

Arizona Board of Funeral Directors and Embalmers

Board licensed/registered applicants without ensuring they met key public protection requirements and did not properly perform funeral establishment and crematory inspections or perform some of these inspections within the required time frame

Performance Audit and
Sunset Review

November 2020
Report 20-110

A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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November 5, 2020

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Ms. Judith Stapley, Executive Director
Arizona Board of Funeral Directors and Embalmers

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona Board of Funeral Directors and Embalmers*. This report is in response to a September 19, 2018, 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 to provide a quick summary for your convenience.

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

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

Sincerely,

Lindsey Perry, CPA, CFE
Auditor General

cc: Arizona Board of Funeral Directors and Embalmers members

Arizona Board of Funeral Directors and Embalmers

Board licensed/registered applicants without ensuring they met key public protection requirements and did not properly perform funeral establishment and crematory inspections or perform some of these inspections within the required time frame.

Audit purpose

To determine whether the Board issued licenses to individuals and businesses in the funeral industry in accordance with statute and rule requirements, conducted funeral establishment and crematory inspections as required, and provide responses to the statutory sunset factors.

Key findings

- Board licensed/registered 44 of 47 funeral establishment, crematory, prearranged funeral salesperson, cremationist, embalmer, funeral director, and multiple funeral director applicants we reviewed without ensuring they met key public protection requirements, including not performing the required fingerprint-based criminal history records check for 27 of these applicants.
- Board approved funeral establishments to sell prearranged funeral agreements without ensuring they had surety bonds in required amounts to help protect customers who purchase these agreements from financial loss.
- Board did not properly perform funeral establishment and crematory inspections we reviewed, placing business employees' health and safety at risk and consumers at financial risk.
- Board did not perform 5 of 30 funeral establishment and crematory inspections we reviewed within the statutorily required 5-year time frame, including 3 that had not been inspected for more than 7 years.
- Board has not evaluated the appropriateness of its license and registration fees.

Key recommendations

The Board should:

- Ensure that all initial licensing and registration applicants meet all statutory and rule requirements and develop and/or update and implement licensing and registration policies and procedures to address all statute and rule requirements.
- Revise its license and registration applications and application checklists to ensure they include and address all statute and rule requirements.
- Verify that funeral establishments that are applying for an endorsement to sell prearranged funeral agreements have obtained surety bonds in amounts prescribed by statute.
- Conduct licensed business inspections that assess compliance with all statutory and rule requirements and accurately document the results of the inspections; and update and implement its inspection policies, procedures, and checklists to address all statute and rule requirements.
- Conduct licensed business inspections at least once every 5 years, as required by statute.
- Conduct a review of its licensing and registration fees and work with the Legislature to revise fees accordingly.



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Board overview

The Arizona Board of Funeral Directors and Embalmers (Board) regulates the funeral industry by issuing licenses to individuals and businesses, conducting inspections, investigating and adjudicating complaints, and providing information to the public about the status of licensees. Statute requires that the Board consists of 7 members appointed by the Governor for 4-year terms, and it was authorized 4 full-time equivalent positions for fiscal year 2020. The Board does not receive any State General Fund appropriations. Rather, the Board's revenues consist primarily of licensing fees.

Active individual licenses as of March 2020	Active business licenses as of March 2020
1,509	239
Business inspections conducted in fiscal year 2019	
48	
Complaints received in fiscal years 2015-2019	
91	

Audit results summary

Key regulatory areas reviewed		
Individual licenses —Process initial applications within 110 days. Key qualifications include a criminal history records check and experience.	Issued timely ✓	Ensured qualifications met ✗
Business licenses —Process initial applications within 110 days. Key qualifications include a criminal history records check and an inspection.	Issued timely ✓	Ensured qualifications met ✗
Prearranged funeral endorsements —Process initial applications within 60 days. A key qualification includes having an adequate surety bond.	Issued timely ✓	Surety bond requirements met ✗
License renewals —Process renewals in 60 days. Funeral directors and embalmers must complete 12 continuing education hours annually.	Issued timely ✓	Continuing education met ✓
Business inspections —Inspect businesses at least once every 5 years.	Met 5-year inspection requirement ✗	Performed and documented adequately ✗
Complaint handling —Investigate complaints it receives and take action to address violations.	Followed statutory requirements for investigation ✓	Followed statutory requirements for adjudication ✓
Public information —Provide specific complaint and licensee information to the public upon request.	Provided via website ✓	Provided via phone ✓
Other responsibilities reviewed		
License time frames —Refund licensing fees and pay a penalty to the State if it does not process an application within the required time frames.	Tracked license time frames ✗	Assessed need to refund fees ✗
Fee setting —Establish fees based on the actual costs of providing services.	Assessed costs ✗	Based fees on actual costs ✗
Conflicts of interest —Sign a disclosure form annually and recuse oneself from decisions involving substantial interests.	Board members and staff signed annual disclosure form ✓	Board members with conflicts recused selves during board meetings ✓
Open meeting law —Requirements include involving the public in rulemaking and making meeting minutes available in 3 working days.	Involved public in rulemaking ✓	Meeting minutes available in 3 working days ✓



The Office of the Auditor General has completed a performance audit and sunset review of the Arizona Board of Funeral Directors and Embalmers (Board). This report addresses the Board's processes for issuing licenses to individuals and businesses in the funeral industry and conducting inspections of funeral establishments and crematories. This report also provides responses to the statutory sunset factors.

Mission and responsibilities

The regulation of practices related to the disposition of human remains began in 1909 with the Board of Embalming. In 1945, the Arizona Board of Funeral Directors and Embalmers was established to regulate funeral practitioners, such as funeral directors and embalmers, and funeral businesses, and to protect consumers from financial harm. The Board's mission is to "maintain and enforce a set of standards that provides protection for the health, safety, and welfare of Arizona citizens by educating the consumer and by actively and impartially regulating those licensed to provide funeral goods and services."

The Board's statutory responsibilities include:

- **Licensing and registration**—Issuing licenses and registrations for funeral directors, embalmers, cremationists, prearranged funeral salespersons, interns, multiple funeral directors, embalmer's assistants, funeral establishments, crematories, and funeral establishments with prearranged funeral sales endorsements (see textbox). For information on licensing and registration requirements, see Appendix A, pages a-1 through a-2. As of March 2020, the Board reported that there were 1,509 licensed and registered funeral professionals and 239 licensed funeral businesses in Arizona.
- **Conducting inspections**—Conducting inspections of funeral establishments and crematories, both before initial licensure and at least once every 5 years thereafter, to ensure compliance with statute and rule requirements.¹ The Board reported that it conducted 48 funeral establishment and crematory inspections in fiscal year 2019.

Key definitions

- **Funeral director**—A person who arranges, directs, and provides a service in the disposition of dead human bodies.
- **Embalmer**—A person engaged in embalming, including disinfecting and preserving a dead human body.
- **Cremationist**—A person who performs cremation of human remains.
- **Prearranged funeral salesperson**—A registered person who is employed or otherwise engaged by a funeral establishment to solicit, offer, or sell prearranged funeral agreements funded by trust.
- **Multiple funeral director**—A funeral director who manages and supervises the operations of more than 1 funeral establishment.
- **Funeral establishment**—A business that is devoted to care, storage, or preparation for final disposition or transportation of dead human bodies.
- **Crematory**—A building or portion of a building that houses a retort in which human remains are cremated.

Source: Auditor General staff analysis of Arizona Revised Statutes (A.R.S.) §§32-1301, 32-1384, and 32-1391.14.

¹ In December 2019, the Board and the Arizona State Veterinary Medical Examining Board entered into an Interagency Services Agreement for the Board to conduct inspections of licensed animal crematories in the State at a minimum of once every 5 years.

- **Investigating and adjudicating complaints**—Processing and investigating complaints against licensed or registered individuals and licensed businesses and taking disciplinary action against licensees, as appropriate. The Board received a total of 91 complaints in fiscal years 2015 through 2019.
- **Providing information to the public**—Providing information on licensees, including the number of complaints against them and the status of their licenses, on the Board’s website and in response to public inquiries.

Organization and staffing

Statute requires the Board to consist of 7 governor-appointed members.² Members must include 3 practicing and licensed funeral directors or embalmers and 4 public members, one of whom must be the owner or manager of a business unrelated to the funeral industry.³ As of August 2020, the Board reported that it had 1 member who continues to serve without an official gubernatorial reappointment.

The Board was authorized 4 full-time equivalent (FTE) staff positions for fiscal year 2020 but indicated it received funding for 3.25 FTE positions. As of March 2020, these positions were filled by an executive director, investigator, licensing administrator, and a part-time administrative assistant.

Budget

The Board does not receive any State General Fund appropriations. Rather, the Board’s revenues consist primarily of funeral industry licensing fees. Statute requires the Board to remit all monies collected from civil penalties against licensees and 10 percent of all other revenues, including licensing fees, to the State General Fund and to remit the remaining 90 percent to the Board’s fund.⁴ In fiscal years 2017 through 2020, most of the Board’s revenues consisted of licensing and related fees, and most of its expenditures were for personnel costs (see Table 1 on page 4). According to the Board’s executive director, revenues in fiscal years 2018 were lower than fiscal years 2017 and 2019 because some revenues received in fiscal years 2018 were not processed and recorded until fiscal year 2019. Similarly, an Arizona Department of Administration official reported that some fiscal year 2020 revenues were not processed and recorded until fiscal year 2021.⁵

² A.R.S. §32-1302.

³ Laws 2020, Ch.75, §1, enacted during the 2020 legislative session, changed the Board’s composition to 3 members who are practicing funeral directors or embalmers and 4 public members.

⁴ A.R.S. §32-1308.

⁵ The Central Services Bureau within the Arizona Department of Administration provides accounting services for the Board.

Table 1
Schedule of revenues and expenditures
Fiscal years 2017 through 2020
(Unaudited)

	2017	2018	2019	2020
Revenues				
Licensing and related fees	\$457,587	\$394,041	\$485,652	\$367,442
Examination fees	9,680	9,940	8,020	7,280
Interest on investments	4,245	6,480	10,869	9,239
Fines, forfeits, and penalties	200	3,225	8,307	4,937
Other	13,441	13,049	14,561	19,223
Total gross revenues	485,153	426,735	527,409	408,121
Net credit card transaction fees ¹		2,372	(2,681)	(3,825)
Remittances to the State General Fund ²	(47,574)	(44,137)	(50,077)	(39,013)
Total net revenues	437,579	384,970	474,651	365,283
Expenditures and transfers				
Payroll and related benefits	271,750	241,604	266,752	273,951
Professional and outside services	25,467		6,484	6,886
Travel	1,926	2,412	3,293	3,212
Other operating ³	65,325	68,437	71,043	101,667
Furniture, equipment, and software ⁴	46	498	13,935	
Transfers to the other agencies ⁵	5,205	36,136		
Total expenditures and transfers	369,719	349,087	361,507	385,716
Net change in fund balance	67,860	35,883	113,144	(20,433)
Fund balance, beginning of year	418,456	486,316	522,199	635,343
Fund balance, end of year	\$486,316	\$522,199	\$635,343	\$614,910

¹ Net credit card transaction fees were the convenience fees received from licensees netted against payments made to credit card processors. Timing differences occur between the receipt of the fees received and amounts paid to the processors.

² As required by A.R.S. §§32-1308 and 32-1368, the Board is required to remit to the State General Fund 100 percent of civil penalties and 10 percent of most of its other monies collected; however, it is not required to remit interest on investments or reimbursements for its investigation, information interview, and/or formal hearing costs.

³ Other operating expenditures consist of various items, such as building rent, office supplies, accounting services, security services, insurance, and software support and maintenance costs. These expenditures increased by nearly \$30,000 in fiscal year 2020, primarily because the Board had higher rent, insurance, and software support and maintenance costs.

⁴ The Board reported that its move to a new building and ongoing maintenance costs for its e-licensing system increased the Board's furniture, equipment, and software expenses for fiscal year 2019.

⁵ Transfers to other agencies were transfers to the Arizona Office of Administrative Hearings for hearing costs and the Arizona Department of Administration for a portion of a new procurement system and a portion of a State-wide e-Licensing system and relocation costs.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2017 through 2020, and the State of Arizona *Annual Financial Report* for fiscal years 2017 through 2019.



Board licensed/registered applicants we reviewed without ensuring they met key public protection requirements

Board approved licenses and registrations without ensuring applicants met all qualifications

Our review of a stratified random sample of 47 Board-approved licenses and registrations found that the Board did not ensure that 44 of these applicants met all statutory or rule requirements before issuing the license or registration (see Appendix A, pages a-1 through a-2, for all license and registration requirements).⁶ For example:

- **Board did not always perform a required fingerprint-based criminal history records check**—The Board did not perform a fingerprint-based criminal history records check for 27 of 45 license and registration applicants we reviewed, as required by statute.^{7,8}
- **Board did not inspect all businesses before licensure**—The Board did not conduct a business inspection before issuing licenses for 5 of 10 business applications we reviewed, as required by statute.⁹ Three businesses had ownership changes, which requires a new license, and 2 had an expired license, which requires applying for a new license rather than allowing the owner to renew the license.
- **Board did not ensure all funeral director and embalmer applicants met all experience requirements**—The Board did not ensure that all the funeral directors and embalmer applicants we reviewed met all the experience requirements in statute and rule. For example, the Board did not obtain documentation verifying that 2 of the 7 funeral director applicants met the requirement to arrange 25 funerals, as required by statute.¹⁰

Table 2 on page 6 provides a summary of key license/registration requirements that the Board did not ensure the 44 applicants met before licensing/registering them.

⁶ We reviewed a stratified random sample of 47 funeral establishment, crematory, prearranged funeral salesperson, cremationist, embalmer, funeral director, and multiple funeral director initial applications from a total of 166 initial licenses the Board approved between July 30, 2018 and July 30, 2019.

⁷ A.R.S. §§32-1323(B)(2), 32-1383(B)(2), 32-1394.01(B), 32-1391.14(A)(8), and 32-1395(B)(2).

⁸ Two of the 47 applications we reviewed were for multiple funeral director licenses, which do not require a fingerprint-based criminal history records check.

⁹ A.R.S. §§32-1383(C) and §32-1395(C).

¹⁰ A.R.S. §32-1322(C)(4).

Table 2**Summary of key individual and business license/registration requirements Board did not assess or verify before licensure/registration**

Individual license or registration type 	Fingerprint-based criminal history check 	Experience 	Lawful presence 
Funeral director	4/7 not conducted	2/7 not verified	3/7 not verified
Embalmer	6/9 not conducted	All 9 verified	7/9 not verified
Cremationist	6/12 not conducted	N/A	10/12 not verified
Salesperson	1/7 not conducted	N/A	4/7 not verified

Business license type 	Fingerprint-based criminal history check 	Initial inspection 	Attestation to comply with State laws and rules 
Funeral Establishment	5/5 not conducted	3/5 not inspected	5/5 not verified
Crematory	5/5 not conducted	2/5 not inspected	4/5 not verified

Source: Auditor General staff analysis of statutes, rules, and a sample of individual and business license and registration applications.

Board’s licensing practice places the public at risk

By not ensuring that license and registration applicants meet all statutory and rule requirements, the Board places the public at risk by potentially issuing licenses to unqualified candidates. For example, by not performing a fingerprint-based criminal history check for all funeral directors, salespersons, and business owners, the Board could improperly license applicants with a history of fraud or other crimes that could impact their suitability to work in the funeral industry. Additionally, not inspecting all businesses before licensure places consumers at risk of improper business practices and business employees at risk of using unsafe embalming equipment. Specifically, inspections help ensure compliance with various statute and rule requirements that serve to protect the public, such as verifying that funeral establishments disclose that embalming is not mandatory and that crematories have procedures to ensure cremated remains are properly identified (see Finding 3, pages 11 through 14, for more information on inspections).

Board misapplied licensing requirements and has not established processes that help ensure applicants meet all statute and rule requirements

The following factors contributed to the licensing and registration deficiencies we noted:

- **Board misinterpreted 1 licensing requirement and was unaware of another**—As noted previously, the Board did not perform a fingerprint-based criminal history records check for 27 of 45 license and registration applicants we reviewed. According to the Board, it did not perform a fingerprint-based criminal history records check for these 27 applicants because each of them already held an active license from the Board for a different license/registration and previously underwent a fingerprint-based criminal history records

check. However, statute or rule does not allow for this exemption. Specifically, statute requires each applicant for licensure or registration to complete a fingerprint-based criminal history records check.¹¹ Additionally, obtaining and reviewing fingerprint-based criminal history records allows the Board to assess and determine an applicant's suitability for licensure or registration, based on the information within the criminal history records and the particular license or registration type.

Additionally, the Board did not inspect some businesses before licensure because it reported that it was unaware of the requirement to inspect businesses submitting initial license applications resulting from either a change in ownership or an expired license. Specifically, statute requires all businesses, regardless of new ownership or expired licenses, to undergo an inspection before licensure.¹²

To address these issues, the Board updated its inspection policies and procedures in January 2020 to require all business applicants to undergo an inspection before licensure. In addition, in March 2020 the Board developed policy and procedures that require each new license or registration applicant to undergo a fingerprint-based criminal records check, regardless of any current licenses held by the applicant.

- **Board's license and registration applications do not include all statute and rule requirements**—The Board's various license and registration applications are missing 1 or more statute or rule requirements. For example, although required by rule, the funeral establishment and crematory applications do not require an applicant to submit a statement, signed by the responsible funeral director or cremationist and notarized, confirming responsibility for the funeral establishment's or crematory's compliance with State laws and rules.¹³ As indicated in Table 2 (see page 6), the Board did not verify that 9 of the 10 funeral establishment and crematory applicants we reviewed met this requirement.
- **Board lacks comprehensive guidance and a supervisory review process to ensure license/registration applicants meet all requirements**—Although the Board has developed procedures and checklists to help its staff review and approve applications, these procedures and checklists do not address all licensing and registration requirements. Before licensure, funeral director and embalmer applicants must hold an active intern license for 1 year and demonstrate experience with directing 25 funerals or embalming 25 bodies; however, the Board's licensing application checklists do not indicate that Board staff need to verify that applicants have met these requirements. For example, Board staff should use the Board's e-licensing database to check that in-State funeral director and embalmer applicants held an intern license for 1 year, or if the applicant was from out of State, verify that the applicant submitted the required form demonstrating compliance with out-of-State applicant rule requirements. Further, the Board had not developed a supervisory review process to help ensure that Board staff obtain the necessary documentation to support and/or verify that applicants meet all statutory and rule requirements before it issues a license or registration.

Recommendations

The Board should:

1. Ensure that all initial licensing and registration applicants meet all statutory and rule requirements before approving applications and issuing licenses and registrations, such as performing a fingerprint-based criminal history records check for all applicants, inspecting all funeral establishments and crematories applying for an initial business license, and verifying all education and experience requirements for funeral directors and embalmers.
2. Develop and/or update and implement licensing and registration policies and procedures to ensure they address all statute and rule requirements for all license and registration types.
3. Revise its licensing and registration applications to include all statute and rule requirements.

¹¹ A.R.S. §§32-1323(B)(2), 32-1383(B)(2), 32-1394.01(B), 32-1391.14(A)(8), and 32-1395(B)(2).

¹² A.R.S. §§32-1383(C) and 32-1395(C).

¹³ Arizona Administrative Code (AAC) R4-12-204(A)(16) and AAC R4-12-207(1)(f).

4. Revise its licensing and registration application checklists to ensure they address all statute and rule requirements for each license and registration type.
5. Develop, document, and implement a supervisory review process, such as having the Board's executive director review a risk-based sample of applications that have been administratively reviewed by Board staff.
6. Train staff on the newly developed and updated policies, procedures, checklists, and practices.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.



Board approved funeral establishments to sell prearranged funeral agreements without ensuring they had surety bonds in required amounts

The Board has approved funeral establishments to sell prearranged funeral agreements without ensuring they had obtained surety bonds in the amounts required by statute (see text box).¹⁴ It is important that the Board ensure funeral establishments have purchased surety bonds for the appropriate amount to protect customers who have purchased prearranged funeral agreements from financial loss in the event that the funeral establishment does not or cannot fulfill a prearranged funeral agreement. According to a 2019 survey completed by the National Funeral Directors Association, the median cost of a funeral in the Mountain states ranged from about \$4,500 for a funeral followed by cremation and about \$6,900 for a funeral followed by burial.¹⁵ As of March 2020, the Board reported there were 40 licensed funeral establishments endorsed to sell prearranged funeral agreements in the State.

Our review of all 4 applications for initial funeral establishment prearranged sales endorsement that the Board approved between July 30, 2018 and July 30, 2019, found that the Board did not determine whether the amount of the applicant's surety bond met the statutory requirement.¹⁶ Although the Board had a copy of the corporate surety bond for 3 of the applications we reviewed, including the amount of the bond, the Board did not have a process to compare this amount against the number of salespersons the applicant employed, which determines the required amount of the surety bond. The Board did not have a copy of the corporate surety bond for the fourth application yet approved the application without information about this applicant's surety bond amount or the number of salespersons employed.

Definitions and requirements

Prearranged funeral agreement—Any agreement or combination of agreements under which a payment is made before the intended beneficiary's death for funeral goods and services to be delivered or performed after the beneficiary's death.

Corporate surety bond—A promise by a surety to pay one party a certain amount if a second party fails to meet some obligation, such as fulfilling the terms of a prearranged funeral agreement. The surety bond amount is based on the number of salespersons at the funeral establishment.¹ Specifically, statute requires that the surety bond amount starts at \$15,000 and increases by \$5,000 for each salesperson employed at the funeral establishment.²

¹ A.R.S. §32-1391.12 and AAC R4-12-523. At renewal, the corporate surety bond amount is also based on the number of prearranged funeral agreements sold in the preceding calendar year.

² A.R.S. §32-1391.12.

Source: Auditor General staff review of A.R.S. §§32-1301(40) and 32-1391.12; AAC R4-12-523; and information from the National Association of Surety Bond Producers' website: <https://www.nasbp.org/getabond/about-surety> retrieved in May 2020.

¹⁴ A.R.S. §32-1391.12.

¹⁵ Mountain states include Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Koth, J. (2019, December 19). 2019 NFDA General Price List study shows funeral costs not rising as fast as rate of inflation. *NFDA News Releases*. Retrieved 5/28/20 from <https://www.nfda.org/news/media-center/nfda-news-releases/id/4797/2019-nfda-general-price-list-study-shows-funeral-costs-not-rising-as-fast-as-rate-of-inflation>.

¹⁶ We were unable to determine whether the amounts of the surety bonds were sufficient for the 4 applications we reviewed because the Board did not request information about the number of salespersons employed at the funeral establishments.

Board staff reported that they were unaware of the requirement that applicants must obtain a surety bond in the statutorily required amount in order to qualify for a prearranged sales endorsement, nor is this requirement addressed in the Board's policies, procedures, or checklists that staff use to guide their endorsement application reviews. Further, the Board's endorsement application does not require applicants to provide the Board with the total number of salespersons employed at their funeral establishment, which is needed for the Board to verify that the surety bond amount meets the statutory requirement.

Recommendations

The Board should:

7. Verify that funeral establishments that are applying for an endorsement to sell prearranged funeral agreements have obtained surety bonds in amounts prescribed by statute.
8. Develop and implement policies, procedures, and/or application checklists for applications for prearranged funeral sales endorsement to require Board staff to verify surety bond amounts, and train its staff on these policies, procedures, and checklists.
9. Revise its prearranged funeral sales endorsement application to require applicants to provide the Board with the total number of salespersons employed at their funeral establishment.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

Board did not properly perform funeral establishment and crematory inspections, placing business employees' health and safety at risk and consumers at financial risk

Board did not conduct and document inspections in accordance with statute, rule, and Board procedures

The Board did not conduct and document its funeral establishment and crematory inspections in accordance with statute, rule, and Board procedures based on our observations of 5 funeral establishment and crematory inspections and review of 58 inspection files.¹⁷ Inspections help ensure that both the public and funeral industry employees are protected from unsafe and inappropriate funeral practices. Statute requires the Board to conduct inspections of licensed funeral establishments and crematories, and the Board's rules specify that inspections should ensure that (1) licensees comply with the various statute and rule requirements for operating a funeral business, which may include using proper embalming equipment and appropriately identifying cremated remains, and (2) any deficiencies found do not show a pattern of noncompliance.^{18,19} However, we found:

- **Board staff did not inspect for some employee and consumer protection statutory and rule requirements**—For 3 of the 5 funeral establishment and crematory inspections we observed, Board staff did not inspect the following key requirements:

- **Crematory procedures**—For both crematory inspections we observed, Board staff did not review the crematory's written procedures to ensure they complied with statute. Specifically, statute requires that

Overview of our inspection findings

- Crematory procedures reviewed
- Prearranged funeral agreement consumer notices reviewed
- Checklist completed
- Funeral goods and services price list reviewed

¹⁷ We reviewed the inspection records for a sample of 20 licensed funeral establishments and 10 crematories that were operating between January 2013 and August 2019. Our sample included a total of 58 different inspections. As of August 2019, there were a total of 177 funeral establishments and 60 crematories. The Board could not locate the inspection documentation for 1 crematory in our sample; therefore, we were unable to assess the associated inspection. Additionally, we observed 5 funeral establishment and crematory inspections Board staff conducted in July, October, and November 2019.

¹⁸ A.R.S. §32-1307(A)(5)(h) and AAC R4-12-120 (B),(G), & (H).

¹⁹ A.R.S. §32-1399.

each crematory follow several procedures before, during, and after a cremation, including procedures for the identification, storage, and release or disposal of human remains.²⁰ Because the Board conducts unannounced inspections it may not have the opportunity to observe a cremation during its inspections. Consequently, by not reviewing a crematory's written procedures, the Board has no assurance that a crematory appropriately handles cremated human remains, including ensuring that a family member(s) of the deceased receives the correct cremated human remains.

- **Prearranged funeral agreement consumer notices and surety bond amount**—For the 1 funeral establishment endorsed to sell prearranged funeral agreements, Board staff did not review the prearranged funeral agreement files to ensure agreements contained conspicuously printed consumer notices and that the customer initialed the agreement, as required by statute. Specifically, statute requires funeral establishments to provide consumer notices that detail information about the trust account being used for a prearranged funeral, such as the name of the financial institution and the trust account number.²¹ The consumer notice should also show the total monies and service fees associated with the prearranged funeral agreement.²² The establishment should then require the purchaser to indicate that they have read the notices by initialing. By not inspecting for these requirements, the Board cannot effectively protect the public from potential financial harm.

Additionally, Board staff did not verify the number of salespersons employed by the funeral establishment to verify that the funeral establishment's surety bond amount met the statutory requirement (see Finding 2, page 9, for more information on surety bond requirements).

- **Board review of embalming procedures does not ensure compliance with all rule requirements**—Rule requires that each funeral establishment adopt and implement adequate procedures that address numerous embalming practices, such as wearing appropriate clothing and gloves while embalming to protect the embalmer.^{23,24} Although the Board reviews the funeral establishments' embalming reports that summarize the embalming procedure performed, these reports do not always address all embalming requirements. For example, based on our review of 6 funeral establishment embalmer reports provided by the Board, key requirements such as wearing appropriate clothing and gloves while embalming and ensuring that remains are covered after an embalming has been performed were not included in the reports. By not verifying that funeral establishments meet all required procedures for embalming, the Board has no assurance that funeral establishments have implemented appropriate practices to protect employee health and safety.
- **Board staff did not complete or document inspections to allow the Board to monitor licensees for patterns of noncompliance**—Deficiencies with the completion of and/or documentation of inspections restrict the Board's ability to monitor licensees for patterns of noncompliance from inspection to inspection. Specifically:
 - **Board staff either did not inspect all checklist items or did not document inspecting them for nearly half of the inspections we reviewed**—The Board's inspection policies and procedures require Board staff to use checklists to help conduct and document inspections for funeral establishments and crematories. However, 23 of the 58 inspection checklists we reviewed were not completed, indicating that Board inspection staff either did not inspect all items or did not document inspecting them. For example, some checklists did not indicate whether the inspector had checked for funeral arrangement file requirements such as prearranged funeral consumer notices. Other checklists did not indicate whether the inspector had verified that crematories had completed cremation authorization forms to ensure they had appropriate approvals to cremate a body and remain-identification procedures to appropriately identify

²⁰ A.R.S. §32-1399.

²¹ A.R.S. §32-1391.09 (A).

²² A.R.S. §32-1391.09 (A).

²³ AAC R4-12-311.

²⁴ AAC R4-12-311 (A)(3).

the cremated remains. According to Board staff, some checklist items were not completed because the items may have not applied to the licensed business, such as items related to embalming at funeral establishments that do not perform embalming. However, items such as cremation authorization forms should always be inspected at crematories because cremations cannot occur without written approval by an authorizing agent, such as a spouse or family member.

- **Board staff inaccurately documented some inspection checklist items as compliant despite not evaluating them and did not document other items as being noncompliant despite finding them noncompliant**—On 4 of 5 inspection checklists for the inspections we observed, the Board’s inspector documented multiple items as compliant despite not evaluating these areas. For example, for both crematory inspections we observed, the Board’s inspector did not verify that the crematory maintained cremation records for 5 years, as required by statute.²⁵ Similarly, for 2 of the funeral establishment inspections we observed, the Board’s inspector did not verify whether the establishment’s funeral arrangement documentation was retained for 3 years, as required by statute.²⁶ In all of these instances, the checklists indicated that the establishments had complied with these requirements. Further, for 1 inspection we observed, the inspector verbally communicated identified deficiencies but did not document the deficiencies on the checklist. For example, the inspector told a funeral director that the preparation room used for embalming human remains cannot be used as a storage area for other establishment items like mops, boxes, and brooms when not in use, but the inspector did not note this deficiency on the inspection checklist.²⁷

By not inspecting all items or inaccurately recording inspections results, the Board cannot follow up on deficiencies to ensure that they are resolved and cannot fulfill its responsibility to monitor that subsequent inspections do not show a pattern of noncompliance.

Board does not have comprehensive inspection checklist and procedures and did not conduct supervisory review

The following factors contributed to the deficiencies in the Board’s inspection process:

- **Board had not adopted comprehensive inspection checklist and procedures to ensure all required items were inspected**—Although the Board developed an inspection checklist, the checklist did not include all statutory and rule requirements as of August 2020. For example, the checklist did not specify that the inspector should inspect critical requirements such as licensees’ embalming and cremation procedures and prearranged funeral agreement consumer notices. Additionally, the Board has policies and procedures that guide inspectors on how to conduct inspections. However, the Board’s procedures did not require the inspector to document an explanation for any uninspected items. In January 2020, during the audit, the Board revised its policies and procedures to require that all items are inspected or an explanation is provided if an item is not inspected.
- **Board’s executive director accompanies staff on some inspections but has not conducted required supervisory reviews to ensure inspections are adequately conducted and documented**—Although not required by Board policy, the Board’s executive director reported that she occasionally accompanies the Board’s inspector on inspections to ensure they are conducted thoroughly and appropriately. However, she has not conducted bimonthly reviews of inspection files to further help ensure that inspections were adequately performed and documented, as required by Board policy. she reported not performing these reviews because an experienced inspector was conducting the inspections. The Board adopted the policy requiring supervisory review of inspection files in 2014 to address similar inspection deficiencies that we

²⁵ A.R.S. §32-1399 (11).

²⁶ A.R.S. §32-1385.

²⁷ After our inspection observations, the Board updated its inspections policies and procedures in January 2020 to clarify that Board inspections should provide a written explanation on the checklist for items that were not verified or assessed during an inspection.

identified as part of our 2013 performance audit and sunset review of the Board (see Report No. 13-11). In May 2020, during the audit, the Board revised its policies and procedures to require its executive director to review each completed inspection checklist.

Recommendations

The Board should:

10. Conduct licensed business inspections that assess compliance with all statutory and rule requirements and accurately document the results of these inspections.
11. Update and implement its inspection policies, procedures, and checklists to address all statutory and rule requirements.
12. Ensure that its executive director reviews inspection checklists after each inspection as required by Board policy.
13. Develop and implement policies and procedures requiring its executive director to periodically accompany inspectors on inspections to help ensure they are thoroughly and appropriately conducted and documented.
14. Train all relevant Board staff on the updated inspection policies, procedures, and checklists.

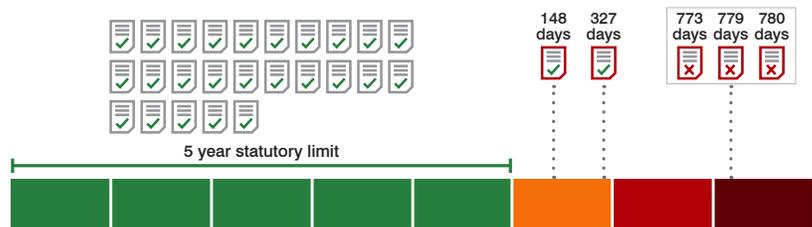
Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.



Board did not perform some funeral establishment and crematory inspections within required 5-year time frame

Five of the sample of 30 licensed funeral establishment and crematory businesses we reviewed did not receive an inspection within 5 years of its prior inspection, as required by statute (see Figure 1).^{28,29} Specifically, as of March 2020, the Board had not inspected 3 of the licensed businesses for more than 7 years. Although the Board inspected the other 2 businesses in January 2019 and August 2019, it performed these inspections 148 and 327 days after the 5-year requirement, respectively. These inspections identified noncompliance at both funeral establishments, specifically incorrect pricing and missing equipment in the preparation room. Following the inspections, the licensed establishments corrected the identified noncompliance areas and the Board verified that these corrections had been made.

Figure 1
Number of days inspections were past 5-year statutory requirement
As of March 12, 2020



Source: Auditor General staff analysis of sample of 30 Board inspection files.

Inspections help ensure that both the public and funeral industry employees are protected from unsafe and inappropriate funeral practices, such as ensuring that funeral establishments use proper embalming equipment and sanitation protocols and that crematories appropriately identify cremated remains (see Finding 3, pages 11 through 14, for more information). Additionally, inspections should help ensure that licensees are in compliance with all statutory and rule requirements, identify instances of noncompliance, and allow the Board to work with licensed funeral establishments and crematories to remedy any noncompliance. Untimely inspections may allow potential instances of noncompliance to go unchecked or linger. For example, 1 of the licensed funeral establishments that had not been inspected for more than 7 years was the subject of a complaint filed with the Board in April 2019 for employing an unregistered prearranged funeral agreement salesperson. The Board investigated and substantiated the complaint and issued a letter of concern to the funeral establishment; however, a timely inspection of this licensee might have more quickly identified and addressed this violation.

Although the Board has records of when licensed funeral establishments and crematories were last inspected, it did not use the last known inspection date when scheduling inspections to help ensure that it inspected all licensees at least once every 5 years. The Board developed an inspection-tracking spreadsheet during the audit

²⁸ A.R.S. §32-1307(A)(5)(h) requires the Board to inspect funeral establishments and crematories at least once every 5 years. Funeral establishments and crematories must also be inspected before initial licensure, as required by A.R.S. §§32-1383(C) and §32-1395(C).

²⁹ We reviewed the inspection records for a sample of 20 licensed funeral establishments and 10 crematories that were operating between January 2013 and August 2019. Our sample included a total of 58 individual inspections. As of August 2019, there were a total of 177 funeral establishments and 60 crematories. The Board was missing 1 crematory inspection file, and therefore, we were unable to determine if the Board met the 5-year inspection time frame requirement for this business.

in August 2019 that includes all active funeral establishments and crematories, as well as the dates of inspections performed since 2017. In September 2020, the Board updated its spreadsheet to include inspections performed since 2015 and began using its e-licensing system to run monthly reports to notify Board staff which licensed funeral establishments and crematories are due for an inspection.

Additionally, despite a requirement in Board policy for the executive director to conduct bimonthly supervisory reviews of inspection files to help ensure licensed businesses were inspected in a timely manner, she had not done so. She reported not performing these reviews because an experienced inspector was conducting the inspections.

In May 2020, during the audit, the Board revised its policies and procedures to require that Board staff review the inspection-tracking spreadsheet after each monthly Board meeting to ensure that inspections are scheduled and conducted in a timely manner.

Recommendations

The Board should:

15. Conduct inspections of licensed funeral establishments and crematories at least once every 5 years, as required by statute.
16. Regularly maintain its inspection-tracking spreadsheet to include all inspection dates for each licensed funeral establishment and crematory and use the inspection-tracking spreadsheet and e-licensing system to monitor and ensure all licensed funeral establishments and crematories receive inspections within required time frames.
17. Ensure that board staff conduct reviews of the inspection-tracking spreadsheet after each monthly Board meeting, as required by Board policy.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.



Pursuant to A.R.S. §41-2954(D), the legislative committees of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of the Board. The sunset factor analysis includes additional findings and recommendations not discussed earlier in the report.

Sunset Factor 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’s mission is to “maintain and enforce a set of standards that provides protection for the health, safety, and welfare of Arizona citizens by educating the consumer and by actively and impartially regulating those licensed to provide funeral goods and services.” To accomplish this mission, the Board licenses funeral industry individuals and businesses, conducts inspections of funeral establishments and crematories, and investigates and adjudicates complaints against licensees. The Board also provides information to the public regarding the license status and disciplinary history of licensees.

We did not identify any states that met the Board’s objectives and purpose through private enterprise. According to the 2019 compendium *Regulations in Funeral Service Licensing, Continuing Education, and Pre-Need* issued by the International Conference of Funeral Service Examining Boards, all 50 states regulate some aspect of the funeral industry, including licensing funeral directors, embalmers, cremationists, funeral establishments, and/or crematories.³⁰ In addition, we contacted California, Hawaii, and Nevada and found that none used private enterprises for licensing, inspections, or complaint handling (see Appendix B, pages b-1 through b-2, for more information on sample selection).

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

The Board has met some of its statutory objective and purpose by issuing initial and renewal licenses in a timely manner for the applications we reviewed. The Board also ensured that funeral directors and embalmers met continuing education requirements for the applications we reviewed. Specifically, the Board:

- **Issued initial and renewal licenses in a timely manner**—Rule requires the Board to approve or deny initial license and registration applications within 110 days, initial prearranged funeral sales endorsements within 60 days, and funeral director and embalmer license renewals within 60 days.³¹ The Board reviewed and approved within required time frames the 47 initial license and registration applications and 4 initial funeral establishment prearranged sales endorsements we reviewed that it issued between July 30, 2018 and July 30, 2019, and the 20 funeral director and embalmer renewal licenses we reviewed that it approved in calendar year 2019.³²
- **Ensured that funeral directors and embalmers we reviewed met continuing education requirements**—Rule requires funeral directors and embalmers to complete 12 continuing education hours annually and

³⁰ The International Conference of Funeral Service Examining Boards. (2019). *Regulations in funeral service licensing, continuing education, and pre-need*. Retrieved 9/5/19 from <https://theconferenceonline.org/wp-content/uploads/2019/06/Regulations-in-Licensing-2019.pdf>.

³¹ AAC R4-12-106.

³² We reviewed a stratified random sample of 47 of the 166 initial licenses and registration applications and all 4 initial funeral establishment prearranged sales endorsements the Board approved between July 30, 2018 and July 30, 2019. We also reviewed a random sample of 20 of the 919 funeral director and embalmer renewal licenses approved in calendar year 2019.

provide documentation of continuing education completion to the Board.³³ The Board ensured that the 10 funeral director and 10 embalmer renewal license applicants we reviewed and the Board approved in calendar year 2019 submitted the required continuing education documentation.

In addition, the Board investigated and adjudicated the complaints we reviewed in accordance with statute and rule requirements (see Sunset Factor 6, pages 21 through 22, for more information on complaint handling) and provided appropriate information about licensees over the phone and on its website (see Sunset Factor 5, page 21, for more information on how the Board provides information to the public).

However, the Board has not fully met its objective and purpose in some areas. Specifically:

- Board has not evaluated the appropriateness of its fees**—The Board’s application, licensure, registration, and exam fees were established in statute in 1998.³⁴ For example, an applicant seeking an initial funeral director’s license pays an application fee of \$85, a license fee of \$85, and an exam fee of \$80. However, the Board has not analyzed the costs of performing its regulatory responsibilities, such as processing applications or inspecting businesses, to determine the appropriateness of its fees, nor has it reviewed the appropriateness of its fees since they were initially established. As a result, the Board may be collecting more revenue than it needs to operate. For example, as shown in Table 3, the Board’s fund balance has increased from about \$486,000 at the end of fiscal year 2017 to nearly \$615,000 at the end of fiscal year 2020. Government fee-setting standards and guidance state that user fees should be determined based on the costs of providing a service and reviewed periodically to ensure they are aligned with program costs.³⁵

Table 3
Schedule of revenues, expenditures and transfers, and changes in fund balance
Fiscal years 2017 through 2020

(Unaudited)

	2017	2018	2019	2020
Total net revenues	\$437,579	\$384,970	\$474,651	\$365,283
Total expenditures and transfers	369,719	349,087	361,507	385,716
Fund balance, end of year	\$486,316	\$522,199	\$635,343	\$614,910

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2017 through 2020 and the State of Arizona *Annual Financial Report* for fiscal years 2017 through 2019.

- Board should implement its newly developed policy and procedures to track compliance with its licensing time frames**—Statute requires the Board to refund an applicant all licensing fees and pay a penalty to the State General Fund if the Board does not approve or deny the application within the required time frames.³⁶ However, the Board did not track compliance with its licensing time frames and therefore did not have the information needed to determine if and when it needed to refund fees to applicants or pay a penalty to the State General Fund. In September 2020, the Board updated its licensing policies and procedures to require Board staff to monitor application processing times on a monthly basis to help ensure compliance with the required time frames.

³³ AAC R4-12-413; R4-12-416.

³⁴ A.R.S. §32-1309.

³⁵ Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER). (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS; U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC.

³⁶ A.R.S. §41-1077.

Finally, as discussed in Findings 1 through 4, we found that the Board:

- Licensed/registered applicants we reviewed without ensuring they met key statutory and rule requirements and approved funeral establishments to sell prearranged funeral agreements without ensuring they had surety bonds in required amounts (see Findings 1 and 2, pages 5 through 10).
- Did not properly perform inspections of licensed funeral establishments and crematories and did not perform some inspections within the statutorily required time frame (see Findings 3 and 4, pages 11 through 16).

Recommendation

The Board should:

18. Implement its newly developed policy to track compliance with the required time frames for processing all initial and renewal licenses, registrations, and endorsement applications.
19. Refund fees to applicants and pay penalties to the State General Fund if and when it does not meet the required application processing time frames.
20. Conduct a review of its licensing and registration fees by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, and determining the appropriate licensing fees, and then work with the Legislature to revise its fees accordingly.
21. Establish and implement a process to periodically review the appropriateness of its fees on an ongoing basis.

Board response: As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

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

The Board serves the entire State by licensing applicants, inspecting funeral establishments and crematories, and investigating and adjudicating complaints against funeral industry personnel and businesses throughout Arizona. However, we found that the Board had not complied with some conflict-of-interest requirements. Statute requires public officers and employees of public agencies, including Board members, to avoid conflicts of interest that might influence or affect their official conduct.³⁷ These laws require certain interests to be disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Public officers/employees must then refrain from participating in matters related to disclosed interests. In addition, public agencies are required to maintain a special file of all documents necessary to memorialize such disclosures and make this file available for public inspection. However, when we began our audit in July 2019, the Board did not have a process to address potential conflicts of interest in accordance with these laws.

During our audit, the Board took steps to comply with conflict-of-interest laws and associated best practices.³⁸ For example, in October and December 2019, the Board developed conflict-of-interest policies and procedures that address remediating conflicts or potential conflicts, and a special file for all conflict-of-interest disclosures. In addition, in December 2019, the Board developed and implemented an annual disclosure form that contains all required elements and provided conflict-of-interest training to Board members and staff. Lastly, we observed Board members publicly disclose their conflicts of interests in the Board's December 2019 Board meeting, as recommended by best practices, and the Board documented these disclosures in its special file.

³⁷ A.R.S. §38-501 et seq.

³⁸ Best practices we reviewed included the following: Controller and Auditor General of New Zealand. (2007). *Managing conflicts of interest: Guidance for public entities*. Wellington, New Zealand. Retrieved 12/31/2019 from <https://oag.parliament.nz/2007/conflicts-public-entities/docs/oag-conflicts-public-entities.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of Interest*. Retrieved 12/31/2019 from <https://www.ethics.org/knowledge-center/conflicts-of-interest-report/>; Organisation for Economic Co-operation and Development (OECD). (2003). *Recommendation of the council on guidelines for managing conflicts of interest in the public services*. Paris, France. Retrieved 12/31/2019 from https://legalinstruments.oecd.org/public/doc/130/130_en.pdf.

Recommendation

The Board should:

22. Continue to implement its newly developed conflict-of-interest policies and procedures, such as using its new annual disclosure form, publicly disclosing conflicts of interests at Board meetings, and documenting disclosed Board member and staff conflicts of interest in a special file.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

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

The Board has not developed some required rules for crematory operation based on our review of the Board's statutes and rules. Specifically, the Board has not adopted the following rules as required by A.R.S. §32-1399:

- A rule stating that crematories shall store human remains in a secure holding facility that can only be accessed by employees.
- A rule stating that a crematory cannot accept or hold a casket or container that shows evidence of leaking bodily fluids.
- Rules stating that bridgework and body prostheses shall be removed from cremated remains and then disposed of by the crematory.
- Rules stating that the crematory must remove cremated remains from the cremator, separated from other remains, and labeled with identification.
- Rules stating that the crematory must put cremated remains in a temporary and secure container.
- Rules regarding cremated remains that are not picked up after the cremation. The crematory must send a written notice after 30 days, and if the remains are not picked up within 90 days, the crematory can then dispose of the remains.
- Rules stating that employees of a crematory shall not remove a dead body without the authorizing agent's consent and must also remove mechanical or radioactive devices from the body if discovered.

Although we observed the Board inspect crematories for most of these requirements, the Board has yet to develop and implement the required rules despite the statute being enacted in 1989. The Board's executive director reported not having time to work on adopting these rules because of other responsibilities. To adopt or revise its rules, the Board would need to seek an exemption to the rule-making moratorium.³⁹ The moratorium restricts rulemaking without the prior written approval from the Governor's Office; however, it provides for exceptions, including making rule changes to comply with a statutory requirement. As of July 2020, the Board had not established a time frame for adopting rules required by A.R.S. §32-1399.

Recommendation

The Board should:

23. Work with its Assistant Attorney General to determine whether and when it can develop and adopt rules to clarify statutes and processes for crematory operations.
24. Contingent on receiving an exemption to the rule-making moratorium, adopt rules to specify crematory operation requirements consistent with A.R.S. §32-1399.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

³⁹ Executive Order 2020-02 established the rule-making moratorium on January 13, 2020.

Sunset Factor 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.

The Board has encouraged input from the public and informed the public of its actions and expected impact as follows:

- **Board involved public in adopting rules**—The Board informed the public of its most recent rulemaking and its expected impact and provided opportunities for public input as part of the rules it finalized in October 2014. Specifically, the Board published notices of its proposed rulemakings in the Arizona Administrative Register and included a statement detailing these proposed rules’ impact on the public. Additionally, the Board provided opportunities for public input by listing in the notices which Board staff the public could contact to provide input about the proposed rulemaking, allowing the public to submit written comments on proposed rule changes for at least 30 days after it published the first notice, and holding meetings where the public could provide input.
- **Board complied with various open meeting law requirements for meetings reviewed**—The State’s open meeting law requires the Board to post meeting notices and agendas at least 24 hours in advance, include necessary information for the public in meeting notices and agendas, and provide written meeting minutes or recordings within 3 working days after the meeting. The Board complied with these requirements for the 6 Board meetings we attended between July 2019 and December 2019.
- **Board provided accurate and appropriate disciplinary information on its website for licensees reviewed**—The Board provided accurate and appropriate disciplinary information for the 46 licensed individuals and businesses that we reviewed.⁴⁰ Additionally, the Board did not provide prohibited nondisciplinary information on its website for the licensees we reviewed. A.R.S. §32-4404 prohibits regulatory boards from disclosing information on their website regarding complaints that do not result in discipline.
- **Board provided accurate and appropriate information in response to 2 anonymous phone calls we made**—Board staff provided appropriate licensee information during 2 anonymous calls we made in November 2019 requesting information about 2 licensees with complaint histories. Specifically, statute requires the Board to provide public records, including information on dismissed complaints and complaints that resulted in nondisciplinary action to the public during business hours.⁴¹ During both phone calls, Board staff appropriately disclosed information about license status and whether the licensee had dismissed complaints or complaints that resulted in nondisciplinary Board action.

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

The Board is required by statute to investigate and adjudicate complaints against licensed individuals and businesses.⁴² If the Board finds a statutory and/or rule violation when investigating a complaint, it can take various nondisciplinary and disciplinary actions (see textbox on page 22). The Board investigated and adjudicated complaints in accordance with statute and rule requirements for the sample of 26 complaints we reviewed.⁴³ For example, Board staff conducted interviews with all involved parties and collected, documented, and reviewed related evidence. In addition, the Board dismissed unsubstantiated complaints and took action to address violations, such as by issuing letters of concern or reprimand or revoking licenses.

⁴⁰ We reviewed a sample of 26 hard copy complaint files from the 91 complaints the Board received between fiscal years 2015-2019. Some of these complaints involved multiple licensees. Specifically, for these 26 complaint files, there were a total of 46 licensed individuals and businesses.

⁴¹ A.R.S. §39-121.

⁴² A.R.S. §32-1367(A).

⁴³ The Board received 91 complaints in fiscal years 2015 through 2019. Of the 26 complaints we reviewed, we randomly selected 18 and judgmentally selected 8 based on disciplinary action taken.

However, the Board took several months to resolve some of the complaints we reviewed. Specifically, the Board did not adjudicate 10 of the 26 complaints we reviewed within 180 days of receipt.⁴⁴ Of these, the Board took between 181 and 286 days to resolve 9 complaints, and it had yet to resolve 1 complaint that had been open for 580 days as of March 2020. Various factors contributed to the Board's delayed resolution for these 10 complaints, which were practical or generally outside of its control. For example:

- The Board combined its investigation and adjudication of 4 complaints against the same licensee and while practical to do so, it extended the time the Board took to resolve the initially-received complaints. Specifically, the Board was in the process of investigating and adjudicating 2 complaints that were received within 4 days of each other, when a third complaint involving the same licensee was received 3 months later. Due to delays in obtaining information from the licensee and scheduling issues for the out-of-State complainants pertaining to the first 2 complaints, the Board included the third complaint in its ongoing complaint investigation. However, the Board had to postpone its initial hearing for the 3 complaints because the licensee reported not being able to attend the scheduled hearing. One month after the Board conducted the initial hearing for the 3 complaints and prior to the Board resolving these complaints, it received a fourth complaint involving the licensee. The fourth complaint was then added to the Board's ongoing complaint investigation and adjudication, which delayed the final resolution of the prior complaints. After completing the investigation and adjudication of all 4 complaints, the Board revoked the licensee's embalmer, funeral director, cremationist, and funeral establishment licenses 286 days after the first complaint was received and 110 days after the fourth complaint was received. Although delayed, combining its investigation and adjudication of the 4 complaints provided sufficient evidence for the Board to revoke the license.
- The Board's investigation of a complaint that included allegations that a licensed funeral director acting as a personal representative of decedents' estates was charging the estates excessive fees had been open for 580 days as of March 2020.⁴⁵ The licensed funeral establishment independently settled with the complainants, at which point those complainants no longer cooperated with the Board's complaint investigation, including not participating in the Board's disciplinary hearing, which caused delays in the complaint investigation. Additionally, the Board had a temporarily assigned assistant attorney general representative from September 2019 until March 2020, which the Board reported delayed it from moving the case to the Office of Administrative Hearings (OAH) for review and hearing.⁴⁶

Examples of the Board's disciplinary and nondisciplinary options to address violations

Nondisciplinary actions:

- Letter of concern

Disciplinary actions:

- Letter of censure or reprimand
- Probationary terms
- Civil penalty
- Suspend a license
- Revoke a license

Source: Auditor General staff analysis of A.R.S. §32-1367.

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

The Attorney General serves as the Board's legal advisor and provides legal services as the Board requires, according to A.R.S. §41-192(A)(1). In addition, A.R.S. §32-1307(B)(3) provides authority for the Attorney General to request any court in the State to enforce subpoenas.

⁴⁴ We use a 180-day standard to assess the timeliness of complaint resolution.

⁴⁵ Laws 2020, Ch. 18, §1, enacted during the 2020 legislative session, does not allow a funeral director or funeral establishment owner who has control of the decedent's remains to have priority for appointment as a personal representative of a decedent's estate.

⁴⁶ The Board had a temporarily assigned assistant attorney general representative from September 2019 to March 2020.

Sunset Factor 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 it plans to seek a statutory change to require responsible funeral directors to hold an embalmer license, in addition to the already required funeral director license. Statute requires that a funeral establishment employ and designate a responsible funeral director to manage and supervise the establishment's daily operation.⁴⁷ However, because of a statutory change made during the 2019 legislative session, an applicant for a funeral director license is no longer required to have been licensed as an embalmer for 1 year. Consequently, the Board indicated that responsible funeral directors may not possess the necessary embalming knowledge to oversee a funeral establishment's daily operation. The Board reported it plans to pursue this statutory change during the first regular legislative session of 2021.

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

We did not identify any needed changes to the Board's statutes.

Sunset Factor 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 funeral industry's practice. It accomplishes this mission by:

- Licensing, registering, and endorsing individuals and businesses to help ensure they are qualified to practice in the funeral industry.
- Inspecting licensed businesses to help ensure compliance with Board statutes and rules regarding worker safety and professionalism.
- Receiving and investigating complaints against licensees alleging statute and/or rule violations.
- Taking disciplinary action against licensees who have engaged in unprofessional conduct, repeated or continuing negligence, or other professional incompetence.⁴⁸
- Providing information to the public about licensees, including license status and disciplinary history.

These functions help protect the public from harm. For example, some complaints we reviewed alleged that licensees engaged in behavior that posed a threat to the public, including driving under the influence while picking up human remains from a home, losing decedents' cremated remains, and charging excessive fees for funeral services.

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

The level of regulation the Board exercises is generally similar to that in other states; however, Arizona does not require inspections as frequently as most other states and requires more continuing education for licensees than most other states. Specifically, our review of the 2019 compendium *Regulations in Funeral Service Licensing, Continuing Education, and Pre-Need* issued by the International Conference of Funeral Service Examining Boards indicates the following:

- **Regulation**—All 50 states regulate some aspect of the funeral industry, including funeral directors, embalmers, cremationists, funeral establishments, or crematories.

⁴⁷ A.R.S. §32-1382 (A)(3).

⁴⁸ A.R.S. §32-1366 (A)(1)&(2).

- **Inspections**—Similar to Arizona, 44 states conduct inspections of funeral businesses. The frequency of these inspections varies by state. For example, 29 states conduct annual or biennial inspections. Kansas and Rhode Island are required to conduct inspections most frequently, at least once every 6 months, whereas Arizona and Nebraska require inspections least frequently, at least once every 5 years.
- **Continuing education**—Forty states require varying amounts of continuing education for license renewal. Most states require between 5-8 credit hours per year, whereas Arizona is 1 of 3 states that require either 12 hours of continuing education per year or 24 hours every 2 years.⁴⁹

Sunset Factor 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 for (1) car rental for travel for inspections, (2) court reporting, and (3) the administration of its e-licensing system.⁵⁰ We contacted California, Hawaii, and Nevada to obtain information regarding their funeral regulatory entity's use of private contractors. Only Nevada reported using private contractors. Specifically, Nevada's Funeral and Cemetery Services Board reported using private contractors for audit services, bookkeeping, and outside legal counsel.⁵¹

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

⁴⁹ The 2019 compendium *Regulations in Funeral Service Licensing, Continuing Education, and Pre-Need* issued by the International Conference of Funeral Service Examining Boards does not specify continuing education requirements by license type. Board rule requires continuing education to renew funeral director and embalmer licenses.

⁵⁰ The Board obtains these services through other State agencies. The Board began using private rental cars when the State's fleet management transferred to the Arizona Department of Transportation (ADOT) because it did not meet ADOT's threshold for mileage or trip usage to use a State-owned fleet car. Additionally, the Board reported that court reporting services are obtained through a State-wide contract overseen by the State Procurement Office, and the Board's e-licensing system is administered through the Arizona Department of Administration.

⁵¹ Audit services include a financial audit of the Board that occurs every 2 years to ensure compliance with all generally accepted accounting principles. Additionally, although Nevada's board has a contract for outside legal counsel, it reported relying on its Attorney General's Office for most legal support.



SUMMARY OF RECOMMENDATIONS

Auditor General makes 24 recommendations to the Board

The Board should:

1. Ensure that all initial licensing and registration applicants meet all statutory and rule requirements before approving applications and issuing licenses and registrations, such as performing a fingerprint-based criminal history records check for all applicants, inspecting all funeral establishments and crematories applying for an initial business license, and verifying all education and experience requirements for funeral directors and embalmers (see Finding 1, pages 5 through 8, for more information).
2. Develop and/or update and implement licensing and registration policies and procedures to ensure they address all statute and rule requirements for all license and registration types (see Finding 1, pages 5 through 8, for more information).
3. Revise its licensing and registration applications to include all statute and rule requirements (see Finding 1, pages 5 through 8, for more information).
4. Revise its licensing and registration application checklists to ensure they address all statute and rule requirements for each license and registration type (see Finding 1, pages 5 through 8, for more information).
5. Develop, document, and implement a supervisory review process, such as having the Board's executive director review a risk-based sample of applications that have been administratively reviewed by Board staff (see Finding 1, pages 5 through 8, for more information).
6. Train staff on the newly developed and updated policies, procedures, checklists, and practices (see Finding 1, pages 5 through 8, for more information).
7. Verify that funeral establishments that are applying for an endorsement to sell prearranged funeral agreements have obtained surety bonds in amounts prescribed by statute (see Finding 2, pages 9 through 10, for more information).
8. Develop and implement policies, procedures, and/or application checklists for applications for prearranged funeral sales endorsement to require Board staff to verify surety bond amounts, and train its staff on these policies, procedures, and checklists (see Finding 2, pages 9 through 10, for more information).
9. Revise its prearranged funeral sales endorsement application to require applicants to provide the Board with the total number of salespersons employed at their funeral establishment (see Finding 2, pages 9 through 10, for more information).
10. Conduct licensed business inspections that assess compliance with all statutory and rule requirements and accurately document the results of these inspections (see Finding 3, pages 11 through 14, for more information).
11. Update and implement its inspection policies, procedures, and checklists to address all statutory and rule requirements (see Finding 3, pages 11 through 14, for more information).
12. Ensure that its executive director reviews inspection checklists after each inspection as required by Board policy (see Finding 3, pages 11 through 14, for more information).

13. Develop and implement policies and procedures requiring its executive director to periodically accompany inspectors on inspections to help ensure they are thoroughly and appropriately conducted and documented (see Finding 3, pages 11 through 14, for more information).
14. Train all relevant Board staff on the updated inspection policies, procedures, and checklists (see Finding 3, pages 11 through 14, for more information).
15. Conduct inspections of licensed funeral establishments and crematories at least once every 5 years as required by statute (see Finding 4, pages 15 through 16, for more information).
16. Regularly maintain its inspection-tracking spreadsheet to include all inspection dates for each licensed funeral establishment and crematory and use the inspection-tracking spreadsheet and e-licensing system to monitor and ensure all licensed funeral establishments and crematories receive inspections within required time frames (see Finding 4, pages 15 through 16, for more information).
17. Ensure that board staff conduct reviews of the inspection-tracking spreadsheet after each monthly Board meeting, as required by Board policy (see Finding 4, pages 15 through 16, for more information).
18. Implement its newly developed policy to track compliance with the required time frames for processing all initial and renewal licenses, registrations, and endorsement applications (see Sunset Factor 2, pages 17 through 19, for more information).
19. Refund fees to applicants and pay penalties to the State General Fund if and when it does not meet the required application processing time frames (see Sunset Factor 2, pages 17 through 19, for more information).
20. Conduct a review of its licensing and registration fees by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, and determining the appropriate licensing fees, and then work with the Legislature to revise its fees accordingly (see Sunset Factor 2, pages 17 through 19, for more information).
21. Establish and implement a process to periodically review the appropriateness of its fees on an on-going basis (see Sunset Factor 2, pages 17 through 19, for more information).
22. Continue to implement its newly developed conflict-of-interest policies and procedures, such as using its new annual disclosure form, publicly disclosing conflicts of interests at Board meetings, and documenting disclosed Board member and staff conflicts of interest in a special file (see Sunset Factor 3, pages 19 through 20, for more information).
23. Work with its Assistant Attorney General to determine whether and when it can develop and adopt rules to clarify statutes and processes for crematory operations (see Sunset Factor 4, page 20, for more information).
24. Contingent on receiving an exemption to the rule-making moratorium, adopt rules to specify crematory operation requirements consistent with A.R.S. §32-1399 (see Sunset Factor 4, page 20, for more information).



License, registration, and endorsement requirements

The Board licenses, registers, and endorses multiple professionals and businesses in the funeral industry. License, registration, and endorsement applicants must meet key requirements in statute or rule as shown in Table 4.

Table 4
Key statute and rule requirements by license and registration type

License	Key requirements	Legal reference
Professionals		
Embalmer	<ul style="list-style-type: none"> Graduate of high school and mortuary school. Licensed as an intern for at least 1 year. Assisted in embalming at least 25 dead human bodies. Pass the funeral service science section of the national board examination, as well as the State laws and rule exam. Pass a fingerprint-based criminal history records check. 	AAC R4-12-202 (A)(1)(d)&(e) A.R.S. §32-1322 (B)(1),(2),(4),&(5) A.R.S. §32-1323 (B)(2)
Funeral director	<ul style="list-style-type: none"> Graduate of high school and mortuary school. Held an intern license for at least a year. Assisted in arranging and directing at least 25 funerals. Pass the funeral service arts section of the national Board examination, as well as the state laws and rule exam. Pass a fingerprint-based criminal history records check. 	AAC R4-12-202 (A)(1)(d)&(e) A.R.S. §32-1322 (C)(1),(2),&(4) A.R.S. §32-1323 (B)(2)
Cremationist	<ul style="list-style-type: none"> Certificate of completion of a crematory certification program. Pass a fingerprint-based criminal history records check. 	AAC R4-12-210 (2) A.R.S. §32-1394.01(B)
Prearranged funeral salesperson	<ul style="list-style-type: none"> Satisfactory evidence of employment by a licensed funeral establishment holding a prearranged funeral sales endorsement. Passed State laws and rule exam. Pass a fingerprint-based criminal history records check. 	A.R.S. §32-1391.14 (A)(5),(6),&(8)
Intern	<ul style="list-style-type: none"> Graduate of high school and mortuary school. Pass a fingerprint-based criminal history records check. 	A.R.S. §32-1322 (A)(1)&(2) A.R.S. §32-1323 (A)(3)
Multiple funeral director	<ul style="list-style-type: none"> Distance between the current funeral establishment and funeral establishment for which the application is being made. Number of funerals, cremations, and transportations of human remains arranged through the funeral establishment. 	AAC R4-12-202 (F)(2)&(3)
Embalmer's assistant	<ul style="list-style-type: none"> Graduate of high school and mortuary school. If applicable, dates of apprenticeship, along with number of human bodies embalmed and a report of the apprenticeship. 	AAC R4-12-203 (1)(d)&(e),&(4)
Businesses		
Funeral establishment	<ul style="list-style-type: none"> Submit a partnership agreement, articles of incorporation, or other organizational documents. Submit a statement, signed by the responsible funeral director, confirming responsibility for the establishment's compliance with State laws and rules. Pass a fingerprint-based criminal history records check. Pass an inspection of premises. 	A.R.S. §32-1383 (A),(B)(2),&(C) AAC R4-12-204 (A)(16)

Table 4 continued

License	Key requirements	Legal reference
Crematory	<ul style="list-style-type: none"> • Submit a partnership agreement, articles of incorporation, or other organizational documents. • Submit a statement, signed by the responsible cremationist, confirming responsibility for the crematory's compliance with State laws and rules. • Pass a fingerprint-based criminal history records check. • Pass an inspection of premises. 	A.R.S. §32-1395 (A),(B)(2),&(C) AAC R4-12-207(1)(f)
Funeral establishment with prearranged funeral sales endorsement	<ul style="list-style-type: none"> • Evidence of a corporate surety bond in an amount prescribed by statute and rule. 	AAC R4-12-523 A.R.S. 32-1391.12 (A)(4)

Source: Auditor General staff review of A.R.S. Title 32, Ch. 12, and AAC Title 4, Ch. 12.



Objectives, scope, and methodology

The Office of the Auditor General has conducted a performance audit and sunset review of the Board pursuant to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq. This audit addresses the Board's processes for issuing and renewing licenses, conducting inspections, handling complaints, and providing information to the public. It also includes responses to the statutory sunset factors.

We used various methods to address the audit's objectives. These methods included reviewing Board statutes, rules, and policies and procedures; interviewing Board members and staff; and reviewing information from the Board's website. We also attended and reviewed minutes or audio recordings from 6 public Board meetings and executive sessions held between July 2019 and December 2019. In addition, we used the following specific methods to meet the audit objectives:

- To evaluate whether the Board issued initial licenses and registrations to qualified applicants in a timely manner, we selected and reviewed a stratified random sample of 47 funeral establishment, crematory, prearranged funeral salesperson, cremationist, embalmer, funeral director, and multiple funeral director initial applications from a total of 166 initial licenses approved between July 30, 2018 and July 30, 2019.⁵² Additionally, to evaluate whether the Board issued prearranged funeral sales endorsements in accordance with statute and rule requirements, we reviewed all 4 initial funeral establishment prearranged sales endorsement applications the Board approved between July 30, 2018 and July 30, 2019. Further, to determine whether the Board renewed licenses according to its rules, including requirements for continuing education, we selected and reviewed a random sample of 20 of the 919 funeral director and embalmer renewal licenses the Board approved in calendar year 2019.
- To evaluate whether the Board adequately conducted inspections in a timely manner, we selected and reviewed the Board's inspection records for a sample of 20 funeral establishments and 10 crematories that were operating between January 2013 and August 2019. This sample included a total of 58 individual inspections. As of August 2020, there were a total of 177 funeral establishments and 60 crematories. We randomly selected half of the licensed funeral establishments and crematories in this sample and judgmentally selected the remaining half based on geographical location of the licensee. We used a judgmental selection to ensure that licensees from all areas of the State, including rural areas, were represented in the sample.
- To evaluate the Board's complaint investigation and adjudication processes, including the timeliness of complaint resolution, we reviewed a sample of 26 complaint files from a total of 91 complaints received in fiscal years 2015 through 2019. For this sample, we randomly selected 18 complaints, and we judgmentally selected 8 additional complaints that resulted in discipline for review. The 26 complaints included allegations against a total of 46 licensees, including professionals and businesses.
- To assess whether the Board provided appropriate information to the public, we judgmentally selected 2 licensees with complaint histories from our sample of 26 complaints and placed 2 anonymous phone calls to the Board in November 2019 requesting information about the licensees. We evaluated the information provided to us by the Board against statute and rule requirements. We also reviewed the disciplinary

⁵² The stratified random sample of initial applications consisted of 5 funeral establishments, 5 crematories, 7 prearranged funeral salespersons, 12 cremationists, 9 embalmers, 7 funeral directors, and 2 multiple funeral directors.

information for the 46 licensees from our complaint file review to assess whether the information on the Board's website was accurate and consistent with statutory requirements.

- To obtain information for the Introduction, we reviewed Board-provided information regarding Board member vacancies and the number of active licensees and registrations as of March 2020. In addition, we compiled and analyzed unaudited financial information from the AFIS *Accounting Event Transaction File* for fiscal years 2017 through 2020 and the State of Arizona *Annual Financial Report* for fiscal years 2017 through 2019.
- To obtain additional information for the Sunset Factors, we reviewed the Arizona Administrative Register regarding the Board's rulemakings in October 2014 and assessed the Board's compliance with various provisions of the State's open meeting law for 6 Board meetings held from July 2019 through December 2019. In addition, to determine whether the Board appropriately established fees, we interviewed Board staff and reviewed the applicable statutes that establish the Board's licensing fees. Additionally, we reviewed best practices for fee setting from the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review and the U.S. Government Accountability Office.⁵³ Further, to assess the Board's compliance with the State's conflict-of-interest laws and best practices, we reviewed statute, the Board's conflict-of-interest disclosure form, and the Board's conflict-of-interest practices.⁵⁴ Finally, we judgmentally selected and contacted 3 states—California, Hawaii, and Nevada—and reviewed their regulation of the funeral industry, including their use of private contractors.
- Our review of 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. Our work included reviewing the following components and associated principles of internal controls:
 - Control activities, including the design and implementation of control activities.
 - Information and communication, including using and communicating quality information both internally and externally.
 - Internal control system monitoring.

We reported our conclusions on these internal controls and, where applicable, Board efforts to improve its controls in Findings 1 through 4, as well as in the Sunset Factors.

We selected the previously indicated audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit and sunset review 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.

We express our appreciation to the Board and its Executive Director and staff for their cooperation and assistance throughout the audit.

⁵³ Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS; U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC.

⁵⁴ Best practices we reviewed included the following: Controller and Auditor General of New Zealand. (2007). *Managing conflicts of interest: Guidance for public entities*. Wellington, New Zealand. Retrieved 12/31/2019 from <https://oag.parliament.nz/2007/conflicts-public-entities/docs/oag-conflicts-public-entities.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of Interest*. Retrieved 12/31/2019 from <https://www.ethics.org/knowledge-center/conflicts-of-interest-report/>; Organisation for Economic Co-operation and Development (OECD). (2003). *Recommendation of the council on guidelines for managing conflicts of interest in the public services*. Paris, France. Retrieved 12/31/2019 from https://legalinstruments.oecd.org/public/doc/130/130_en.pdf.

BOARD RESPONSE



Douglas A. Ducey
Governor

ARIZONA STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Board Members

Samuel Bueler, Industry Member-Chairman
James Ahearne, Jr. Industry Member-Secretary
Harold Adair, Industry Member,
Robert Hockensmith, Public Member
Amie Gazda, Industry Member,
Joe Hornat, Public Member,
Helene Bergeon Public Member

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Director
Brandon Eaden, Investigator
Evelyn Estrella,
Licensing Administrator
Yazmin Bustamante,
Administrative Assistant

November 3, 2020

Lindsey Perry, Auditor General
State of Arizona, Office of the Auditor General
2910 N. 44th St., Ste. 410
Phoenix, AZ 85018-7271

RE: Response to Preliminary Report

Dear Ms. Perry:

The Arizona State Board of Funeral Directors and Embalmers (Board) appreciated the opportunity to meet with your team of auditors led by Lindsey Hench. It was a pleasure to meet with team members and review the activities and processes of the Board.

Thank you for the opportunity to respond to the preliminary performance audit and report. The Board is in receipt of the findings and recommendations from the Auditor General and respectfully submits its response. We acknowledge the recommendations and will strive to address all of them in a timely manner.

The Board strives to perform in a manner that protects the health, safety and welfare of the public, while upholding the values and mission of the Board. We are grateful for the guidance provided to improve our processes and procedures. We thank you and your team for their patience while working during some unique and trying circumstances.

Respectfully,

Judith Stapley
Executive Director

cc: Board Members

Finding 1: Board licensed/registered applicants we reviewed without ensuring they met key public protection requirements

Recommendation 1: The Board should ensure that initial licensing and registration applicants meet all statutory and rule requirements before approving applications and issuing licenses and registrations, such as performing a fingerprint-based criminal history records check for all applicants, inspecting all funeral establishments and crematories applying for an initial business license, and verifying all education and experience requirements for funeral directors and embalmers.

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

Response explanation: Board staff has updated policy to include requiring fingerprints be submitted for every new application regardless of an individual's current licensure status. Board staff updated policy to include inspecting all establishments and crematories in every circumstance prior to them being considered administratively complete or presented to the Board for approval. The Board will seek a rule change to require transcripts from Mortuary School rather than transcripts and a copy of the applicant's diploma, which is redundant and burdensome.

Recommendation 2: The Board should develop and/or update and implement licensing and registration policies and procedures to ensure they address all statute and rule requirements for all license and registration types.

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

Response explanation: Board staff has updated policy to include requiring fingerprints be submitted for every new application regardless of an individual's current licensure status.

Recommendation 3: The Board should revise its licensing and registration applications to include all statute and rule requirements.

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

Response explanation: The Board agrees with this recommendation and will continue to update the online licensing process to ensure statutory and rule requirements are met.

Recommendation 4: The Board should revise its licensing and registration application checklists to ensure they address all statute and rule requirements for each license and registration type.

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

Response explanation: The Board agrees with this recommendation. Board staff has updated the application checklist to comply with the auditor’s recommendation.

Recommendation 5: The Board should develop, document, and implement a supervisory review process, such as having the Board’s executive director review a risk-based sample of applications that have been administratively reviewed by Board staff.

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

Response explanation: Board Licensing Administrator will implement a licensing procedure checklist that includes a mandatory second review of each application by the administrative assistant prior to being considered administratively complete. Board staff have implemented procedures to review any applications with the executive director that are not within our normal parameters. Additionally, the executive director will randomly review applications to ensure completeness.

Recommendation 6: The Board should train staff on the newly developed and updated policies, procedures, checklists, and practices.

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

Response explanation: Board staff currently meet weekly to discuss various issues such as scheduling, licensing issues, inspection schedules, dockets and upcoming Board meeting items. New policy will also include ongoing reviews of best practice for any newly implemented procedures and practices.

Finding 2: Board approved funeral establishments to sell prearranged funeral agreements without ensuring they had surety bonds in required amounts

Recommendation 7: The Board should verify that funeral establishments that are applying for an endorsement to sell prearranged funeral agreements have obtained surety bonds in amounts prescribed by statute.

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

Response explanation: The Board agrees with this recommendation and will continue to ensure all statute and rule requirements are met.

Recommendation 8: The Board should develop and implement policies, procedures, and/or application checklists for applications for prearranged funeral sales endorsement to require Board staff to verify surety bond amounts, and train its staff on these policies, procedures, and checklists.

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

Response explanation: The Board agrees with this recommendation and will require and review evidentiary documentation of surety bonds, in the required amounts, prior to the application being administratively complete. Board staff are aware and have updated the checklist for the Endorsement license to include this requirement.

Recommendation 9: The Board should revise its prearranged funeral sales endorsement application to require applicants to provide the Board with the total number of salespersons employed at their funeral establishment.

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

Response explanation: Board staff has revised the online application for an endorsement license to require applicants provide the total number of salespersons currently employed or who will be employed at time of licensure. This process is now applied to new and renewal applications to ensure compliance with surety bond requirements.

Finding 3: Board did not properly perform funeral establishment and crematory inspections, placing business employees' health and safety at risk and consumers at financial risk

Recommendation 10: The Board should conduct licensed business inspections that assess compliance with all statutory and rule requirements and accurately document the results of these inspections.

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

Response explanation: Board staff have improved inspection procedures by adding more specific details to the inspection checklist. The Board does not consider this to be a statutory deficiency, however, they will consider seeking statutory change to model other states that allow Branch locations. This would not require a preparation room in every funeral establishment if there were another location under the same ownership with a fully operational preparation room, thus removing a significant barrier for business growth.

Recommendation 11: The Board should update and implement its inspection policies, procedures, and checklists to address statutory and rule requirements.

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

Response explanation: Board staff have updated inspection checklists for funeral establishments and crematories to ensure all recommended additions of statutory and rule requirements are accounted for and streamlined in process.

Recommendation 12: The Board should ensure that its executive director reviews inspection checklists after each inspection as required by Board policy.

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

Response explanation: Board staff will update the electronic submission of inspection reports to be sent directly to the executive director's email for review.

Recommendation 13: The Board should develop and implement policies and procedures requiring its executive director to periodically accompany inspectors on inspections to help ensure they are thoroughly and appropriately conducted and documented.

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

Response explanation: The Board agrees with this finding. The executive director will continue to both perform and oversee some inspections performed by Board staff.

Recommendation 14: The Board should train all relevant Board staff on the updated inspection policies, procedures, and checklists.

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

Response explanation: Board staff have been and will continue to be trained on all inspections procedures, updated checklists and the necessity to more accurately document all findings.

Finding 4: Board did not perform some funeral establishment and crematory inspections within required 5-year time frame

Recommendation 15: The Board should conduct inspections of licensed funeral establishments and crematories at least once every 5 years as required by statute.

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

Response explanation: The Board agrees with this finding and will strive to remain compliant to the greatest extent possible with a lack of staffing and adequate funding. Complaints have increased upwards of 250% from a few years ago. These is due to the inability of Board staff to inspect establishments and crematories more frequently. As the state continues to grow exponentially, the Board needs to obtain sufficient appropriation to adequately fund necessary costs and staff associated with all Board functions. The Board has requested an increase in appropriated funds for fiscal 2020 and fiscal 2021 to increase adequate funding and staffing in order to meet increasing agency demands and remain statutorily compliant.

Recommendation 16: The Board should regularly maintain its inspection-tracking spreadsheet to include all inspection dates for each licensed funeral establishment and crematory, and use the inspection-tracking spreadsheet and e-licensing system to monitor and ensure all licensed funeral establishments and crematories receive inspections within required time frames.

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

Response explanation: Board staff have implemented an inspection tracking system within the online Salesforce platform to keep current on all inspection dates. All inspections details are now entered into and tracked in Salesforce.

Recommendation 17: The Board should ensure that board staff conduct reviews of the inspection-tracking spreadsheet after each monthly Board meeting, as required by Board policy.

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

Response explanation: Board administrative assistant now reviews the inspection tracking report after each Board meeting and sends notification to the executive director of all funeral establishments and crematories that need to be inspected during the upcoming quarter.

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

Recommendation 18: The Board should implement its newly developed policy to track compliance with required time frames for processing all initial and renewal licenses, registrations, and endorsement applications.

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

Response explanation: Board staff now track all applications from submission to approval through the online Salesforce platform. The administrative assistant runs monthly reports to ensure time frames are being met.

Recommendation 19: The Board should refund fees to applicants and pay penalties to the State General Fund if and when it does not meet the required application processing time frames.

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

Response explanation: The Board would comply with any refunds of penalties if it failed to comply with time frames related to the application process. To date the Board has never been out of compliance processing applications in the required time frames.

Recommendation 20: The Board should conduct a review of its licensing and registration fees by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, and determining the appropriate licensing fees, and then work with the Legislature to revise its fees accordingly.

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

Response explanation: Board staff will seek assistance from the Office of Strategic Planning and Budgeting (OSPB) to analyze the cost of its regulatory responsibilities and determine appropriate fees to allow the agency to fulfill its mission.

Recommendation 21: The Board should establish and implement a process to periodically review the appropriateness of its fees on an on-going basis.

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

Response explanation: Board executive director will seek assistance from OSPB analyst to review the appropriateness of all fees at least annually in conjunction with each fiscal budget submittal. The Board has had no increase to its fee structure in excess of twenty years. The Board will consider moving the current fees from the Arizona Revised Statutes to the Arizona Administrative Code.

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

Recommendation 22: The Board should continue to implement its newly developed conflict-of-interest policies and procedures, such as using its new annual disclosure form, publicly disclosing conflicts of interests at Board meetings, and documenting disclosed Board member and staff conflicts of interest in a special file.

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

Response explanation: Board staff have updated all conflict of interest forms including both annual disclosures and those for each Board meeting. Additionally, training by the Board's assigned Assistant Attorney General will be ongoing with the goal of having quarterly training for Board members on the agenda.

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

Recommendation 23: The Board should work with its Assistant Attorney General to determine whether and when it can develop and adopt rules to clarify statutes and processes for crematory operations.

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

Response explanation: Board executive director will work with the AAG and Board members to seek rule change to modify requirements in Article 6 for cremation logs and crematory operations.

Recommendation 24: The Board should, contingent on receiving an exemption to the rule-making moratorium, adopt rules to specify crematory operation requirements consistent with A.R.S. §32-1399.

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

Response explanation: The executive director will seek an exemption to the rule-making moratorium so that all crematory operations and requirements have greater clarity and are consistent with statute.

