

# Arizona Medical Board

Board issued licenses to qualified applicants and appropriately resolved complaints, but should ensure renewal applicants comply with continuing medical education requirements and continue to improve complaint resolution timeliness

Performance Audit and  
Sunset Review

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A Report to the Arizona Legislature

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Auditor General





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August 10, 2017

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Ms. Patricia McSorley, Executive Director  
Arizona Medical Board

Transmitted herewith is a report of the Auditor General, *A Performance Audit and Sunset Review of the Arizona Medical Board*. This report is in response to a September 14, 2016, 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 Medical 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

cc: Arizona Medical Board members

Attachment



## Arizona Medical Board

**CONCLUSION:** The Arizona Medical Board (Board) regulates the practice of medicine in the State by licensing allopathic physicians (also known as “doctors of medicine,” or MDs); investigating and resolving complaints against licensees; providing information to the public, such as MDs’ license status and disciplinary history; and administering the Physician Health Program (PHP) for MDs suffering from substance abuse, medical, and mental health issues. We found that the Board issued licenses, permits, and registrations to qualified applicants, and did so in a timely manner. However, the Board should continue its efforts to ensure that license renewal applicants comply with continuing medical education (CME) requirements. Additionally, the Board appropriately investigated and adjudicated complaints we reviewed, but some complaint resolutions experienced delays. Therefore, the Board should continue its efforts to improve complaint resolution timeliness. The Board also provided appropriate, accurate, and timely information about licensees to the public. Finally, the Board administers the PHP to help ensure that MDs are able to safely practice medicine, and is seeking additional PHP contractors.

### Board issued licenses, permits, and registrations to qualified applicants within required time frames

**Board issued licenses, permits, and registrations to qualified applicants**—We reviewed random samples of 26 MD license applications the Board received in calendar years 2015 and 2016, and 5 applications for post-graduate training permits and 5 dispensing registration applications the Board received in calendar year 2016, and found that the Board issued these licenses, permits, and registrations only to qualified applicants.<sup>1</sup>

**Board should continue efforts to ensure compliance with CME requirements**—MDs must meet various requirements every 2 years in order to renew their licenses, including attesting that they have met the 40 hours of required CME, providing a statement regarding history of professional conduct, and submitting the required fee. To help ensure MDs complete the required CME hours, the Board randomly selects and then audits 10 percent of its licensees for compliance with CME requirements. MDs selected for audit must submit documentation to demonstrate compliance with the CME requirements to renew their licenses. We reviewed a random sample of 30 of the 107 MD license renewal applications selected for CME audit on November 1, 2016, and found that 26 MDs complied with CME requirements and their licenses were appropriately renewed. However, the Board renewed two licenses without auditing the MDs’ CME, and the remaining two licenses were renewed even though the MDs did not provide proof of completing the required number of CME hours. Based on this finding, the Board enhanced its training for staff who are new to processing license renewal applications to include experienced staff reviewing trainees’ work.

**Board issued and renewed licenses in a timely manner**—The Board issued licenses and renewals that we reviewed within the time frames specified in rule. We analyzed board data for the 2,693 MD license applications that were received in calendar years 2015 and 2016 and approved as of February 23, 2017, and reviewed the random sample of 30 MD renewal applications selected for CME audit, and found that these licenses and renewals were processed within the time frames allowed by board rules.

### Recommendation

The Board should continue to use its newly implemented training review procedure to ensure that license renewal applicants meet all requirements in statute and rule, including ensuring that all applicants who are chosen for CME audit are audited, and if audited, ensuring that applicants submit proof of meeting CME requirements.

<sup>1</sup> A post-graduate training permit is a 1-year permit that allows a person to practice medicine in the supervised setting of a teaching hospital’s internship, residency, or fellowship training program. A dispensing registration allows an MD to dispense prescription drugs.

## Board appropriately resolved complaints, but should continue its efforts to improve timeliness

**Board uses multi-step process to resolve complaints against MDs**—The Board is responsible for investigating and resolving complaints against MDs. The complaint-handling process involves several steps, including an investigation to determine whether the complaint allegations are supported by evidence, a review of relevant medical information by an internal or outside medical consultant, and a review by a Staff Investigational Review Committee (SIRC) for substantiated complaints that require board action. Ultimately, the Board may dismiss a complaint or take nondisciplinary or disciplinary action against a licensee, as appropriate.

**Board appropriately investigated and adjudicated complaints**—The Board has implemented adequate controls to guide its complaint investigation and adjudication process. We reviewed a sample of 30 complaints received in calendar years 2015 and 2016 that were resolved or in interim status as of February 2017, and determined that the Board appropriately investigated and resolved these complaints.<sup>2</sup>

**Some complaint resolutions delayed, but Board has taken steps to improve timeliness**—Our review of the 30 complaints indicated that, although complaints were investigated and adjudicated appropriately, some experienced delays during various phases of the complaint-handling process. Specifically, these complaints were resolved or placed in interim status between 21 and 531 days after receipt. In addition, we analyzed board data for the 1,413 complaints the Board received in calendar year 2016. Fifty-two percent of these complaints were resolved in 180 days or fewer, while 24 percent took longer than 180 days to resolve, and 24 percent of the complaints were still open as of March 28, 2017, with just over half of these complaints having been open for more than 180 days. Although we identified some delays in complaint handling, we did not identify any potential negative impact on public health and safety as a result of those delays for the 30 complaints reviewed. For example, we observed that board staff assigned a high priority to complaints that posed a potential or imminent threat to public health and safety. Further, the Board has taken steps to mitigate the causes for delays, such as creating additional SIRCs and holding additional board meetings.

### Recommendation

The Board should continue to implement the measures it adopted to address delays in its complaint resolution process, assess the impact of these measures on complaint resolution timeliness, and take additional actions, as needed, if resolvable delays persist.

## Board generally provided accurate, appropriate, and timely information to the public

The Board provides information to the public on its website and over the phone. We reviewed 29 randomly selected profiles of MDs on the Board's website and placed 8 phone calls to request information about licensees. Information provided on the website and over the phone was generally accurate, appropriate, and timely.

## Board administers the Physician Health Program (PHP)

The PHP is a board-sponsored program, operated by an outside contracted medical group, to perform assessments and post-treatment monitoring of MDs who may suffer from substance abuse, medical, and mental health disorders that may affect their ability to safely practice medicine or perform healthcare tasks. According to board management, since 1992, a single contractor has operated the PHP because it has been the sole respondent each time the contract has been bid. However, the Board is seeking additional PHP contractors to avoid the potential for conflict of interest that may result from having a single contractor recommend treatment and then be paid to perform post-treatment monitoring and to provide more options for performing assessments. Further, we obtained information regarding similar programs in five other states and found that these states' programs vary considerably.

<sup>2</sup> Interim statuses are agreements between the Board and MDs that include practice restrictions and stipulated rehabilitation agreements to ensure public health and safety while a complaint is being resolved.



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## Scope and objectives

The Office of the Auditor General has conducted a performance audit and sunset review of the Arizona Medical Board (Board) pursuant to a September 14, 2016, resolution of the Joint Legislative Audit Committee. The 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 its provision of information to the public. It also includes information about the Physician Health Program, a program for allopathic physicians (also known as "doctors of medicine," or MDs) who may have substance abuse, medical, or mental health issues that may affect their practice, and responses to the statutory sunset factors.

## Mission and responsibilities

The Board was established in 1913 to regulate the practice of medicine in Arizona. Its mission is to protect public safety through the judicious licensing, regulation, and education of all MDs. The Board's responsibilities include:

- **Issuing licenses, permits, and registrations**—The Board issues MD licenses that must be renewed every 2 years. The Board also issues 1-year post-graduate training permits for participants in internships, residencies, and fellowships; prescription drug dispensing registrations; pro bono registrations; 1-year teaching licenses; 5-day education teaching permits; and locum tenens registrations. See Table 1 on page 2 for descriptions of these license, permit, and registration types, as well as the number of active licenses, permits, and registrations as of May 2017. According to board records, the Board issued 1,517 initial MD licenses and 382 post-graduate training permits in calendar year 2016.
- **Investigating and resolving complaints**—The Board investigates complaints against licensees, permittees, and registrants and can take statutorily authorized nondisciplinary or disciplinary action, as needed, such as issuing a decree of censure or placing a licensee on probation (see Chapter 2, page 9, for examples of the Board's nondisciplinary and disciplinary options). According to board data, the Board received 1,413 complaints and closed 1,844 complaints in calendar year 2016.<sup>1</sup>
- **Providing information to the public**—The Board provides information about MDs with active, revoked, and inactive licenses, including disciplinary history, on its website. In addition, the Board publishes public meeting agendas and minutes on its website. Board staff also respond to requests for public information, including requests made by phone, regarding the license status and disciplinary history of MDs (see Public information, pages 15 through 16, for more information).
- **Administering the Physician Health Program (PHP)**—The PHP is a board-sponsored program, operated by an outside contracted medical group (Contractor), to perform assessments and post-treatment monitoring of MDs who may suffer from substance abuse, medical, or mental health issues that may affect their ability to safely practice medicine or perform healthcare tasks. According to board management, as of February 2017, approximately 100 MDs of about 23,000 total active MDs in Arizona were participating in the PHP. The Contractor performs the assessment of potentially impaired MDs and monitors MDs for compliance with board orders and agreements that specify treatment requirements. The contract expires on December 31, 2017. According to board management, the Board plans to contract with multiple providers throughout the State to improve the PHP (see Chapter 4, pages 17 through 20, for more information about the PHP).

<sup>1</sup> Complaints may not be resolved in the same calendar year they are received. In calendar year 2016, the Board resolved some complaints it received in prior years.

**Table 1**  
**License, permit, and registration types, descriptions, and number active**  
**As of May 2017**  
(Unaudited)

Type	Description	Number
Doctor of medicine (MD) license	Allows qualified physicians to practice medicine in Arizona.	23,423
Post-graduate training permit	A 1-year permit that allows a person to practice medicine in the supervised setting of a teaching hospital's internship, residency, or fellowship training program.	1,446
Dispensing registration	Allows an MD to dispense prescription drugs.	747
Pro bono registration	Allows an MD licensed in another state to practice in Arizona for a total of 60 days each calendar year.	20
Teaching license	Allows an MD licensed in another state to teach at a board-approved school or teaching hospital for 1 year, as long as the MD does not practice outside that setting.	3
5-day education teaching permit	Allows an MD licensed in another state to teach on specific topics at board-approved schools in Arizona.	0
Locum tenens registration	Allows an MD licensed in another state to practice as a substitute or temporarily assist a board-licensed MD for 180 days.	0

Source: Auditor General staff review of A.R.S. §32-1421 et seq. and board documents.

## Organization and staffing

As required by A.R.S. §32-1402, the Board consists of 12 Governor-appointed members, including 8 MDs who have practiced in the State for at least 5 years and 4 public members, one of whom is a licensed registered nurse with at least 5 years' experience. Board members are eligible to serve two 5-year terms. The Board is assisted by various staff, including an executive director. The Board was appropriated 61.5 full-time equivalent (FTE) staff positions for fiscal year 2017. As of May 2017, 44.5 FTE positions were filled. In addition to the executive director, the Board employed a deputy executive director, investigations manager, chief medical consultant, licensing manager, and chief information officer, and other licensing, complaint investigation, and administrative staff.

## Budget

The Board does not receive any State General Fund appropriations. Rather, its revenues consist primarily of license, permit, and registration fees. In addition, the Board receives revenues from the Board of Physician Assistants (PA Board) to provide administrative services. As required by A.R.S. §§32-1403, 1406, and 1451, the Board remitted to the State General Fund 100 percent of civil penalties and 10 percent of all its other monies collected except those from grants, gifts, devises, and other contributions from public or private sources for which none was required to be remitted. As shown in Table 2 on page 3, the Board's fiscal year 2016 net revenues totaled approximately \$6.2 million, and the Board estimates that its fiscal year 2017 net revenues will

**Table 2**  
**Schedule of revenues and expenditures**  
**Fiscal years 2015 through 2017**  
(Unaudited)

	2015 (Actual)	2016 (Actual)	2017 (Estimate)
<b>Revenues</b>			
Board revenues and revenue reductions			
Licenses and fees	\$6,425,179	\$6,857,903	\$6,936,300
Fines, forfeits, and penalties	99,250	125,950	100,500
Other	46,177	65,932	58,200
Credit card transaction fees	(123,641)	(134,173)	(145,000)
Remittances to the State General Fund <sup>1</sup>	(653,386)	(704,014)	(625,600)
<b>Total board net revenues</b>	<b>5,793,579</b>	<b>6,211,598</b>	<b>6,324,400</b>
PA Board net revenues <sup>2</sup>	467,178	471,579	444,100
<b>Total board and PA Board net revenues</b>	<b>6,260,757</b>	<b>6,683,177</b>	<b>6,768,500</b>
<b>Expenditures and transfers</b>			
Payroll and related benefits	3,570,477	3,996,000 <sup>3</sup>	4,302,000
Professional and outside services	1,825,189	1,154,536	991,700
Travel	23,926	42,487	45,200
Other operating	828,805	956,253	861,400
Furniture, equipment, and software	221,996	295,259	226,000
Transfers to the Office of Administrative Hearings	15,000	18,196	20,000
<b>Total expenditures and transfers</b>	<b>6,485,393</b>	<b>6,462,731</b>	<b>6,446,300</b>
Net change in fund balance	(224,636)	220,446	322,200
Fund balance, beginning of year	5,831,079	5,606,443	5,826,889
<b>Fund balance, end of year</b>	<b>\$5,606,443</b>	<b>\$5,826,889</b>	<b>\$6,149,089</b>

<sup>1</sup> As required by A.R.S. §§32-1403, 1406, and 1451, the Board remitted to the State General Fund 100 percent of civil penalties and 10 percent of all its other monies collected except those from grants, gifts, devises, and other contributions from public or private sources for which none was required to be remitted.

<sup>2</sup> Amount is the net revenues available from the PA Board to pay for the Board and the PA Board's combined expenditures. The Board provides administrative services to the PA Board and is not required and does not separately account for all of the PA Board's financial activities. However, the Board separately accounts for the PA Board's revenues and its board member expenditures. Therefore, the PA Board's presented net revenues include the PA Board's revenues less its board member expenditures.

<sup>3</sup> According to the Board, payroll and related benefits expenditures increased in fiscal year 2016 because it hired nine new employees when it received legislative approval to fill vacant positions to address enhanced licensing requirements, licensing backlogs, and complaints.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2015 and 2016; the State of Arizona *Annual Financial Report* for fiscal years 2015 and 2016; and board-provided financial estimates for fiscal year 2017.

total approximately \$6.3 million. Expenditures in Table 2 include costs for both the Board and the PA Board. Personnel costs accounted for most of these expenditures, which totaled nearly \$4 million in fiscal year 2016 and are estimated to total approximately \$4.3 million in fiscal year 2017. The Board estimates that its fiscal year 2017 ending fund balance will total more than \$6.1 million.





## Licensing, permitting, and registration

The Arizona Medical Board (Board) issued initial licenses, permits, and registrations auditors reviewed to qualified applicants and should continue to implement new procedures for ensuring that applicants for renewal licenses comply with continuing medical education (CME) requirements. The Board also issued and renewed licenses auditors reviewed within the overall time frames specified in board rules.

### Board issued licenses, permits, and registrations to qualified applicants

The Board issued the licenses, permits, and registrations that auditors reviewed to qualified applicants. Specifically, auditors reviewed random samples of 26 applications for doctor of medicine (MD) licenses, 5 applications for post-graduate training (PGT) permits, and 5 dispensing registration applications received by the Board.<sup>2</sup> Auditors found that for all license, permit, and registration applications reviewed, the Board issued these licenses, permits, and registrations only to qualified applicants. In addition to the MD license, post-graduate training permit, and dispensing registration, the Board issues four other license, permit, and registration types to MDs that have varying requirements according to statute and rule (see Table 3 on page 6). To help ensure the Board issues licenses, permits, and registrations only to qualified applicants, board staff use checklists to document that applicants have submitted all necessary paperwork, including the application, fee, citizenship form, and education and training documentation. Additionally, board staff maintain a database that manages scanned application documents and generates notices of deficiency and approval that are sent to applicants. Applications for several types of licenses and registrations also receive a secondary review prior to approval to ensure that each applicant has provided evidence of meeting all statutory and rule requirements. These requirements include that licensing staff collect some documentation from a primary source. For example, applicants must request that their medical schools send transcripts directly to the Board. Board staff maintain documentation to ensure that a secondary reviewer may verify that the transcripts came directly from the primary source.<sup>3</sup>

In addition, auditors reviewed the one MD application that the Board denied during calendar years 2015 and 2016. After board staff investigated statements made on the application, the Board required the applicant to participate in its Physician Health Program (PHP)—a board-sponsored program for MDs who may have substance abuse, medical, or mental health issues that may affect their practice—as a condition for licensure (see Chapter 4, pages 17 through 20, for more information about the PHP). However, the Board denied the application after the applicant failed to meet this condition.

<sup>2</sup> The MD license application sample was randomly selected from the 2,664 MD license applications the Board received in calendar years 2015 and 2016 that were approved as of February 23, 2017. The PGT permit application sample was randomly selected from the 382 PGT permit applications the Board received and approved between January 1, 2016 and December 31, 2016. The dispensing registration applications were randomly selected from the 734 applications received by the Board in calendar year 2016.

<sup>3</sup> The internal controls described in this paragraph were in place at the time of the Office of the Auditor General's April 2015 *A Procedural Review of the Arizona Medical Board—Licensing and Registration Processes*. The Auditor General published this procedural review in response to an October 2013 Arizona Office of the Ombudsman-Citizens' Aide report regarding the potential inappropriate issuance of some licenses and registrations. Auditors reviewed licensing and registration files approved after the Board's implementation of these internal controls to verify that they would help ensure that licenses and registrations issued as of June 2014 were issued in compliance with statute and rule. MD licenses issued from October 2011 through February 5, 2014, were reviewed for compliance with statute and rule by a board contractor. If the contractor identified any deficiencies in an MD's application file, the contractor contacted the MD to collect the necessary documentation. The contractor's review did not identify any MDs who did not meet licensure requirements or who were not safe to practice medicine.

**Table 3****License, permit, and registration types and requirements****As of May 2017**

(Unaudited)

Type	Requirements
Doctor of medicine (MD) license	Graduation from an approved school of medicine, successful completion of an internship or residency, and passing physician licensure exams.
Post-graduate training permit	Participation in a teaching hospital's internship, residency, or clinical fellowship training program.
Dispensing registration	A list of all locations where the MD intends to dispense, and a copy of the MD's federal Drug Enforcement Agency card if he/she intends to dispense controlled substances.
Pro bono registration	Inactive Arizona license or active and unrestricted licensure in another state and agreement to practice at no cost to patients.
Teaching license	Must meet the same requirements of the MD license but agree to not have a practice outside of the approved school or teaching hospital.
5-day education teaching permit	Invitation from a dean of an approved school, licensure in another state, proof of malpractice insurance, and letter from the inviting school outlining the scope of what the visiting MD will teach.
Locum tenens registration	Must meet the same requirements for the MD license and submit a written request from the licensed MD for whom he/she is substituting or assisting.

Source: Auditor General staff review of Arizona Revised Statutes §32-1421 et seq. and Arizona Administrative Code (AAC) R4-16-301.

## Board should continue efforts to ensure compliance with CME requirements

Although the Board ensured that applicants for initial MD licensure met statutory and rule requirements prior to licensure, auditors identified some applications for MD license renewal that were approved without ensuring the MDs met CME requirements. MDs must meet various requirements every 2 years to renew their licenses, including attesting that they have met the 40 hours of required CME, providing a statement regarding their history of professional conduct, and submitting the required fee. To help ensure MDs complete the required CME, statute and rule require the Board to randomly select 10 percent of its licensees to audit for compliance with CME requirements. Per board policy, MDs selected for audit must submit documentation to prove that they have completed at least 40 hours of CME since their license was issued or last renewed.<sup>4</sup> The Board provides guidance on these requirements on its website and in its renewal applications. The Board's CME audit procedures are similar to those used by other Arizona health regulatory boards, such as the Arizona Board of Osteopathic Examiners in Medicine and Surgery and the Arizona State Board of Physical Therapy.

<sup>4</sup> Prior to November 14, 2016, MDs selected for audit were required to complete and sign a form listing CME activities; however, after this date, auditees were required to submit documentation verifying compliance with the CME requirements, such as a course certificate or transcript.

Auditors reviewed a random sample of 30 MD renewal license applications selected for CME audit.<sup>5</sup> From this sample, auditors found that 26 MDs complied with CME requirements, and their licenses were renewed appropriately. However, the Board renewed two licenses without auditing the MDs' CME, and the remaining two licenses were renewed even though the MDs did not provide proof of completing 40 hours of CME.

Based on the results of auditors' review, board management enhanced its training of staff new to processing MD license renewal applications. Specifically, in May 2017, board management implemented a secondary review procedure for staff in training whereby experienced staff review trainees' work until the trainees demonstrate the ability to properly evaluate and determine compliance with renewal requirements. The Board should continue using its newly implemented secondary review procedure for trainees to ensure that renewal applicants meet all requirements in statute and rule, including ensuring that all applicants who are chosen for CME audit are audited, and if audited, ensuring that the applicants submit proof of meeting CME requirements.

## Board issued and renewed licenses in a timely manner

The Board issued licenses and renewals auditors reviewed within the time frames specified in rule. Statute requires the Board to establish time frames in administrative rule for issuing licenses, permits, and registrations. These time frames are important because they provide information and assurance to the public about what to expect in regard to having a license, permit, or registration approved or denied, and increase the Board's accountability when time frames are not met. If the Board does not meet its time frames, statute requires it to refund licensing fees to applicants and pay a penalty of 2.5 percent of the application fee to the State General Fund for each month that licenses, permits, or registrations are not issued or denied within the established time frames.<sup>6</sup>

Auditors analyzed board data for initial MD applications received in calendar years 2015 and 2016 and determined that the 2,693 applications approved as of February 23, 2017, were processed within the time frames allowed by board rules for administrative completeness and substantive review.<sup>7</sup> Specifically, AAC R4-16-206 requires the Board to approve or deny initial MD applications within a 240-day time frame. The Board is required to complete its administrative review of these applications within 120 days and conduct its substantive review of these applications within 120 days. The applications auditors reviewed were processed in as few as 3 days and as many as 128 days, with an average of about 23 days, and none exceeded the time frames set by rule.

Additionally, auditors reviewed the licensing files for the sample of 30 MD renewal applications selected for CME audit and found they also were processed within the time frames allowed by board rules. Specifically, AAC R4-16-206 requires the Board to complete its administrative review of MD license renewal applications within 45 days and conduct its substantive review within 45 days, for an overall time frame of 90 days. For the 30 renewal applications reviewed, the Board took between 8 and 21 days, with an average of 12 days, to process them.

To help ensure that the Board issues licenses, permits, and registrations within required time frames, the Board's licensing database includes features that notify each member of the licensing staff when action on an application is needed. Licensing staff also accept documentation via email and electronically from third parties, as permitted by statute. In addition, the Board made changes to its licensing procedures to reduce processing times for some applications. In April 2015, the Board collaborated with the Arizona Management System to pilot these procedures.<sup>8</sup> Specifically, for applications that require an investigation to determine fitness to practice medicine, the Board piloted procedures to conduct the administrative review concurrently with the investigation.<sup>9</sup> Prior to the

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<sup>5</sup> The sample was randomly selected from the 107 MD license renewal applications that had been selected for CME audit on November 1, 2016, and that had been approved for renewal as of February 22, 2017.

<sup>6</sup> This is for all cases except for license applications that were not subject to substantive review.

<sup>7</sup> These time frames are measured in calendar days. The administrative time frame is the time used to ensure that an application is complete. The substantive time frame is the time the Board has to review the applicant's qualifications for licensure. Auditors' analysis of these time frames did not include the days that the Board was waiting for deficient information to be sent by applicants.

<sup>8</sup> The Arizona Management System is a state initiative to assist state agencies and boards in improving productivity, quality, and service.

<sup>9</sup> Some applications may require an investigation if an applicant indicates that he/she has had a malpractice action, sought treatment for addiction, or was the subject of disciplinary action by another state's medical board.

pilot, staff would ensure administrative completeness first and then refer applications to investigative staff for an investigation. With these new procedures, investigative staff could conduct the investigation while licensing staff are waiting for documentary evidence of requirements for licensure to arrive. Auditors noted that this procedural change reduced the time needed to grant a license by a few days, and by up to a month in some cases.

### **Recommendation**

- 1.1. The Board should continue using its newly implemented secondary review procedure for trainees to ensure that renewal applicants meet all requirements in statute and rule, including ensuring that all applicants who are chosen for CME audit are audited, and if audited, ensuring that the applicants submit proof of meeting CME requirements.



# Complaint resolution

The Arizona Medical Board (Board) uses a multi-step process to resolve complaints against doctors of medicine (MDs). Based on auditors' review, the Board appropriately investigates and adjudicates complaints and should continue its efforts to improve complaint resolution timeliness.

## Board uses multi-step process to resolve complaints against MDs

As discussed in the Introduction (see page 1), the Board is responsible for investigating and resolving complaints against MDs and may take nondisciplinary and disciplinary action, as needed (see textbox). As highlighted in Figure 1 (see page 10), the complaint-handling process involves several steps, including an investigation to determine whether the complaint allegations are supported by evidence and review of relevant medical information by an internal or outside medical consultant. If the investigator and/or medical consultant determine that the MD did not violate the standards of professional conduct in Arizona Revised Statutes (A.R.S.) §32-1401, the complaint is forwarded to a supervisor for review who, based on this review, may recommend that the executive director dismiss the case.<sup>10</sup> The executive director will then review the complaint and decide whether to dismiss it, send it to the Board for dismissal, or refer it for further investigation. If the executive director dismisses the complaint, the complainant has the right to appeal the executive director's decision to the Board for the Board's final determination.

### Examples of Board's nondisciplinary and disciplinary options:

#### Nondisciplinary options

- Advisory letter
- Order for continuing medical education

#### Disciplinary actions

- Letter of reprimand
- Civil penalty
- Decree of censure
- Practice restriction
- Probation
- License suspension or revocation

Source: Auditor General staff analysis of board policy.

However, if the investigator and/or medical consultant and a supervisor determine that a violation may have occurred, the complaint is then reviewed by a Staff Investigational Review Committee (SIRC) composed of board staff, including the Board's assistant attorney general, its chief medical consultant or a designated physician, the investigations manager or a designee, and the board operations manager or a designee. After reviewing the complaint, a SIRC determines if it agrees with the investigator's and/or medical consultant's conclusions and recommends appropriate disciplinary or nondisciplinary action to the Board. The Board will then consider the SIRC's recommendation and determine the appropriate resolution for the complaint. During this process, a complaint may be sent back to a previous step for additional review. For example, a SIRC could determine that additional investigation or an additional medical consultant review is necessary before it finalizes its review of a complaint and develops its recommendations.

According to board records, the Board received a total of approximately 2,700 complaints in calendar years 2015 and 2016. The majority of these complaints were dismissed.

<sup>10</sup> A.R.S. §32-1405(C)(21) allows the Board to authorize its executive director to dismiss complaints that are without merit.

**Figure 1**  
**Highlights of the complaint resolution process**



Board resolution options		
<p><b>Dismissal</b></p> <p>The Board may vote to dismiss a complaint, either at the recommendation of the executive director or at its own discretion.</p>	<p><b>Nondisciplinary action</b></p> <p>The Board may vote to take non-disciplinary action such as issuing an advisory letter or requiring continuing medical education.</p>	<p><b>Disciplinary action and referral to formal hearings</b></p> <p>The Board may vote to take disciplinary action such as issuing a letter of reprimand or suspending or restricting a license. The Board may also refer a complaint to OAH for a formal hearing.</p>

Source: Auditor General staff review of complaint files and board policies and procedures, as well as board-provided information related to the complaint review process.

## Board appropriately investigated and adjudicated complaints

Auditors determined that the Board has implemented adequate controls to guide its complaint investigation and adjudication processes, including policies and procedures, board member review of investigated complaints, and the use of a database to organize all complaint documents and information and monitor complaint investigation and resolution progress. Auditors reviewed a sample of 30 complaints and determined that the Board appropriately investigated and resolved these complaints.<sup>11</sup> Specifically, the Board:

- Administratively closed complaints when appropriate. As authorized by statute and board policy, board staff may administratively close a complaint without an investigation;
- Notified MDs and complainants when a complaint was opened, placed on a board meeting agenda, and resolved;
- Followed board policy for prioritizing complaints according to the complaint's potential risk to public health and safety (see textbox);
- Adequately investigated complaints by collecting sufficient information, such as medical records and patient prescription histories, to determine if an MD violated board statutes and prepared detailed reports for executive director and/or board review;
- Followed an adjudication process that is consistent with statute and is sufficiently separated from the investigative process, in that cases are investigated by staff investigators and adjudicated by the Board. Further, the Board imposed only discipline that is permitted by statute;
- Dismissed complaints where it determined there was no violation of statute, as allowed by A.R.S. §§32-1405 and 1451;
- Took disciplinary and nondisciplinary action, as needed. After board review and discussion of investigated complaints, if the Board determined there was not enough evidence to support a violation of statute but there was a concern about an MD's conduct, it issued a nondisciplinary advisory letter of concern or order for continuing medical education. However, if the Board found that there was enough evidence to support a violation of statute, it took disciplinary action such as issuing a decree of censure or letter of reprimand; and
- Monitored compliance with disciplinary actions and other agreements between MDs and the Board.

### Complaint prioritization

- **Priority 1**—Complaints regarding actions that pose substantial danger to public safety and represent a potential for imminent threat, such as allegations of sexual misconduct, inappropriate prescribing resulting in death, reports regarding suspension or revocation or restriction of privileges, or other cases as determined by management and executive staff.
- **Priority 2**—Complaints regarding actions that are potentially harmful but not a substantial danger or imminent threat. All complaints regarding quality of care or professional conduct cases that are not priority 1 are priority 2.
- **Priority 3**—Complaints regarding actions that pose a minimal risk to public safety, such as allegations of failure to provide medical records or cases concerning billing.

Source: Auditor General staff analysis of board policy.

<sup>11</sup> Auditors drew this sample from approximately 2,300 complaints received in calendar year 2015 and 2016 that were resolved or in interim status as of February 2017. Interim statuses are agreements between the Board and MDs that include practice restrictions and stipulated rehabilitation agreements to ensure public health and safety while a complaint is in the process of being resolved. Auditors randomly selected complaints with different resolutions to include five cases that resulted in disciplinary action, five cases that resulted in nondisciplinary action, five cases for which the executive director recommended dismissal, five cases that were dismissed by the Board, five cases that were administratively closed, and five cases that resulted in interim status.

## Some complaint resolutions delayed, but Board has taken steps to improve timeliness

Auditors' review of the 30 complaints indicated that although complaints were investigated and adjudicated appropriately, some experienced delays during various phases of the complaint-handling process. Specifically, these complaints were resolved or placed on interim status between 21 and 531 days after receipt. In addition, auditors analyzed board data for 1,413 complaints received in calendar year 2016. According to this analysis, 52 percent of these complaints were resolved in 180 days or fewer, and another 24 percent took longer than 180 days to resolve, ranging from 181 to 428 days.<sup>12</sup> The remaining 24 percent of the complaints were still open as of March 28, 2017, of which just over half had been open more than 180 days. Although auditors identified some delays in complaint handling, they did not identify any potential negative impact on public health and safety as a result of those delays for the 30 complaints reviewed. Rather, auditors observed that board staff assigned high priority to complaints against MDs who posed a potential or imminent threat to public health and safety, such as those with complaints of sexual misconduct or drug or alcohol addictions. In some cases, the Board placed these MDs in an interim status that restricted their practice while they were evaluated, received treatment, or were monitored for compliance with board orders.

Auditors noted some factors that contributed to delays in complaint resolution. These factors, as well as steps the Board has taken to mitigate the causes for delays, include:

- **Records requests**—A complaint will not progress through the complaint-handling process until investigators have collected all the records needed to conduct a thorough investigation and make a sound determination. Although collecting these documents can be time-consuming, auditors observed that investigative staff take several steps to prevent or minimize delays. Investigative staff often subpoena records from MDs and parties outside of the Board's jurisdiction, such as hospitals, clinics, and other government agencies. If an entity does not provide documents, investigative staff may re-subpoena that entity. Board staff also communicate with the entity to facilitate the timely collection of these documents. Still, untimely provision of requested records can delay the Board's investigation. For example, in 1 of the 30 cases auditors reviewed, the investigative staff sent an initial subpoena to a federal agency for medical records. After the agency did not provide the records by the deadline in the subpoena, investigative staff worked with the Board's assistant attorney general and with the federal agency's staff to facilitate the release of the records needed for the investigation. The information was provided about 4 months after the original deadline.
- **Outside medical consultant (OMC) review**—For complaints that involve a medical specialty, board staff take steps to find an MD to review them as an OMC. However, board staff sometimes experience difficulties in finding an MD who has the time to review the complaint and does not have a potential conflict of interest with the subject of the complaint. Board staff reported that it can be especially difficult to find OMCs within certain specialties, such as addiction medicine and bariatric surgery. Additionally, the Board pays OMCs \$150 per complaint reviewed, which board staff indicated does not provide much of a financial incentive.<sup>13</sup> A 2006 report on state discipline of physicians noted states with low payment rates struggle to recruit medical consultants.<sup>14</sup> Additionally, this report explained that many professionals, like MDs, might feel reluctant to investigate a colleague or fellow MD. Delays in finding an OMC are an ongoing challenge for the Board and were evident in auditors' analysis of the complaints received in 2016 and the 30 complaints reviewed. Specifically, for the 30 complaints reviewed by auditors, 13 required an OMC's review. In 10 of these complaints, it took investigative

<sup>12</sup> Auditor General staff developed a 180-day standard for timely complaint resolution for the Board's 1994 performance audit and re-evaluated this criterion for the Board's 2017 performance audit. Auditors consulted with a 2006 report on state discipline of physicians and found that, in the experience of the state medical boards surveyed, 180 days is the average resolution time for less complex cases, while more complex cases averaged 425 days (see Bovbjerg, R. & Aliagathe, P. (2006). *State discipline of physicians: Assessing state medical boards through case studies*. Washington, DC: U.S. Department of Health and Human Services). As a result, auditors used 180 days as a guideline rather than a standard.

<sup>13</sup> The Arizona board that regulates doctors of osteopathy also uses OMCs to review complaints. For comparison, the Arizona Board of Osteopathic Examiners in Medicine and Surgery pays its medical consultants up to \$450 per complaint review but may pay more upon approved request for an increased stipend if the complaint is extensive and requires more time to review.

<sup>14</sup> Bovbjerg & Aliagathe, 2006.

staff approximately 2 to 10 months to find an OMC to agree to review them. For example, it took over 100 days for board investigative staff to find and assign an OMC to a complaint that was opened as a result of a medical malpractice settlement. For another complaint that required a psychiatric specialist, it took board staff over 160 days to find and assign an OMC to the complaint. During this time, board staff requested three other medical consultants to review the complaint before a fourth accepted.

To help avoid delays, the Board employs two full-time staff whose duties include locating, recruiting, and managing OMCs. Board staff also sometimes recruit OMCs from other states when an in-state MD is not available. In addition, the Board advertises its need for OMCs in its renewal applications and newsletter, and it counts the review of complaints and completion of OMC reports toward OMCs' continuing medical education requirements. Auditors did not identify any additional steps the Board could take to address challenges associated with finding OMCs.

- **SIRC review**—As indicated in Figure 1 (see page 10), if an investigator or medical consultant and supervisor substantiate a violation, the completed investigation is sent to a SIRC for review and recommendation. Fifteen of the 30 complaints auditors reviewed required SIRC review. Those complaints waited between approximately 1 and 8 months for a SIRC review. Delays in SIRC review were also evident in auditors' analysis of complaints received in 2016, where SIRC reviews were generally completed several months after they were ready for review. According to board management, these delays resulted from having more investigated complaints that required a SIRC review than the review process could handle in a timely manner. Board management explained that in 2015, the Board had one SIRC that reviewed ten complaints each week that a board meeting was not scheduled. Some lower-priority cases would be bumped from that SIRC's schedule to accommodate higher-priority complaints, which contributed to longer delays for lower-priority complaints.

Board management reported that in late 2015, board management trained additional administrative staff, medical consultants, and assistant attorneys general to form additional SIRCs to increase the Board's capacity to review complaints. In January 2016, the Board created a second SIRC to review cases, and in September 2016, the Board created a third SIRC. Once these SIRCs reviewed the complaints that had been waiting for review, board management returned to having one SIRC. However, to help ensure that complaints do not have lengthy waits for SIRC review, the Board established a procedure in January 2017 to convene an additional SIRC if there are an excessive number of complaints awaiting review. Additionally, the investigations manager indicated that she will take further steps to ensure cases can be reviewed by a SIRC in a timely manner. She explained that if more than 12 cases are ever awaiting SIRC review, she will ask an additional internal medical consultant to review the additional complaints. This action allows one SIRC to review all of the complaint cases without overburdening the chief medical consultant or his designee. For example, in April 2017, the Board's investigations manager noted that there were 17 complaints awaiting a SIRC review, so she asked one of the Board's internal medical consultants to review an additional 5 complaints. Having another internal medical consultant assist in reviewing the complaints allowed one SIRC to hear all 17 complaints.

- **Board meeting frequency**—In 2014 and most of 2015, the Board conducted meetings that included agenda items for complaint resolution once every other month. According to board management, this meeting frequency was inadequate to keep up with the number of complaints that were reviewed by a SIRC and were ready for board action. Therefore, in 2016 and 2017, the Board met more frequently and for a longer duration, in part to review and resolve complaints. Specifically, in those intervening months when no board meeting would have occurred, the Board met telephonically. Additionally, for in-person board meetings, the Board sometimes met over 2 days instead of 1 day.

In addition, board management procedures require each investigative staff member to take meaningful action for each complaint at least once each month. Compliance with this procedure is accomplished through a reporting tool linked to the Board's database that lists all open cases, the investigator assigned, the last action on each case, and how many days prior that action was taken. According to the investigations manager, investigators are responsible for pulling their own reports and ensuring that meaningful action is taken every month. She further explained that she reviews the reports every 3 months and sends periodic reminders to investigators to ensure they are reviewing the reports. For overall timeliness monitoring, another report identifies how many days each open case has been open. Finally, board management reported that they meet weekly to discuss

open complaints, how to prioritize them considering available resources, and what actions to take to help move specific complaints toward resolution.

Because most of the Board's measures to reduce delays in complaint handling were implemented in 2016, which coincided with the scope of auditors' analysis, auditors were not able to determine their long-term impact on complaint resolution timeliness. The Board should continue to implement the measures it adopted to address delays in its complaint resolution process. The Board should also assess the impact of these measures on complaint resolution timeliness and take additional actions, as needed, should resolvable delays persist.

### **Recommendation**

- 2.1. The Board should continue to implement the measures it adopted to address delays in its complaint resolution process. The Board should also assess the impact of these measures on complaint resolution timeliness and take additional actions, as needed, should resolvable delays persist.



### Public information

The Arizona Medical Board (Board) provides accurate public information in physician profiles available through its website and generally provided accurate, appropriate, and timely information about licensees in response to phone inquiries. This chapter does not include any recommendations.

#### Board provides accurate and appropriate information in physician profiles

The Board provides accurate and appropriate information about doctors of medicine (MDs) on its website. Specifically, the Board's website includes a doctor search feature that allows the public to look up and review physician profiles for MDs with active, revoked, and inactive licenses. The information on the profiles includes the MD's name, date of initial licensure, date the physician's license was last renewed, medical degree, post-graduate training, and disciplinary actions taken against an MD's license. In March 2017, auditors compared the profiles of a random sample of 29 MDs from the Board's website to its licensing and complaint files and found the profiles to be accurate. In addition, the disciplinary histories provided on the MDs' physician profiles complied with Arizona Revised Statutes (A.R.S.) §32-3214, which prohibits state agencies from providing information on their websites about dismissed complaints or complaints that resulted in nondisciplinary action. In accordance with this statute, each MD's profile on the website includes a statement that members of the public may request information about dismissed complaints or complaints that resulted in nondisciplinary action by contacting the Board directly.

#### Board generally provided accurate, appropriate, and timely licensee information over the phone

Auditors' calls to the Board's office to request information about licensees resulted in generally accurate, appropriate, and timely information. Although the Board is prohibited from divulging information about dismissed complaints and nondisciplinary actions on its website, A.R.S. §32-3214 makes this information available to the public pursuant to A.R.S. §39-121. In March and April 2017, auditors placed eight anonymous calls to the Board to request information about seven licensees with varying disciplinary histories. Board staff provided statutorily permissible information at the time of or within 3 hours of each phone call. The information included:

- Details about closed complaints, including any that resulted in disciplinary or nondisciplinary action against the licensee;
- Information about a closed complaint that resulted in dismissal; and
- The existence and number of a licensee's open complaints (i.e., not yet investigated or adjudicated), but not the nature of these complaints, as prohibited by statute.

In addition, board staff also appropriately did not divulge portions of a licensee's complaint history that is confidential by statute. Specifically, when auditors requested the complaint history for an MD who entered into an agreement with the Board for drug abuse rehabilitation pursuant to A.R.S. §32-1452, board staff did not divulge this information.

For one of the eight calls, board staff appropriately disclosed a nondisciplinary action but inappropriately did not disclose the existence of two open complaints. The board staff who provided the information reported that she realized the error after the telephone call was concluded, but that she was unable to follow her usual practice of calling back to provide the additional information because the auditor made the call anonymously. Although the Board's policies and procedures and training for providing public information were generally adequate, to mitigate potential effects of similar errors, board management implemented a new written procedure in May 2017. The procedure requires board staff to maintain a log of phone calls and voice messages that includes caller name and contact information and information provided to the caller about MDs. The procedure also requires that if board staff determine incomplete or inaccurate information was provided after a call ends, board staff shall place a follow-up call and log that additional information was provided. Finally, the procedure directs board management to review the log to determine the appropriateness of the responses and discuss any findings with staff.



## Physician Health Program (PHP)

During the audit, auditors identified an additional board function that helps ensure doctors of medicine (MDs) are able to safely practice medicine. The PHP is a board-sponsored program for MDs who may have substance abuse, medical, or mental health issues that may affect their practice. This report chapter has no recommendations but provides information regarding the PHP and how other states administer similar programs.

### Board sponsors PHP to help ensure safe practice of medicine

The PHP is a board-sponsored program, operated by an outside contracted medical group (Contractor), to perform assessments and post-treatment monitoring of MDs who may suffer from substance abuse, medical, or mental health issues that may affect their ability to safely practice medicine or perform healthcare tasks. Arizona Revised Statutes §§32-1452 and 32-1452.01 authorize the Board to establish this program and contract for its operation. The Board implemented these statutes by initiating a competitive bidding process for operating the PHP by obtaining proposals from qualified providers. Because the statutes do not specify qualifications for eligible providers, the Board established provider qualifications in its request for proposal and the contract. These qualifications are an active and unrestricted MD or doctor of osteopathy license and practice experience in specialties such as addiction medicine. Additionally, through the contracting process, the Board set specific costs for services associated with assessments and post-treatment monitoring to be paid by the participating MDs. MDs are responsible for paying all program costs while in the PHP. The Board may refer MDs as a condition of licensure or through the complaint resolution process. In addition, MDs may refer themselves to the PHP. The PHP encompasses three phases: assessment, treatment, and post-treatment monitoring. Specifically:

- **Assessment**—MDs entering the PHP undergo an initial assessment. The Board issues confidential orders for an MD's assessment if it believes public health and safety may be at risk. During this initial assessment, the Contractor assesses the MD to evaluate the MD's ability to safely practice and to make recommendations to the Board regarding possible treatment and post-treatment monitoring. Assessments may include various evaluations or testing, such as drug testing or psychiatric assessments. The Contractor can also recommend further evaluation after the initial assessment if more information is needed. The Contractor may subcontract with outside providers as needed. For example, the Contractor subcontracts for psychiatric assessments because it does not practice psychiatry. As stipulated in the contract, the Contractor may charge MDs an initial assessment cost of either \$1,500 or \$2,000 depending on the complexity of the case, and these prices are fixed regardless of whether the Contractor or a subcontractor performs the assessment. Based on the results of the assessment, the Contractor may develop specific treatment recommendations for the Board's consideration or may recommend that no treatment is needed.
- **Treatment**—If the Contractor recommends treatment, and the Board agrees with the recommendations, the Board may enter into an agreement with the MD that requires the MD to undergo treatment to address the substance abuse, medical, and/or mental health issue(s) identified during the assessment.<sup>15</sup> Treatment can

<sup>15</sup> Based on auditors' review of PHP documents, auditors determined that the Board does not always agree with the Contractor's recommendations. Board staff reported that this happens infrequently and referred auditors to three cases from 2011 through 2015 where the Board did not agree with the Contractor's recommendations. For example, in a 2014 case, an MD sought early termination of his agreement with the Board and was referred to the Contractor for an evaluation and recommendation. The Contractor recommended that the Board deny his request for early termination of his agreement, but the Board opted to permit the MD to seek a second opinion on whether or not the agreement should be terminated.

consist of inpatient or outpatient care at medical, psychiatric, or substance abuse facilities. The Contractor does not provide treatment; rather, according to board staff, MDs may obtain treatment from any board-approved provider or submit for approval a provider of their choice. MDs are responsible for paying their treatment costs, which are set by the providers, but an MD's private insurance may cover some of these costs.

- **Post-treatment monitoring**—Once treatment is completed, the terms of the agreement between the Board and MD may require the MD to participate in post-treatment monitoring. During post-treatment monitoring, the Contractor oversees the MD for compliance with board requirements as specified in the agreement, such as forgoing alcohol or illegal drugs. The Contractor is responsible for monitoring the MD's participation in required post-treatment programs. For example, for MDs with a risk of addiction, the Contractor subcontracts with qualified therapists to run weekly relapse prevention group sessions. In addition, the Contractor is responsible for coordinating and administering random drug screenings for MDs in post-treatment, as applicable. The post-treatment monitoring phase typically lasts 2 to 5 years, as determined by the Board.<sup>16</sup> As set forth in the contract, MDs are responsible for paying the Contractor the costs of post-treatment monitoring. MDs with medical or mental health disorders pay \$300 per quarter for monitoring, while MDs with substance abuse disorders pay \$500 per month for monitoring. According to board staff, the cost difference is due to the added elements of monitoring for MDs with substance abuse disorders, such as drug screenings, prevention groups, or self-help log tracking. MDs participating in therapy sessions also pay \$100 per session. If additional services are required, such as reviewing and providing opinions regarding MDs' requests for modification or early termination of board agreements, the hourly rate is \$325.

According to board management, as of February 2017, approximately 100 MDs of about 23,000 total active MDs in Arizona were participating in the PHP.

## Board is seeking additional PHP contractors

The Board is seeking additional contractors to administer the PHP. According to board management, the Contractor has operated the PHP since 1992 because it has been the sole respondent each time the contract has been out for bid. Auditors reviewed the most recent contract solicitation, which occurred in 2012, and noted that the State Procurement Office (SPO) determined that the Contractor, who was the sole respondent, was an acceptable provider and concluded that the bid was fair and reasonable. In addition, auditors determined that the Contractor's key staff are licensed MDs with unrestricted licenses who are currently practicing addiction medicine and thus meet the qualifications specified in the contract terms. As previously discussed, the ensuing contract, which expires at the end of 2017, includes the initial assessment and post-treatment monitoring of MDs referred to the PHP.

However, the Board is taking steps to expand the number of contractors that provide assessment and/or post-treatment monitoring in the PHP. Specifically, the Board is seeking to expand the number of contractors to avoid the potential for a conflict of interest that may result from having a sole contractor recommend and then be paid to perform post-treatment monitoring for MDs. Board management acknowledged that having a single contractor for both assessment and post-treatment monitoring can lead to a perception of a conflict of interest, although it does not believe that actual conflicts of interest have occurred. General Counsel for the Office of the Auditor General has reviewed the contract and noted that it includes certain clauses that reduce the risk of actual conflicts of interest. These include prohibiting the Contractor from communicating with the evaluation subcontractors and treatment facilities regarding substantive aspects of the MD's evaluation; requiring the Contractor to declare and avoid all acts or relationships that create a conflict of interest or the appearance of a conflict of interest; and requiring the Contractor to assess and report on nonsubjective criteria in post-treatment monitoring, including random biological fluid drug testing results, whether required alcohol/drug awareness education classes were completed, and whether required written notice of plans to travel out of state were submitted by participants. In addition, the Contractor only makes treatment recommendations to the Board, which the Board may accept or reject. Auditors' review of documents for some MDs who participated in the PHP indicated that the Contractor

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<sup>16</sup> MDs may request early termination of board orders for post-treatment monitoring.

does not recommend post-treatment monitoring for all MDs it evaluates, and the Board does not universally adopt all of the Contractor's recommendations.

To encourage more respondents to operate aspects of the PHP, the Board may separate the PHP's assessment and post-treatment monitoring services into separate contracts, for which different contractors could submit a bid to provide one or both of these services. As of May 2017, the Board had issued a request for information (RFI), and was planning to issue a second RFI, to assist the Board in gathering information to draft separate competitive requests for proposals for assessment and post-treatment monitoring services contracts. According to board management, the Board hopes to contract with additional providers throughout the State. Board management emphasized its goal is to have providers who offer more geographic and gender options for the assessment service, in particular. The Contractor comprises only two male MDs who are located in the Phoenix area. The Board has established a subcommittee to gather information and discuss how the Board should proceed in procuring new contracts. As in the past, the Board is working with SPO to garner interest in the contracts and advertise the request for proposals. The Board anticipates the contracts will be in place by the beginning of 2018.

## Other states reported variation in how they administer similar programs

Auditors interviewed medical boards in five other states—California, Nevada, New Mexico, Utah, and Washington—to obtain information regarding similar programs in their states. Auditors found these states' programs vary considerably. Specifically:

- The Medical Board of California (California Board) reported that it did not have a program similar to the PHP as of April 2017. It previously had a diversion program, but this program was discontinued by legislation in 2008. However, California passed legislation in 2016 to implement a program beginning at the earliest in 2018. This legislation will require the California Board to contract for the program's administration with a private third-party independent entity and require physicians to enter into individual agreements with the program and to pay all costs related to treatment, monitoring, and laboratory tests.
- The Nevada State Board of Medical Examiners (Nevada Board) reported that it may refer impaired physicians to its diversion program for assessment. According to Nevada board staff, physicians may choose from four providers who have a memorandum of understanding with the Nevada Board for assessment and/or treatment and who are located throughout the state. Nevada board staff stated that the physicians bear all costs of the program per the Nevada Administrative Code; the Nevada Board does not negotiate prices for them.
- The New Mexico Medical Board (New Mexico Board) reported that it contracts for its monitored treatment program for impaired physicians. The New Mexico Board refers a potentially impaired physician to a contractor's in-house psychiatrist for initial assessment. If needed, the contractor monitors the physician for compliance with the psychiatrist's recommendations for treatment and monitoring. The New Mexico Board reported that it pays the outside contractor \$208,000 annually for its assessment and monitoring services, which are provided at no cost to the physician. However, the physician must pay the costs related to the recommendations, such as treatment with an outside provider and fluids testing.
- The Utah Physicians and Surgeons Licensing Board (Utah Board), which is housed in the Division of Occupational and Professional Licensing (Division), reported that it relies on self-referrals into its diversion program. Physicians may choose from eight approved providers, but the Division will consider other requests from the physician. Services from these providers may include evaluation, treatment, and therapy. A division contractor monitors and drug tests physicians in the diversion program, as needed. According to Utah board staff, physicians in the program pay all costs associated with evaluation, treatment, and monitoring.
- The Washington Medical Quality Assurance Commission (Washington Commission) reported that it is statutorily required to contract with the Washington Physicians Health Program (WPHP), which provides preliminary assessment and post-treatment monitoring for referred physicians, as well as other regulated

health professionals such as dentists, veterinarians, podiatrists, and physician assistants. According to Washington commission staff, the WPHP does a preliminary assessment with two reviewing clinicians in their offices. They contract for full assessments if they feel there could be cause for concern. The WPHP does not provide treatment, which participants obtain from outside providers. The participating regulatory authorities charge an annual additional assessment on all licenses to help subsidize the cost of this program. Under certain circumstances, the regulatory authority will pay part of the cost of a participant's evaluation. Generally, participants in substance abuse monitoring pay \$200 per month for program fees and \$70 per urine toxicology test. For behavioral health monitoring, program participant costs are \$75 per month.



# SUNSET FACTOR ANALYSIS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether the Arizona Medical Board (Board) should be continued or terminated. This section of the report has no recommendations.

**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 established in 1913 to regulate the practice of medicine in Arizona. Its mission is to protect public safety through the judicious licensing, regulation, and education of all allopathic physicians (also known as “doctors of medicine,” or MDs). The Board accomplishes its mission by setting educational and training standards for licensure and by adjudicating complaints made against MDs, interns, and residents to ensure that their conduct meets the standards of the profession, as defined in A.R.S. §32-1401. The Board also provides information to the public on MDs’ licensure status and disciplinary history.

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 generally met its statutory objective and purpose by licensing qualified applicants in a timely manner (see Chapter 1, pages 5 through 8); appropriately resolving complaints against licensees (see Chapter 2, pages 9 through 14); and providing accurate, appropriate, and timely information to the public (see Chapter 3, pages 15 through 16).

However, as discussed in these chapters, the Board should continue to:

- Use its newly implemented secondary review procedure for trainees to ensure that renewal applicants meet all statutory and rule requirements, including ensuring that all applicants who are chosen for CME audit are audited, and if audited, ensuring that the applicants submit proof of meeting CME requirements (see Chapter 1, pages 6 through 7).
- Implement the measures it has adopted to prevent delays in investigating and adjudicating complaints, including increasing the number of board meetings it holds annually, assembling additional complaint investigation review committees when needed, and actively managing caseloads. The Board should also assess the impact of these measures on complaint resolution timeliness and take additional actions, as needed, should resolvable delays persist (see Chapter 2, pages 12 through 14).

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

The Board serves the entire State by licensing and resolving complaints against MDs who practice throughout Arizona.

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

The Board is fulfilling its statutory responsibilities in promulgating, reviewing, and updating its rules. General Counsel for the Office of the Auditor General has analyzed the Board’s rulemaking statutes and has advised that the Board has established rules required by 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.**

As discussed in Chapter 3 (see pages 15 through 16), the Board provides accurate, appropriate, and timely public information about MDs on its website and generally does so in response to public inquiries.

In addition, auditors found that the Board provided opportunities for input from the public before adopting rules by publishing notices and holding public meetings. Rules the Board proposed between calendar years 2014 and 2016 were exempted from the rulemaking process either by Governor order or session law and, thus, did not have the same public information requirements that apply to the standard rulemaking process.<sup>17</sup> However, the Board still encouraged input from the public by posting proposed rules on its website for 30 days for the calendar year 2016 rule revisions and holding three public meetings for the calendar year 2015 rule revisions. Additionally, as of May 2017, the Board was conducting a 5-year rule review. As required in A.R.S. §41-1056, every state agency shall review all of its rules at least once every 5 years to assess effectiveness and impact. For the review, the Board issued a request to the public on its website to obtain input on how the Board's rules should be revised. The Board also held two public comment sessions in March and May 2017. According to board management, the Board did not receive any input regarding the 5-year rule review.

Further, auditors assessed the Board's compliance with various provisions of the State's open meeting law for its February and March 2017 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 website at least 24 hours in advance and posted the notices and agendas at the physical locations where its website states they will be posted. The Board also posted written meeting minutes on its website within 3 business days following the board meetings. These meeting notices and written minutes complied with statute by providing the date, time, and exact location of the meeting on both the meeting notices and written minutes. Auditors determined that the minutes accurately represented topics for discussion and decisions made at each meeting. Further, the Board also made calls to the public and professional stakeholders to address the Board during the board meetings regarding items of personal and professional concern.

**6. The extent to which the Board has investigated and resolved 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 decree of censure, ordering continuing medical education, imposing probation, and suspending or revoking a license. Auditors found that the Board opened, investigated, and adjudicated complaints appropriately (see Chapter 2, pages 9 through 14). Although auditors identified some delays in complaint resolution, the Board has adopted several measures to prevent such delays, including increasing the number of board meetings it holds annually, assembling additional complaint investigation review committees when needed, and actively managing caseloads. Auditors recommended that the Board should continue to implement these measures, assess their impact on complaint resolution timeliness, and take additional actions, as needed, should resolvable delays persist.

**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).

**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 it proposed statutory changes in 2017 to address deficiencies in its statutes. These statutory changes included:

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<sup>17</sup> Executive Orders in 2012 and 2015 exempted all state regulatory boards from rulemaking requirements in an effort to streamline existing rules. Laws 2015, Ch. 251, §3, exempted only the Board from rulemaking requirements for 1 year effective July 3, 2015.

- Laws 2017, Ch. 92, §5, which amended A.R.S. §32-1438 to require applicants for a temporary MD license to meet more stringent requirements prior to temporary licensure. This change modified the statute, enacted by Laws 2016, Ch. 137, §2, that permits the Board to issue a temporary license to a physician who is also applying for full MD licensure so that he/she may practice in the State for up to 250 days, or until the full license is granted.<sup>18</sup> As enacted, the requirements for temporary licensure included licensure in another state and a complaint history that did not include any open complaints or license revocations. As amended, the statute requires the Board to obtain confirmation that applicants have met the basic requirements for the full MD license.<sup>19</sup> In addition, the revised statute allows the Board to deny, revoke, or suspend the temporary license and withdraw the application for full MD licensure if the applicant makes misrepresentations on his/her application.
- Laws 2017, Ch. 92, §3, which amended A.R.S. §32-1422 to remove the requirement that applicants for MD licensure obtain primary source verification of all hospitals where the doctor has or had practice privileges. According to board management, this requirement did not safeguard public health and safety because the information is available through other sources, such as the National Practitioner Databank, which includes reports of adverse actions against physicians at hospitals. These reports are available upon board staff demand, whereas primary source verification of hospital affiliation takes time to obtain.
- Laws 2017, Ch. 92, §§1, 6, and 7, which amended A.R.S. §§32-1401, 32-1452, and 32-1452.01 to revise the Board's Physician Health Program. These changes included an updated definition of substance abuse for the Board to use when addressing a substance abuse concern, an option for the Board to send relapsed MDs to intensive outpatient treatment, and provisions to allow the Board to give MDs with potential behavioral or physical health issues the same access to confidential rehabilitation that is available to MDs undergoing rehabilitation for substance abuse.

**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.**

Auditors 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 public health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board's role is to protect the public by regulating the practice of medicine. 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 alleging actions by MDs who posed a threat to the public, including MDs who allegedly inappropriately prescribed controlled substances and had inappropriate physical contact with patients.

**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.**

According to the Federation of State Medical Boards, all 50 states regulate MDs. The audit found that the level of regulation exercised by the Board appears appropriate and is generally similar to that in other states. Specifically, similar to most states, Arizona issues MD licenses, post-graduate training permits, and dispensing registrations. In addition, the Board is statutorily permitted to revoke licenses, issue a summary license suspension, place a licensee on probation, enter into a stipulation or consent agreement, and issue

<sup>18</sup>This license type became effective on July 1, 2017.

<sup>19</sup>These statutory changes also include a provision that allows the Board to confirm licensure in other states and employment history through non-primary source means, such as websites. The Board is still required to verify this information via primary source for full MD licensure.

a civil penalty as a result of violating professional standards. This is consistent with most other states, which allow for similar disciplinary actions.

In calendar year 2016, Arizona enacted legislation to participate in the medical licensure compact (compact). States participating in the compact formally agree to adopt common rules and procedures that streamline medical licensure so that MDs can more easily obtain licenses in multiple states. According to the Interstate Medical Licensure Compact Committee, as of May 2017, 18 states had enacted the compact and 8 states had active legislation to do so.

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 uses private contractors to perform its duties, which include expert witnesses at hearings, outside medical consultants, temporary licensing staff, board meeting security, and court reporters. Auditors compared the use of contractors for these types of services with that of five western states' medical boards—California, Nevada, New Mexico, Utah, and Washington. Auditors found that the Board generally uses contractors to the same extent as the five other states. However, auditors found that similar to Arizona, only Nevada and New Mexico contract with temporary staff.

The Board also contracts with an outside medical group to perform assessments and post-treatment monitoring of MDs who may suffer from substance abuse, medical, or mental health issues that may affect their ability to safely practice medicine or perform healthcare tasks (See Chapter 4, pages 17 to 20, for more information about the Physician Health Program).

Auditors did not identify any additional areas where the Board should consider using private contractors.



## Methodology

Auditors used various methods to study the issues in this performance audit and sunset review of the Arizona Medical Board (Board). These methods included reviewing board statutes, rules, and policies and procedures; interviewing board members and staff; and reviewing information from the Board's website. Auditors also reviewed minutes from and attended four board meetings held in February and March 2017. In addition, auditors used the following specific methods to meet the audit objectives:

- To determine whether the Board issued licenses, permits, and registrations to qualified applicants in a timely manner, auditors reviewed random samples of 26 applications for doctor of medicine (MD) licenses received by the Board in calendar years 2015 and 2016, and approved as of February 23, 2017; 5 applications for post-graduate training (PGT) permits received in calendar year 2016; 5 dispensing registration applications that the Board approved in calendar year 2016; and the one MD license application the Board denied in calendar years 2015 and 2016.<sup>20</sup> Auditors also reviewed a random sample of 30 of the 107 MD renewal license applications that had been selected for continuing medical education audit on November 1, 2016, whose licenses were renewed as of February 22, 2017. Additionally, auditors reviewed the Board's application forms for initial licensure, MD renewals, PGT permits, and dispensing registrations, and compared them to statutes and rules. Finally, auditors analyzed board data for the 2,693 initial MD license applications received in calendar years 2015 and 2016 and approved as of February 2017 and for the 30 renewal license applications selected for CME audit that auditors reviewed to calculate the licensing and renewal processing time frames and determine whether they complied with board rules.
- To assess whether the Board appropriately investigated and adjudicated complaints, auditors reviewed a random sample of 30 complaints the Board received during calendar years 2015 or 2016 that were resolved or in interim status as of February 2017.<sup>21,22</sup> Auditors also reviewed the process that board staff used to monitor and track the complaints, including mechanisms for addressing complaint investigation backlogs and board staff entries in the Board's database. In addition, auditors analyzed board data for the 1,413 complaints the Board received in calendar year 2016 and that were resolved or still open as of March 28, 2017, to evaluate the amount of time the Board took to resolve complaints. Additionally, auditors reviewed the U.S. Department of Health and Human Services' *State Discipline of Physicians: Assessing State Medical Boards Through Case Studies* to determine how different state boards handle complaint cases.<sup>23</sup>
- To assess whether the Board shared appropriate information with the public, auditors placed eight anonymous phone calls to board staff in March and April 2017 requesting information about seven licensees and compared the information provided to board records. Auditors also reviewed licensing and disciplinary

<sup>20</sup> The 26 approved MD licenses, 5 PGT permits, and 5 dispensing registrations were chosen from sampling populations of 2,664, 382, and 734, respectively.

<sup>21</sup> Interim statuses are agreements between the Board and MDs that include practice restrictions and stipulated rehabilitation agreements to ensure public health and safety while a complaint is in the process of being resolved.

<sup>22</sup> The 30 complaints were chosen from a sampling population of approximately 2,300 complaints. Auditors randomly selected complaints with different resolutions to include 5 cases that resulted in disciplinary action, 5 cases that resulted in nondisciplinary action, 5 cases for which the Executive Director recommended dismissal, 5 cases that were dismissed by the Board, 5 cases that were administratively closed, and 5 cases that resulted in interim status.

<sup>23</sup> Bovbjerg, R. & Aliagathe, P. (2006). *State discipline of physicians: Assessing state medical boards through case studies*. Washington, DC: U.S. Department of Health and Human Services.

information for a random sample of 29 licensees to assess whether the information provided on the Board's website matched the Board's files.

- To obtain information about the Physician Health Program (PHP), which is operated by an outside contracted medical group (Contractor), auditors reviewed related contract and procurement documents, as well as the Contractor's assessment documents and board orders and agreements for some PHP participants. In addition, auditors contacted staff from medical boards in five states—California, Nevada, New Mexico, Utah, and Washington—to learn about similar programs in their states.
- To obtain information for the Introduction, auditors compiled and analyzed unaudited information from the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2015 and 2016; the State of Arizona *Annual Financial Report* for fiscal years 2015 and 2016; and board-provided financial estimates for fiscal year 2017. In addition, auditors reviewed unaudited May 2017 board information and Joint Legislative Budget Committee fiscal year 2018 budget documentation regarding the Board's staffing.
- To obtain information used in the Sunset Factors, auditors reviewed information in the Arizona Administrative Register from calendar years 2014, 2015, and 2016, and assessed the Board's compliance with various provisions of the State's open meeting law for board meetings held in February and March 2017. In addition, auditors reviewed the Federation of State Medical Boards' *U.S. Medical Regulatory Trends and Actions* to identify levels of regulation in all 50 states that have medical boards.<sup>24</sup> Auditors also contacted staff from medical boards in five states—California, Nevada, New Mexico, Utah, and Washington—to obtain information about their use of private contractors.
- 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 reported their conclusions on these internal controls and, where applicable, board efforts to improve its controls in Chapters 1 through 3 of the report. In addition, auditors assessed the reliability of the Board's database information for performing audit work. Specifically, auditors interviewed board staff; reviewed database controls; compared information in the database against licensing and complaint files; and performed work to validate downloaded data, such as reviewing the data for blank or erroneous fields. Through this work, auditors determined that the Board's database was sufficiently reliable for audit purposes.

Auditors conducted this performance audit and sunset review of the 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.

The Auditor General and staff express their appreciation to the Board and its Executive Director and staff for their cooperation and assistance throughout the audit.

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<sup>24</sup> Federation of State Medical Boards. (2014). *U.S. medical regulatory trends and actions*. Euless, TX.

# AGENCY RESPONSE



## Arizona Medical Board

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### Executive Director

**Patricia E. McSorley**

August 4, 2017

Debbie Davenport, Auditor General  
State of Arizona, Office of the Auditor General  
2910 N. 44<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85018

RE: Response to Preliminary Report

Dear Ms. Davenport,

Thank you for the opportunity to respond to the revised draft preliminary performance audit and sunset review report for the Arizona Medical Board ("Board") dated July 11, 2017. The Board is in agreement with the findings and recommendations from the Auditor General, and each will be discussed below as requested.

### **LICENSING, PERMITTING, AND REGISTRATION**

**Recommendation 1.1: The Board should continue using its newly implemented secondary review procedure for trainees to ensure that renewal applicants meet all requirements in statute and rule, including ensuring that all applicants who are chosen for Continuing Medical Education ("CME") audits are audited, and if audited, ensuring that the applicants submit proof of meeting CME requirements.**

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

As noted by the audit, the Board has implemented a secondary review procedure that ensures that new employees can properly evaluate and determine compliance with renewal requirements, including the CME audit process. This procedure will continue to be used in order to ensure that all renewal applications meet the requirements for statute and rule, and those applications needing a CME audit are properly processed by Board staff.

### **COMPLAINT RESOLUTION**

**Recommendation 2.1: The Board should continue to implement the measures it adopted to address delays in its complaint resolution process. The Board should also assess the impact of these measures on complaint resolution timeliness and take additional actions, as needed, should resolvable delays persist.**

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

As noted by the audit, the Board has implemented a number of measures to address delays in the complaint resolution process, including steps taken to minimize delays in obtaining records for investigations, continuing efforts to increase the pool of Outside Medical Consultants ("OMCs") available for reviewing medical records and increased Board meeting

frequency when required. The Board continues to hold telephonic Board meetings in months where no regular Board meeting is scheduled. Additionally, efforts to minimize wait time for completed cases to be reviewed by the Staff Investigation Review Committee (“SIRC”) have been successful. Since January, 2017 completed cases are scheduled for the next available SIRC meeting, with meetings occurring at least once weekly, and multiple internal medical consultants continue to be utilized when necessary to avoid additional delays.

The Board notes that no recommendations were made with regard to the Auditor’s review of the Board’s public information policies and procedures, but the Board is committed to continuing to provide accurate and statutorily appropriate public information in a timely manner. Additionally, as identified by the report, the Board continues to find ways to improve its PHP program to better assist impaired physicians while protecting the public.

The Board would like to thank the Auditor General’s consideration during this process, and the professionalism of the staff involved. The Board looks forward to continuing to implement these procedures as it continues to act in accordance with its stated mission and statutory directives.

Sincerely,

Patricia E. McSorley  
Executive Director

