review and adjudicate complaints within the recommended 180-calendar-day time frame. Further, the Board’s 210-calendar-day initial review time frame allows more than the recommended 180-calendar-day time frame for resolving complaints. Therefore, the Board should revise its policies and

procedures to decrease the investigative and overall processing time frames for its priority three complaints to help ensure that those complaints are resolved within the recommended 180-day time frame.

- **Revise policies and procedures to include case checklist**—As indicated previously, the Board has also implemented a case checklist to aid staff in monitoring and tracking complaints; however, board staff have not consistently used it. For the 29 complaints that auditors reviewed, the Board opened 6 after it had implemented the checklist. However, board staff inconsistently used the case checklist for these 6 complaints. Specifically, 2 of the 6 complaint files did not contain the case checklist. In addition, for the 4 complaint files that contained the checklist, all 4 case checklists were incomplete. Board staff’s inconsistent use of the checklist is likely attributable to the fact that the Board’s complaint policies and procedures do not require its use. In addition, board staff reported that the use of the case checklist has not been enforced. However, by consistently and appropriately using the case checklist, board staff could better monitor the complaint investigation’s progress. Therefore, to more effectively monitor complaint timeliness, the Board should revise its complaint policies and procedures to require the use of the case checklist and train its staff accordingly.
- **Ensure that accurate complaint resolution dates are recorded**—Complaints resolved by consent agreement may inaccurately reflect complaint resolution timeliness because complaint resolution dates are incorrectly recorded. For complaints resolved by a consent agreement, the Board has recorded the complaint resolution date in its database as the date of the board meeting when the Board decided to offer the consent agreement.¹ When a consent agreement is issued, the licensee is the first party to sign it, acknowledging that he/she will comply with its terms. Once the licensee has delivered the signed consent agreement back to the Board, the Board’s executive director signs it, which initiates the consent agreement terms. A consent agreement must be signed by both the Board’s executive director and the licensee before the terms of the consent agreement are considered valid. Consequently, the date when the last party has signed the agreement would be the date that the complaint was resolved, not the date of the board meeting.

However, if a consent agreement was not signed in a timely manner, it could substantially increase the number of days to resolve the complaint. Therefore, the Board should use the date a consent agreement is signed by both the Board and the licensee as the resolution date for the associated complaint, not the date of the board meeting when the consent agreement is offered. This change should also be reflected in the Board’s policies and procedures and tracking mechanisms, such as its complaint database, and staff should be trained accordingly.

- **Prescribe time frames for signing consent agreements**—Of the 29 complaints that auditors reviewed, 9 were resolved by consent agreement and took between 22 and 96 calendar days from the date when the Board offered a consent agreement at its board

¹ The Board may offer consent agreements or issue nondisciplinary letters, which licensees sign to demonstrate acceptance of the disciplinary or nondisciplinary action the Board offered without going to a formal hearing. The Board dictates the terms of a consent agreement or letter.

meeting to the date when the licensee and board executive director both signed the consent agreement. Although the Board's complaint policies and procedures prescribe a time frame for when the Board should send licensees consent agreements after a board meeting, they do not specify time frames for when the licensee should sign the consent agreement, or for when the Board's executive director should sign the consent agreement after it has been signed by the licensee. Not having these specific time frames may contribute to a longer complaint resolution process. For example, in one of the complaints auditors reviewed, the licensee did not sign the consent agreement for 44 days after it had been sent by the Board. Therefore, the Board should establish time frames in its policies and procedures for when the licensees and the Board's executive director should sign consent agreements.

Recommendations:

1. The Board should revise its complaint policies and procedures to decrease the investigative and overall processing time frames for its priority three complaints to ensure that complaints are resolved within 180 days.
2. The Board should revise its complaint policies and procedures to require the use of the case checklist and train its staff accordingly.
3. For complaints resolved by consent agreements, the Board should use the date both the Board and the licensee sign the agreement as the resolution date. This date for tracking complaint resolution should also be reflected in the Board's policies and procedures and tracking mechanisms, such as its complaint database, and staff should be trained accordingly.
4. The Board should establish time frames in its policies and procedures for when the licensees and the Board's executive director should sign consent agreements.

Public information

Although the Board has provided appropriate information about licensees on its Web site, it should develop and implement policies and procedures to guide staff on what information to provide over the phone.

Board should improve its provision of public information

Although the Arizona State Board of Respiratory Care Examiners (Board) has provided appropriate and accurate public information on its Web site, including information related to licensees' disciplinary history, it should improve the provision of information over the phone. Auditors compared the Board's Web site information from a sample of four licensees to the Board's database information and found the Web site information to be accurate as of January 2016. The information provided on the Board's Web site also complied with Arizona Revised Statutes §32-3214, which prohibits state agencies from providing information on their Web sites regarding dismissed complaints or complaints that resulted in nondisciplinary action, such as the issuance of a letter of concern or an order for continuing education. Further, in accordance with this statute, as of January 2016, the Board's Web site included a statement that members of the public may request information about dismissed complaints and complaints that resulted in nondisciplinary action by contacting the Board directly.

However, the Board did not provide all publicly available complaint history information over the phone. Specifically, the Board's practice is to provide disciplinary information over the phone, but require a written public information request to obtain dismissed and nondisciplinary complaint history. Auditors placed four phone calls to board staff in January 2016 to request complaint history information about four licensees. For one call, board staff appropriately provided disciplinary information for one licensee who had a disciplinary action on file, but did not disclose information regarding dismissed complaints or nondisciplinary actions for this licensee. In addition, board staff did not disclose dismissed or nondisciplinary information for two other calls auditors made. Consistent with its practices, board staff directed the callers to submit a public information request to obtain this information. The Board did not answer the fourth phone call auditors placed. The auditor left a message and was contacted 2 business days later. The auditor contacted the direct line of the staff member who left the message, but again had to leave a message because the staff member did not answer. The staff member contacted the auditor later that day and left a message. Auditors did not continue to pursue obtaining the public information.

Statute does not restrict the complaint history information the Board can provide over the phone, and other Arizona State health regulatory boards provide dismissed and nondisciplinary complaint information over the phone. Additionally, the public should have access to complete and timely information about licensees to make informed decisions about their healthcare, and should not be required to submit a public information request for information that can be provided over the phone. However, the Board's practices affect its ability to provide complete information to the public in a timely manner. Board staff also reported that some complaint history information is not included in its database and must be located in hard-copy files, which can require additional time to respond to public information requests.

Therefore, to help ensure that board staff provide appropriate and timely information to the public, the Board should develop and implement policies and procedures to guide staff on what information to provide about licensees over the phone, including dismissed and nondisciplinary licensing and complaint information, and the time frames for returning phone calls. These policies and procedures should also direct how board staff should respond to public information requests received over the phone for complaint history information that is located in hard-copy files. For example, if requested information requires some time to locate, policies and procedures could direct board staff to return phone calls in a specified period of time to provide the information. Additionally, the Board should cease the practice of directing callers to submit public information requests to obtain this information. Once the Board has developed and implemented its policies and procedures, it should also train its staff accordingly.

Recommendation:

1. The Board should develop and implement public information policies and procedures to guide staff on what information to provide about licensees over the phone, including dismissed and nondisciplinary licensing and complaint information, and the time frames for returning phone calls. These policies and procedures should also direct how board staff should respond to public information requests received over the phone for complaint history information that is located in hard-copy files. Additionally, the Board should cease the practice of directing callers to submit public information requests to obtain this information. Once the Board has developed and implemented the policies and procedures, it should also train its staff accordingly.

Sunset factor 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 to continue or terminate the Arizona State Board of Respiratory Care Examiners (Board).

The analysis of the Sunset Factors includes two recommendations not discussed earlier in this report. First, as required by rule, the Board should not accept cash as payment for services (see Sunset Factor 2, pages 19 through 20). Second, as required by statute, the Board should remit only 10 percent of its civil penalties to the State General Fund, but it should pursue a statutory change to deposit 100 percent of all civil penalties to the State General Fund, consistent with other health regulatory boards (see Sunset Factor 9, pages 21 through 22).

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.

Established in 1990, the Board's mission is to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care (see textbox). It accomplishes this mission by issuing licenses to qualified individuals, investigating and adjudicating complaints against licensees, and providing information to the public.

Respiratory care is the health care discipline that specializes in cardiopulmonary function and health and wellness.

Source: American Association for Respiratory Care. (2015). *Position Statement: Definition of Respiratory Care*. Irving, TX.

Auditors did not identify any states that met the Board's objective and purpose through private enterprises.

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, for the most part, met its statutory objective and purpose by issuing licenses to qualified applicants and investigating and adjudicating complaints appropriately. However, as discussed earlier in this report, the Board should evaluate various ways to increase compliance with its continuing-education requirements, such as increasing the civil penalty for noncompliance, and develop and implement policies and procedures for tracking licensing time frames (see Licensing, pages 5 through 10). The Board should also reduce its priority three complaint-processing time frames; ensure board staff complete and use the complaint case checklist; and revise its process to accurately record the close date of complaints that are resolved with signed consent agreements (see Complaint resolution, pages 11 through 15). Finally, the Board should develop and implement policies and procedures to guide staff on the complete and timely provision of public information about licensees over the phone (see Public information, pages 17 through 18).

In addition, the Board should not accept cash as a payment method. Board staff reported that on rare occasions, they would accept cash from licensees as payment for services the Board

provides, such as licensing and renewal services. Staff reported that they accepted cash to provide a convenience to license holders. However, the Board's administrative rules specifically prohibit the Board from accepting cash as payment. During the audit, board staff ceased this practice. Therefore, unless the Board revises its rules, board staff should continue to not accept cash as payment for services.

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

The Board serves licensees providing respiratory care services throughout the State. In addition, it investigates complaints against licensed individuals and disciplines those who violate board laws and rules. Finally, through its Web site, the Board provides the public with information regarding individuals' licensing status and disciplinary history. However, auditors found that the Board can better serve the public by providing all available public information to the public by phone (see Public information, pages 17 through 18, for more information).

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 established all the rules statute requires and that established rules 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 provided opportunities for input from the public before adopting rules by publishing notices of proposed rule-making in the Arizona Administrative Register. Specifically, the Board submitted proposed rules in the Arizona Administrative Register when it revised its rules in 2008 and provided contact information for public comment. The Board revised its rules to establish procedures for reinstating a revoked license and amending conditions of probation. Additionally, the Board filed a notice of proposed rule-making with the Arizona Administrative Register in February 2016 to raise the minimum level of competency for licensure from a "Certified Respiratory Therapist" (CRT) credential to a "Registered Respiratory Therapist" (RRT) credential (see Sunset Factor 11, page 22, for more information). The Board held an oral proceeding to solicit public input regarding this rule-making in April 2016.

Auditors also assessed the Board's compliance with various provisions of the State's open meeting law for three board meetings held between November 2015 and January 2016, and found the Board to be in compliance with these laws. For example, consistent with open meeting law requirements, the Board posted meeting notices and agendas on its Web site at least 24 hours in advance. In addition, board staff made meeting minutes available within 3 days after the meeting dates.

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 address statute and/or rule violations, such as issuing a letter of concern, ordering continuing education, imposing probation, and suspending or revoking a license. However, auditors found that the Board should take steps to resolve complaints in a more timely manner, including decreasing the time frames for processing some complaints, revising its complaint policies and procedures to require the use of its complaint case checklist, and revising its process to record the accurate resolution date for complaints that are resolved with a consent agreement (see Complaint resolution, pages 11 through 15, for additional information).

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.

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). In addition, the Attorney General can file a petition to enjoin the unauthorized practice of respiratory therapy according to A.R.S. §32-3557.

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 its enabling statutes contain no deficiencies that prevent it from fulfilling its statutory mandate. However, the Board had statutory changes in 2015 and 2016. Specifically, Laws 2015, Ch. 156, eliminated the Board's ability to issue temporary licenses and temporary license renewals. Prior to this change, the Board issued temporary licenses to initial license applicants to perform respiratory care services without a license, if the services were performed under the direct supervision of a licensed respiratory care practitioner or a licensed physician. Additionally, Laws 2016, Ch. 49, allows the Board to require licensees to respond to allegations within 20 days of receiving an initial complaint notification; require a licensee or applicant to undergo mental, physical, or psychological assessments; and issue a civil penalty of up to \$500 per violation.

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 Board should propose a statutory revision requiring it to remit all civil penalties to the State General Fund. Statute requires the Board to remit 10 percent of civil penalties to the State General Fund and deposit the remaining 90 percent in the Board of Respiratory Care Examiners Fund. However, most Arizona health regulatory boards are required to remit all civil penalties to the State General Fund.¹ The requirement to remit all civil penalties to the State General Fund is intended to prevent health regulatory boards from imposing improper or excessive civil penalties on licensees, as the boards do not retain the penalties. Although the Board's statutes require it to remit only 10 percent of civil penalties to the General Fund, its practice has been to

¹ The Arizona State Board of Dispensing Opticians and the Arizona State Board of Homeopathic and Integrated Medicine are not required to remit 100 percent of civil penalties to the State General Fund.

remit 100 percent of civil penalties. Consistent with most other Arizona health regulatory boards, the Board should propose legislation that would require it to deposit 100 percent of all civil penalties in the State General Fund. Further, until such legislation is passed, the Board should comply with statute and remit only 10 percent of its civil penalties to the State General Fund.

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 agency. The Board's role is to protect the public through regulating the practice of respiratory care. It accomplishes this mission by licensing individuals who meet statutory requirements; receiving and investigating complaints against licensees alleging statute and/or rule violations, including unprofessional conduct; and taking action against licensees when necessary. The Board also provides information to the public about licensees, including disciplinary history. These functions help protect the public from harm. For example, auditors reviewed complaints the Board investigated alleging actions by respiratory care practitioners who posed a threat to the public, including drug usage and treatment inconsistent with the standards of practice for respiratory care practitioners.

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

Every state, except for the State of Alaska, regulates the practice of respiratory care. The audit found that the level of regulation the Board exercises is similar to other states in most ways, but the Board is proposing a rule change that would change the Board's level of regulation. As of May 2016, the Board required applicants for initial licensure to have a Certified Respiratory Therapist (CRT) certificate or registration, which can be obtained by taking the National Board of Respiratory Care (NBRC) CRT examination. The NBRC also offers a Registered Respiratory Therapist (RRT) credential, which is a more comprehensive certification because the RRT examination includes a clinical assessment, which demonstrates a higher competency level. The Board has proposed a rule change that would require applicants who apply for licensure after December 31, 2016, to have the RRT credential to become licensed (See Sunset Factor 5, page 20, for more information). The Board is proposing this change because the Commission on Accreditation for Respiratory Care has adopted new accreditation standards for respiratory care therapists that set the RRT credential as the standard level of competency.¹ California and Ohio have changed their licensing requirements to require an RRT credential and, according to the American Association of Respiratory Care, the expectation is that eventually all other states will adopt the RRT credential as part of their licensing requirements.

¹ The Commission on Accreditation for Respiratory Care accredits degree-granting respiratory care programs. Its mission is to ensure that high-quality educational programs prepare competent respiratory care practitioners for practice, education, research, and service.

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 has used private contractors for rule-writing and temporary administrative staff services for data entry. Auditors contacted three other states' respiratory care boards—California, Missouri, and North Carolina—and found that two of the three states contract for services. For example, California's board reported using contracted expert witnesses in complaint cases, and North Carolina's board reported using contractors for information technology services as well as end-of-the-year accounting services. Auditors did not identify any additional areas where the Board should consider using private contractors.

Recommendations:

1. The Board should not accept cash as payment for services, as required by rule.
2. The Board should propose legislation that would require it to deposit 100 percent of all civil penalties in the State General Fund, consistent with most other Arizona health regulatory boards. Further, until such legislation is passed, the Board should comply with statute and remit only 10 percent of its civil penalties to the State General Fund.

Appendix A

This appendix provides information on the methods auditors used to meet the audit objectives. The Auditor General and staff express appreciation to the Board, its Executive Director, and staff for their cooperation and assistance throughout the audit.

Methodology

Auditors conducted this performance audit of the Arizona State Board of Respiratory Care Examiners (Board) 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.

Auditors used various methods to study the issues in the performance audit and sunset review. These methods included reviewing board statutes, rules, and policies and procedures; interviewing board staff and stakeholders; and reviewing information from the Board's Web site. In addition, auditors reviewed minutes from and attended three board meetings held in November and December 2015 and January 2016.

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

- To determine whether the Board's processes and practices helped ensure that it issued licenses to qualified applicants in a timely manner, auditors reviewed a random sample of 30 initial licenses issued between January 2013 and November 2015, and a random sample of 12 renewal licenses approved in calendar years 2014 and 2015. Auditors also reviewed the Board's initial and renewal applications and compared them to statutes and rules.
- To assess whether the Board appropriately handled complaints and resolved them in a timely manner, auditors reviewed a random sample of 29 complaints the Board opened in calendar years 2013 through 2015. In addition, auditors reviewed the 29 complaints to determine if board staff accurately recorded the complaint resolution date in its database and the process that board staff use to monitor and track complaints.
- To obtain information for the report Introduction, auditors reviewed department-prepared documents relating to its responsibilities, functions, and staffing. Auditors also compiled and analyzed unaudited information from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* and the AFIS *Management Information System Status of General Ledger-Trial Balance* screen for fiscal years 2014 and 2015, and board-prepared estimates for fiscal year 2016.
- To assess whether the Board shared appropriate information with the public, auditors placed four anonymous phone calls to board staff in January 2016 requesting information about four licensees. Auditors also analyzed licensing information regarding disciplinary history and the status of licenses on the Board's Web site.

- To obtain information used in the Sunset Factors, auditors reviewed information in the Arizona Administrative Register regarding the Board's proposed rules, and assessed whether board staff posted public notices and agendas for board meetings held in November 2015 through January 2016. Auditors also contacted the respiratory care boards in three other states—California, Missouri, and North Carolina—and the American Association of Respiratory Care.
- Auditors' work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with board statutes and rules, and where applicable, testing its compliance with these policies and procedures. Auditors report their conclusions on these internal controls and board efforts to improve its controls in response to audit findings during the audit in the report chapters and Sunset Factor 2. In addition, auditors conducted data validation work to assess the reliability of the Board's data in assessing complaint timeliness. Specifically, auditors selected a sample of 11 complaint files the Board closed in calendar years 2013 through 2015 and compared information in the database to hard-copy files. Auditors determined that the Board's database was sufficiently reliable for the purpose of generating statistical complaint information, such as the number of complaints opened.

AGENCY RESPONSE



Douglas A. Ducey
Governor

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Jack Confer
Executive Director

June 9, 2016

VIA ELECTRONIC AND REGULAR MAIL

Auditor General Debbie Davenport
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, AZ 85018

RE: Performance Audit –Sunset Review

Dear Auditor General Davenport:

The Arizona Board of Respiratory Care Examiners (“Board”) has reviewed the draft of the recent Sunset Review of this Board. As requested, please find the following response:

LICENSING RECOMMENDATIONS:

1. The Board should consider various options for increasing compliance with its continuing education requirements, including:
 - a. Increasing the civil penalty amount for noncompliance and/or suspending a license;
 - b. Increasing the percentage of licensees who are audited each quarter; and
 - c. Pursuing a rule change to allow the Board to require that all licensees submit continuing-education documentation when renewing their licenses, and then auditing a percentage of those renewals.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

2. Once the Board determines what options would best increase compliance with the continuing education requirements, the Board should implement those changes to its continuing education audit policies and procedures as appropriate, and train staff accordingly.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

3. The Board should ensure that it adheres to its audit policy and conduct continuing education audits quarterly.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

4. The Board should develop and implement a disciplinary matrix for its continuing education audit complaints that specifies the civil penalty that should be assessed based on the number of hours the licensee was deficient, whether other disciplinary actions such as suspension should be taken, and prescribes the escalated disciplinary action that should be taken for repeat offenders to reduce the number of complaints the Board must individually hear and to reduce the time needed for adjudication.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

5. The Board should develop and implement policies and procedures that require its staff to track the Board's compliance with all licensing time frames, including the issuance of administrative notices when appropriate. Once policies and procedures have been developed and implemented the Board should ensure all appropriate staff are trained on them.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

COMPLAINT RESOLUTION RECOMMENDATIONS:

1. The Board should revise its complaint policies and procedures to decrease the investigative and overall processing time frames for its priority three complaints to ensure that complaints are resolved within 180 days.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

2. The Board should revise its complaint policies and procedures to require the use of the case checklist and train its staff accordingly.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

3. For complaints resolved by consent agreements, the Board should use the date both the Board and the licensee sign the agreement as the resolution date. This date for tracking complaint resolution should also be reflected in the Board's policies and procedures and tracking mechanisms, such as its complaint database, and staff should be trained accordingly.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

4. The Board should establish time frames in its policies and procedures for when the licensees and the Board's executive director should sign consent agreements.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

PUBLIC INFORMATION RECOMMENDATIONS:

1. The Board should develop and implement public information policies and procedures to guide staff on what information to provide about licensees over the phone including dismissed and non-disciplinary licensing and complaint information and the time frames for returning phone calls. These policies and procedures should also direct how board staff should respond to public information requests received over the phone for complaint history information that is located in hard copy files. Additionally, the Board should cease the practice of directing callers to submit public information requests to obtain this information. The Board should also train its staff accordingly.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

GENERAL RECOMMENDATIONS:

1. The Board should not accept cash as payment for services, as required by rule.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

2. The Board should propose legislation that would require it to deposit 100 percent of all civil penalties in the State General Fund, consistent with most other Arizona health regulatory boards. Further, until such legislation is passed, the Board should comply with statute and remit only 10 percent of its civil penalties to the State General Fund.

The Finding of the Auditor General is agreed to and the audit recommendation will be implemented.

I may be contacted at the above number or at john@rb.az.gov

Thank you and Respectfully,

Jack Confer
Executive Director
Arizona Board of Respiratory Care Examiners

Copy: File

Performance Audit Division reports issued within the last 12 months

15-CR1	Independent Review—Arizona's Child Safety System and the Arizona Department of Child Safety
15-CR1SUPP	Supplemental Report to the Independent Review—Arizona's Child Safety System and the Arizona Department of Child Safety
15-106	Arizona State Retirement System
15-CR2	Independent Operational Review of the Arizona State Retirement System's Investment Strategies, Alternative Asset Investment Procedures, and Fees Paid to External Investment Managers
15-107	Arizona Sports and Tourism Authority
15-108	Arizona Department of Administration—Personnel Reform Implementation
15-109	Arizona Department of Administration—Sunset Factors
15-110	Arizona Foster Care Review Board
15-111	Public Safety Personnel Retirement System
15-CR3	Independent Operational Review of the Public Safety Personnel Retirement System Investment Strategies, Alternative Asset Investment Procedures, and Fees Paid to External Investment Managers
15-112	Arizona Commerce Authority
15-113	Arizona Department of Transportation—Transportation Revenues
15-114	Arizona Department of Transportation—Sunset Factors
15-115	Arizona Radiation Regulatory Agency, Arizona Radiation Regulatory Hearing Board, and Medical Radiologic Technology Board of Examiners
15-116	Arizona Department of Revenue—Security of Taxpayer Information
15-117	Arizona Department of Revenue—Sunset Factors
15-118	Arizona Department of Child Safety—Child Safety, Removal, and Risk Assessment Practices
15-119	Arizona Department of Environmental Quality— Vehicle Emissions Inspection Program
15-120	A Comparison of Arizona's Two State Retirement Systems
15-121	Alternatives to Traditional Defined Benefit Plans
16-101	Arizona Department of Education—K-3 Reading Program
16-102	Arizona Department of Child Safety—Differential Response and Case Screening.

Future Performance Audit Division reports

Arizona Board of Osteopathic Examiners in Medicine and Surgery