

Arizona State Board of Nursing

Board generally issued licenses/certificates we reviewed in accordance with statute and rule but did not resolve some complaints in a timely manner, which may affect patient safety; remit all required revenues to the State General Fund; and provide sufficient public information

Performance Audit and
Sunset Review

September 2021
Report 21-111

A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





The Arizona Auditor General's mission is to provide independent and impartial information and specific recommendations to improve the operations of State and local government entities. To this end, the Office provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits and special reviews of school districts, State agencies, and the programs they administer.

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September 22, 2021

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Ms. Joey Ridenour, Executive Director
Arizona State Board of Nursing

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona State Board of Nursing*. 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 State Board of Nursing 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 A. Perry

Lindsey A. Perry, CPA, CFE
Auditor General

Arizona State Board of Nursing

Board generally issued licenses/certificates we reviewed in accordance with statute and rule but did not resolve some complaints in a timely manner, which may affect patient safety; remit all required revenues to the State General Fund; and provide sufficient public information

Audit purpose

To determine whether the Board issued and renewed licenses/certificates in accordance with statute and rule requirements, resolved complaints in a timely manner and in accordance with Board policy, and provided information to the public as required by statute, and to provide responses to the statutory sunset factors.

Key findings

The Board:

- Was established in 1921 to regulate nursing practices in Arizona, including investigating and adjudicating complaints against licensees and certificate holders.
- Did not resolve 12 of 25 complaints we reviewed within 180 days—taking between 186 and 435 days to investigate and adjudicate these complaints. Untimely complaint resolution may negatively affect patient safety when delays allow licensees and certificate holders to continue to practice while under investigation even though they may be unfit to do so.
- Attributed untimely complaint resolution to high investigative caseloads. The Board requested and received an additional 3.5 FTE investigative positions for fiscal year 2022, which it expects will help lower its caseloads.
- Issued all 75 initial and renewal licenses/certificates we reviewed in a timely manner and ensured 73 applicants met applicable requirements. The Board did not ensure that 2 initial applicants provided all documentation required to verify lawful presence prior to licensure but later obtained this documentation.
- Has not remitted all required revenues to the State General Fund, including 100 percent of civil and administrative penalties.
- Did not consistently comply with open meeting law requirements we reviewed and did not provide sufficient public information in response to anonymous phone calls we made.

Key recommendations

The Board should:

- Investigate and adjudicate complaints within 180 days and determine if it needs additional resources to do so.
- Determine the correct amount that should be remitted to the State General Fund as soon as possible and ensure it remits 100 percent of future civil and administrative penalties to the State General Fund.
- Continue to implement its new open meeting law policies and procedures and its new and revised public information policies and procedures.



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Board overview

The Arizona State Board of Nursing (Board) regulates nursing practice in Arizona by issuing and renewing licenses and certificates to qualified applicants, investigating complaints, administering disciplinary actions against regulated parties who violate Board statutes and rules, and providing information to the public about licensees and certificate holders. Statute requires the Board to consist of 11 members appointed by the Governor for 5-year terms. The Board was appropriated 52 full-time equivalent (FTE) staff positions for fiscal year 2022 and received federal grant funding for an additional 5.5 FTE positions. The Board does not receive any State General Fund appropriations. Rather, the Board's revenues consist primarily of licensing and related fees.

Active licenses and certificates as of June 2021	Complaints received or opened in fiscal year 2021
153,880	3,286

Audit results summary

Key regulatory areas reviewed

Initial licenses/certificates —Process initial license/certificate applications within 150 days if the Board does not open an investigation during the licensure process and 270 days if the Board opens an investigation. Key license/certificate qualifications include education, practice hours, passing an examination, lawful presence documentation, and/or passing a fingerprint-based criminal history check.	Issued timely ✓	Ensured qualifications met ✗
License/certificate renewals —Process renewal license/certificate applications within 120 or 150 days (depending on license/certificate type) if the Board does not open an investigation during the renewal and 270 days if the Board opens an investigation. Licensees/certificate holders must attest to completing practice hours, disclose pending investigations and/or disciplinary action, provide information about criminal activity, and provide evidence of continuing education, if applicable.	Issued timely ✓	Ensured qualifications met ✓
Complaint handling —Investigate complaints it receives and take action to address violations.	Resolved complaints within 180 days ✗	Followed complaint-handling policies ✓
Public Information —Provide specific complaint and licensee/certificate holder information to the public upon request. During the audit, the Board revised its public information policy and procedures.	Provided accurate or sufficient information via phone ✗	Provided required disciplinary information on website ✗

Other responsibilities reviewed

Fee setting —Establish policies and procedures to ensure fees are based on costs of providing services and periodically review fees. During the audit, the Board established fee-setting policies and procedures.	Established fee-setting policies and procedures ✓	Periodically reviewed fees ✗
Conflicts of interest —Requirements and recommended practices include signing a disclosure form annually and maintaining a special file to document substantial interest disclosures. During the audit, the Board revised its conflict-of-interest policy.	Board members and staff signed annual disclosure form ✓	Maintained special file to document substantial interest disclosures ✗
Rulemaking and open meeting law —Requirements include involving the public in rulemaking and making meeting minutes or a recording of the meeting available in 3 working days.	Involved public in rulemaking ✓	Meeting minutes available in 3 working days ✗



The Arizona Auditor General has completed a performance audit and sunset review of the Arizona State Board of Nursing (Board). This performance audit and sunset review provides responses to the statutory sunset factors and determined whether the Board (1) issued and renewed licenses/certificates in accordance with statute and rule requirements, (2) resolved complaints in a timely manner and in accordance with Board policy, and (3) provided information to the public as required by statute.

Mission and responsibilities

The Board was established in 1921 to regulate nursing practices in Arizona. The Board regulates multiple types of licensees and certificate holders, including registered nurses, practical nurses, advanced practice registered nurses, and nursing assistants (see textbox for each type of professional's scope of practice).¹ The Board's mission is "to protect and promote the welfare of the public by ensuring that each person holding a nursing license or certificate is competent to practice safely." Its responsibilities include:

- Issuing and renewing licenses and certificates to qualified applicants. Table 1 (see page 3) shows the number of active licensees and certificate holders as of June 2021. For additional information on licensure and certification requirements, see Appendix A, page a-1.
- Investigating complaints against licensees and certificate holders. During fiscal year 2021, the Board received or opened 3,286 complaints against licensees or certificate holders.
- Administering appropriate disciplinary actions against regulated parties who have violated the Board's statutes or rules.
- Approving prelicensure nursing education programs, APRN programs, and nursing assistant training programs.
- Maintaining a registry of all licensees and certificate holders in the State.

Scope of practice

Registered nurse (RN)—Assess healthcare needs, plan and implement nursing interventions to meet identified needs, and supervise licensed practical nurses and nursing assistants.

Advanced practice registered nurse (APRN)—RNs with an expanded scope of practice based on a specialty area.¹ APRNs may order diagnostic tests, such as laboratory tests, or manage patient care.²

Licensed practical nurse (LPN)—Perform nursing services under an RN's or physician's supervision, such as contributing to the assessment of healthcare needs and administering medications and treatments.

Licensed or certified nursing assistant (LNA or CNA)—Provide or assist in nursing-related services, such as bathing, dressing, and feeding patients, under a licensed nurse's supervision.³

¹ APRNs include registered nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists.

² APRNs may also be granted authority to prescribe and dispense drugs and devices within their scope of practice. Certified registered nurse anesthetists can be granted only prescribing authority.

³ The Board both licenses and certifies nursing assistants. LNAs and CNAs have the same scope of practice. However, LNAs are required to meet additional requirements for licensure, including submitting fingerprints for a criminal records check.

Source: Auditor General staff review of Arizona Revised Statutes (A.R.S.) §§32-1601 and 32-1645; Arizona Administrative Code (AAC) Title 4, Ch. 19; and information from the Board's website.

¹ According to the Board, it does not have jurisdiction over tribal and federal healthcare facilities but has jurisdiction over all Arizona licensees.

- Administering the Alternative to Discipline (ATD) Program, which is a nondisciplinary program for licensed nurses with, or at risk for, substance use disorders, medical conditions, and/or mental health conditions (see pages 5 through 6 for additional information).

Table 1
Number of active licensees and certificate holders by type
As of June 2021
(Unaudited)

Nursing professional type	Number actively licensed/certificated
RN	101,395
LPN	11,099
APRN (must also hold an active RN license):	
a. Registered nurse practitioner	10,829
b. Clinical nurse specialist	148
c. Certified nurse midwife	300
d. Certified registered nurse anesthetist	1,048
LNA	9,133
CNA	19,928

Source: Auditor General staff review of information from the Board’s website.

Organization and staffing

As required by A.R.S. §32-1602, the Board consists of 11 Governor-appointed members who serve 5-year terms. Six members must be RNs, including at least 1 APRN (excluding certified nurse midwives); 2 members must be LPNs; 1 member must be a nursing assistant or nursing assistant educator; and 2 members must represent the public. As of June 2021, the Board reported that it had 10 filled and 1 vacant Board member positions.²

According to the State’s fiscal year 2022 appropriations report, the Board was approved for 52 full-time equivalent (FTE) staff positions for fiscal year 2022. According to the Board, it also received federal grant funding for an additional 5.5 FTE positions. The Board reported that as of August 2021, 56.5 of its total 57.5 FTE positions were filled by 68 staff members, including 51 full-time and 17 part-time staff. Board staff included an executive director, 3 associate directors, chief counsel and 4 legal support staff, as well as investigators, licensing, accounting, and other administrative staff. For example, according to the Board, it had 19 investigators, 8 licensing staff, and 4 staff who had dual roles as both customer service representatives and licensing staff.

According to the Board’s website, it has established 3 committees to help fulfill its mission (see textbox on page 4). Meetings of these 3 committees are open to the public.

² The Board also reported that as of June 2021, 1 Board member served without an appointment. According to the Board, this member has continuously served since initially being appointed in 2009 and reappointed in 2013; however, based on the 2-consecutive-term limit in statute, the member is not eligible for reappointment. Board staff stated this position is an LPN position, which staff explained is difficult to fill based on the time commitment required.

Committees

Advanced Practice Committee—Has established goals, such as clarifying regulatory sufficiency of the 4 advanced practice roles and recommending changes to the Board's statutes and rules, as applicable, and provides recommendations to the Board.

Education Committee—Provides recommendations to the Board on matters related to regulating nursing education programs. The committee has established goals, such as assisting Arizona nursing programs to meet the Board's regulatory requirements to prepare graduates for safe nursing practice.

Scope of Practice Committee—Brings together a diverse membership that represents various healthcare settings throughout the State, including staff nurses, administrators, and faculty members. This committee has established goals, such as responding to the changing healthcare environment by addressing scope of practice issues and developing advisory opinions for nurses, as appropriate, to guide nursing practice.

Source: Auditor General staff review of information from the Board's website.

Nurse Licensure Compact

A.R.S. §32-1660 et seq. establishes Arizona's participation in the Nurse Licensure Compact (Compact). Arizona and 32 other states have implemented the Compact as of June 2021.³ The Compact ensures and encourages cooperation and reduces redundancies in nurse licensure and regulation between party states. Under the Compact, a party state can issue a multistate nursing license to an applicant who declares that state as the applicant's home state, also referred to as the applicant's primary state of residence (PSOR). This multistate license allows the licensee to practice nursing in any party state. Thus, as a party state, Arizona can issue a multistate nursing license to qualified applicants who declare Arizona as their PSOR and recognizes the multistate licenses issued by other party states. If nurses change their PSOR by moving to another party state, they must apply for licensure in the new home state, and the multistate license issued by the previous home state will be deactivated.

The Compact is coordinated by NCSBN.⁴ NCSBN also administers nursing licensure examinations and maintains a verification database. Specifically:

- **National Council Licensure Exams (NCLEX)**—NCSBN has developed 2 standardized exams—1 for registered nurses and 1 for practical nurses—referred to as the NCLEX-RN and NCLEX-PN. The exams are used to determine whether a nursing applicant meets the requirements to practice entry-level nursing. The exams are used by every state in the U.S.; however, each state may develop its own requirements for determining who is eligible to take these exams.
- **Nursys database**—Nursys is a national database used to verify the licensure, discipline, and practice privileges for RNs, LPNs, and APRNs for participating boards of nursing, including all states in the Compact.⁵

³ According to the National Council of State Boards of Nursing (NCSBN), as of June 2021, New Jersey and Guam had partially implemented the Compact, allowing nurses with multistate licenses issued by other compact states to practice in their jurisdiction; however, nurses living in New Jersey and Guam will not be able to apply for a multistate license until the second half of 2021 and 2022, respectively. Additionally, NCSBN reported that Vermont will implement the Compact by February 2022.

⁴ According to its website, NCSBN is an independent not-for-profit organization founded in 1978 whose mission is to empower and support nursing regulators in their mandate to protect the public. NCSBN's membership includes the nursing regulatory bodies in all 50 states; Washington, D.C.; and 4 U.S. territories in addition to 27 associate members across the globe that are nursing regulatory authorities.

⁵ According to NCSBN, Michigan is the only state in the U.S. that does not participate in providing any information through the Nursys database. Additionally, 19 states and Washington D.C. provide information about only RNs and LPNs and do not provide information about APRNs to Nursys.

Alternative to Discipline (ATD) Program

According to the Board's website, the ATD Program is the Board's nondisciplinary, confidential monitoring program for RNs, LPNs, and APRNs. The program is designed for nurses with substance use disorders, medical, or mental health conditions; nurses at risk for these disorders/conditions; or nurses with a combination of these disorders/conditions (see textbox for additional information). Nurses who are interested in the ATD Program must voluntarily request program enrollment and must meet additional eligibility criteria. The ATD Program consists of 5 pathways—4 of these require individuals to have a current diagnosis or disorder, such as substance abuse, a mental health disorder, or a medical condition. The 5th pathway is an "at-risk" pathway for individuals with a history of substance abuse but without active substance use, with medical conditions requiring mind-altering medications, or who do not meet the criteria for the other pathways.

ATD Program

The ATD Program's purpose is to ensure the public's safety through early detection, treatment, and monitoring of nurses who have, or are at risk of, conditions that could potentially impact their nursing practice and to provide the opportunity for rehabilitation for nurses who acknowledge they have, or are at risk of, a condition that may impact their nursing practice and wish to obtain the treatment and/or support needed to maintain safe nursing practice.

Nurses must meet eligibility criteria to enter the ATD Program. For example, the nurse must acknowledge having a substance use disorder or a mental health or medical condition that may affect the nurse's ability to safely practice or be at risk for these conditions. Additionally, the nurse must agree in writing to comply with the terms of the ATD Program agreement and must not have a history of causing death or significant harm to a patient. Finally, the nurse must not have engaged in behavior with a high potential to cause harm to a patient, such as diverting drugs by substituting medications, and must not have engaged in high-risk criminal behavior that includes crimes involving sexual misconduct or violence or threatening behavior, which can impact safety to practice.

Source: Auditor General staff review of information from the Board's website.

Nurses who participate in the ATD Program must be evaluated to determine eligibility, including determining the appropriate program pathway, and sign an agreement that includes general terms such as limiting the nurse's compact license to an Arizona-only license and restricting the nurse's work schedule. ATD Program agreements may also include requirements specific to the program pathway and be individualized to a participant's needs. Nurses admitted into the ATD Program pay all costs associated with the eligibility process and participation in the program.

Board staff explained that ATD Program compliance monitoring is done through a combination of Board staff and RecoveryTrek services.⁶ RecoveryTrek is a third-party administrator and treatment-monitoring provider that uses a secure HIPAA-compliant, cloud-based case management system to provide services such as tracking participant compliance with drug testing and attendance at substance use recovery groups.⁷ ATD Program participants are also required to provide self-reports every 2 months through RecoveryTrek.⁸ The Board explained that RecoveryTrek alerts participants when a report is 15 days late and if the report remains outstanding over 30 days, RecoveryTrek includes this information in a noncompliance report for the Board. Additionally, the Board worked with RecoveryTrek to develop a tracking system to ensure participant compliance, which requires Board staff's daily review of noncompliance reports generated by the Board and through RecoveryTrek.

⁶ The Board entered into an agreement with RecoveryTrek to provide services in 2014. The Board does not compensate RecoveryTrek for its services as participants in the ATD Program are responsible for all costs associated with the program.

⁷ According to the Board, if a participant does not have access to electronic resources to track attendance in substance abuse recovery groups, paper forms are available to manually track attendance.

⁸ The Board explained that self-reports are a form of therapeutic journaling that allow participants an opportunity to discuss strengths and challenges and provide feedback to Board staff.

As of May 25, 2021, the Board reported 186 participants in the ATD Program, with 87 percent of these participants demonstrating compliance with the terms of their agreements.⁹ Additionally, the Board reported that 262 nurses successfully completed the ATD Program between July 1, 2018 and June 14, 2021.

Response to the COVID-19 pandemic

The Board created processes allowing temporary waivers of certain professional licensure requirements in response to the state of emergency declared during the COVID-19 pandemic, which remained in effect as of July 2021. For example, the Board may:

- Grant temporary 90-day renewal licenses for nursing and nursing assistant renewal applicants who have not met required practice hours if the last license/certificate renewal period was within 5 years and the individual does not have a prior history of probation, revocation, application denial, or surrender.
- Grant a temporary 90-day nursing assistant certificate to prelicensure nursing students who can prove they successfully completed at least 1 semester of instruction in a Board-approved, prelicensure nursing program or a program approved by another state board of nursing, and who pass the State nursing assistant examination.
- Temporarily waive specific teaching requirements for educational programs, including substituting online teaching for in-person teaching and substituting direct patient care clinicals and instruction with simulations and similar nondirect patient contact.
- Permit nurses who previously held a nursing license in any state to obtain a temporary, 180-day limited license for the sole purpose of administering COVID-19 vaccinations if they have no previous history of license probation, revocation, application denial, or surrender.

Budget

The Board does not receive any State General Fund appropriations. Rather, its revenues consist primarily of licensing and related fees (see Table 2, page 7). A.R.S. §32-1611 requires the Board to remit 10 percent of all monies received from fees to the State General Fund and to deposit the remaining 90 percent of these revenues into the Board of Nursing Fund. This statute and A.R.S. §32-1663.01 also require the Board to remit 100 percent of civil and administrative penalties to the State General Fund; however, the Board has not remitted 100 percent of these penalties as required (see Sunset Factor 2, page 17, for additional information). Most of the Board's expenditures are for personnel costs and other operating expenses, such as rent and information technology. The Board's fund balance was nearly \$9.1 million at the end of fiscal year 2021.

⁹ Noncompliance with the ATD Program agreement may result in the participant's discharge from the program. When participants are discharged from the ATD Program, pursuant to the standard stipulated agreement, their licenses are suspended pending a final resolution of the discharge action.

Table 2
Schedule of revenues, expenditures, and changes in fund balances¹
Fiscal years 2019 through 2021
(Unaudited)

	2019	2020	2021
Revenues			
Licensing and fees	\$7,089,119	\$6,400,015	\$6,979,931
Federal ²	414,699	414,700	412,350
Charges for goods and services ³	405,143	365,245	428,089
Fines, forfeits, and penalties	59,280	85,736	70,668
Other	7,745	6,177	494
Total gross revenues	7,975,986	7,271,873	7,891,532
Net credit card fees ⁴	52,596	10,223	(49,106)
Remittances to the State General Fund ⁵	(109,331)	(1,328,393)	(812,570)
Total net revenues	7,919,251	5,953,703	7,029,856
Expenditures and transfers			
Payroll and related benefits	4,443,194	4,294,314	4,576,312
Professional and outside services	259,897	268,097	280,710
Travel	15,372	9,092	4,947
Other operating ⁶	353,266	404,762	401,343
Furniture and equipment	11,529	67,505	26,293
Total expenditures	5,083,258	5,043,770	5,289,605
Transfers to the other agencies ⁷	27,205	27,144	23,667
Total expenditures and transfers out	5,110,463	5,070,914	5,313,272
Net change in fund balances	2,808,788	882,789	1,716,584
Fund balances, beginning of year	3,689,282	6,498,070	7,380,859
Fund balances, end of year	\$6,498,070	\$7,380,859	\$9,097,443

¹ Fiscal years 2019 and 2020 revenues were actual revenues recorded on the State's accounting system; however, the revenue sources, such as licensing and fees, were adjusted based on Board estimates for each revenue source, and the total amount of revenues received in fiscal years 2019 and 2020 may not be correct because of an accounting error stemming from fiscal year 2018 (see Sunset Factor 2, page 17, for additional information).

² Federal revenues consist of monies received from the Arizona Department of Health Services and Arizona Health Care Cost Containment System that were used for the administrative and testing costs of a federal program to regulate CNAs.

³ According to the Board, charges for goods and services consisted of fingerprint and copying fees.

⁴ Net credit card fees were the difference between the convenience fees charged for credit card purchases and the related fees paid for the acceptance of credit cards. Timing differences occurred between the collection and payment of these fees.

⁵ The Board is required to remit to the State General Fund 100 percent of civil and administrative penalties and 10 percent of all other revenues (except federal revenues) in accordance with A.R.S. §§32-1611 and 32-1663.01. However, an accounting error stemming from fiscal year 2018 impacted the amounts remitted to the State General Fund in fiscal years 2018 through 2020, and the Board estimated it owed approximately \$348,000 to the State General Fund as of July 2021. Additionally, the Board has not remitted 100 percent of civil and administrative penalties as required. See Sunset Factor 2, page 17, for additional information.

⁶ Other operating expenditures consisted of various expenditures such as rental, telecommunication, insurance, software support and maintenance, information technology, repair and maintenance, and office supplies expenditures.

⁷ Transfers to other agencies primarily consisted of transfers to the Arizona Office of Administrative Hearings.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2019 through 2021, the State of Arizona *Annual Financial Report* for fiscal years 2019 and 2020, and Board-provided estimates for revenue sources in fiscal years 2019 and 2020.



Board has not resolved some complaints in a timely manner, which may affect patient safety

Board investigates and adjudicates complaints against licensees and certificate holders

Statute authorizes the Board to investigate and adjudicate complaints alleging violations of statute or rule by licensees and certificate holders (see Sunset Factor 6, pages 22 through 23, for additional information).¹⁰ According to Board policy, complaint investigations should be completed within an overall average of 180 days of receiving a complaint. Additionally, the Board classifies its complaints into 3 priorities, and Board policy specifies that complaints categorized as priority 1, which are complaints with high-risk allegations such as sexual conduct with a patient, should be investigated and presented to the Board within 180 days of receiving the complaint or reclassifying a complaint as priority 1.^{11,12} Further we have determined that Arizona health regulatory boards should investigate and adjudicate complaints within 180 days of receiving them.

Board did not resolve some complaints we reviewed within 180 days

Our review of 25 randomly selected closed complaints the Board received in fiscal year 2020 found that it did not resolve 12 of these complaints within 180 days.¹³ Specifically, the Board took between 186 and 435 calendar days to investigate and adjudicate these complaints (see Figure 1, page 9). The Board dismissed 4 of these 12 complaints, issued a letter of concern for a 5th complaint, and substantiated the alleged statute or rule violations in the other 7 complaints. Of these 7 complaints, 4 resulted in the licensees voluntarily surrendering their licenses, 2 resulted in consent agreements involving probation, and 1 resulted in the Board issuing a decree of censure to the licensee.

The Board categorized 4 complaints we reviewed as priority 1 complaints and resolved 3 of these complaints within 180 days. The priority 1 complaint that it did not resolve within 180 days, which was 1 of the 12 untimely closed complaints, alleged that the licensed nurse failed to recognize and manage postpartum complications, including hemorrhaging, and delayed presenting the patient for a higher level of care. For this complaint, the Board explained that the investigation was delayed because the allegations required an investigator with specialized knowledge, and the Board's investigator with this knowledge was on extended personal leave for

¹⁰ A.R.S. §32-1606(C). For this finding, we define complaints as allegations the Board received against a licensee or certificate holder and, upon review of the allegations, for which the Board opened a complaint investigation. We did not include instances of investigations related to the initial licensure and/or certification processes.

¹¹ Board policy clarifies that as Board staff conduct complaint investigations and obtain additional information, the priority level may change.

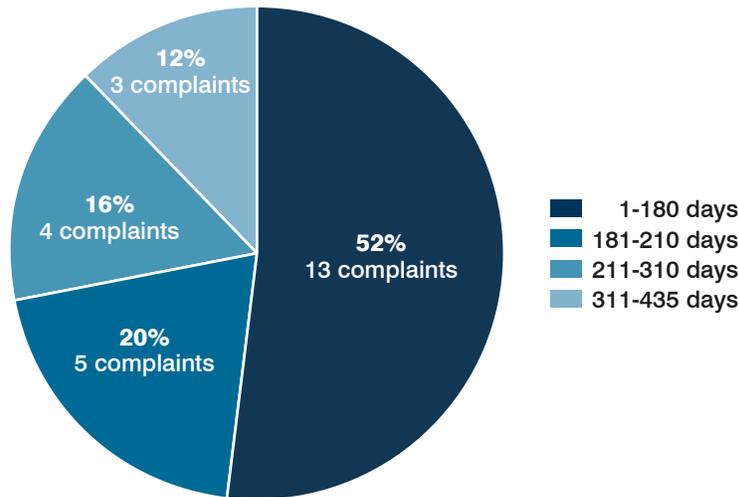
¹² Priority 2 complaints are moderate risk and include allegations such as medication or treatment errors, and priority 3 complaints are low risk and include allegations such as an isolated event or documentation errors.

¹³ To assess the Board's timeliness in investigating and adjudicating complaints, we reviewed 2 random samples of closed complaints the Board received in fiscal year 2020, including 20 of the 194 complaints that the Board closed and 5 of the 131 complaints that the Executive Director closed either through dismissal or by issuing a letter of concern.

longer than the Board anticipated during the time this complaint was being investigated.¹⁴ As a result, the Board took 301 days to substantiate the complaint's allegations and resolve the complaint. The licensee agreed to a consent agreement that required a period of suspension followed by a period of probation (see the next section for additional information). For the remaining 11 complaints we reviewed that the Board took more than 180 days to resolve, it had categorized 4 of these complaints as priority 2 and 7 complaints as priority 3.

Figure 1

Board resolved 13 of 25 complaints we reviewed in 180 days but took more than 180 days to resolve the other 12 complaints



Source: Auditor General staff analysis of Board documentation for 25 randomly selected closed complaints we reviewed that the Board received in fiscal year 2020.

Additionally, we reviewed a random sample of 10 open complaints as of December 18, 2020, that the Board received in fiscal year 2020, and at that time, all 10 complaints had exceeded the 180-day time frame.¹⁵ Since that time, the Board resolved 2 of the 10 complaints—1 complaint took 337 days to resolve and resulted in a letter of concern and the other complaint took the Board 621 days to dismiss. As of July 7, 2021, the other 8 complaints remained open between 391 and 681 days.

When Board is slow to resolve complaints, patient safety may be negatively affected

Untimely complaint resolution may negatively impact patient safety when delays allow licensees and certificate holders alleged to have violated Board statutes and rules to continue to practice while under investigation even though they may be unfit to do so. For example, as discussed previously, the untimely priority 1 complaint alleged that the nurse failed to recognize and manage postpartum complications, including hemorrhaging, and delayed presenting the patient for a higher level of care. The Board entered into a consent agreement with the nurse to revoke her license and agreed to postpone the revocation pending the nurse fulfilling specific requirements. This included suspending her RN license and APRN certificate until she completed required continuing education, followed by a probation period for a minimum of 24 months during which time the nurse can practice only

¹⁴ The Board explained that although it has contracted with outside specialists to assist with investigations, because the staff investigator was able to continue with the investigation—working when she was able to do so during her leave, although at a slower pace than expected—the Board made the decision to allow the investigator to continue the complaint investigation rather than contracting with an outside specialist who would need time to learn about the complaint and current status of the investigation to continue the process.

¹⁵ We reviewed a random sample of 10 of 534 complaints the Board received in fiscal year 2020 that had an open status as of December 18, 2020. Of the 10 open complaints, the Board categorized 4 complaints as priority 2 and 6 complaints as priority 3.

in Arizona.¹⁶ While on probation, the nurse is required to notify the Board when employed as an RN or nurse midwife, notify her employer of the terms of the Board's order, and request all nursing employers to provide monthly performance evaluations to the Board. Despite this action, the Board took 301 days to resolve this complaint, during which time the nurse continued to practice without restriction.

Board has addressed prior audit recommendations regarding complaint-resolution timeliness and attributed untimely complaint resolution to high investigative caseloads

Board has addressed prior audit recommendations regarding complaint-resolution timeliness—In both our 2001 and 2011 performance audits and sunset reviews of the Board, we found and reported on the Board's untimely complaint resolution and made recommendations to improve it.¹⁷ For example:

- In 2001, we found the Board had excessive investigation time frames and many open investigations. Although the Board had procedures with steps to conduct investigations, the steps did not include time frames for completing them. We recommended that the Board establish internal time frames for each phase of its complaint investigation process to resolve complaints within 180 days and that it resolve all priority 1 complaints within these time frames while working to clear its open investigations. Additionally, although the Board had a computer system to capture complaint investigation data, it did not provide management with accurate and complete information on the status of complaint investigations. We recommended that the Board resolve its computer system issues to generate accurate reports for management to track the status of its open investigations. Based on our follow-up work, the Board implemented these recommendations.¹⁸
- In 2011, we found that although the Board had taken steps to improve complaint-resolution timeliness, over half the complaints we reviewed took more than 180 days to resolve. We recommended the Board expand its practice, as appropriate, of drafting, negotiating, and having licensees/certificate holders sign consent agreements prior to investigations going to the Board for initial review to reduce delays; modify procedures and controls to address missing and inconsistent data in its database for tracking and monitoring timeliness; and implement a process for reviewing inactive complaints. Based on our follow-up work, the Board implemented these recommendations.¹⁹

The Board has continued to implement policies, procedures, and/or guidance consistent with our prior audit recommendations. For example, the Board has implemented the following:

- An investigative guidelines policy that states complaint investigations should be completed within an overall average of 180 days of receiving a complaint and provides time frames for various phases of the complaint investigation process. For example, this policy requires staff to:
 - Notify the licensee or certificate holder of the complaint and request additional information from him/her within 30 days of complaint receipt.
 - Issue any required initial subpoenas within 30 days of complaint receipt and continue to subpoena documents, as necessary, in the following 90 days.²⁰
 - Research and draft information for the consent agreement, including Board options, before the Board meeting when the complaint is scheduled for the Board's initial review.

¹⁶ The nurse's RN license and APRN certificate remained on probation status as of July 2021.

¹⁷ See Arizona Auditor General Reports 01-21 *Board of Nursing* and 11-02 *Arizona State Board of Nursing*.

¹⁸ See Arizona Auditor General Report 01-21 *18-Month Follow-up Report*.

¹⁹ See Arizona Auditor General Report 11-02 *18-Month Follow-up Report*.

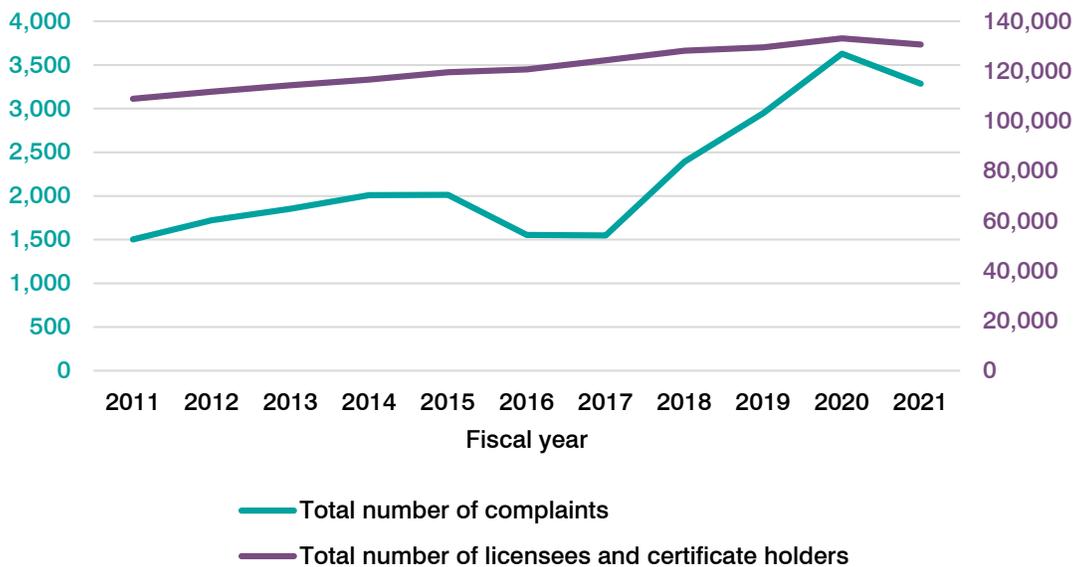
²⁰ The Board may issue subpoenas to obtain information relevant to the investigation, such as the licensee's or certificate holder's employment information or patient medical records.

- Procedures for tracking and monitoring complaint investigations to identify when complaints experience delays in the investigation process. For example, managers can generate a report showing each investigator’s caseload and how long a complaint investigation has been open. Board staff explained that during regular meetings with Board investigators, managers review this report with individual investigators and discuss the priority levels of open complaints to help ensure priority 1 complaint investigations proceed in a timely manner.

Board attributed untimely complaint resolution to high investigative caseloads—The Board reported high investigative caseloads as the primary reason for untimely complaint resolution, which it attributed to an increase in the combined number of complaints and licensure investigations opened each fiscal year. Specifically, the Board reported a 119 percent increase between fiscal years 2011 and 2021 in the number of complaints it received or opened, from 1,503 in fiscal year 2011 to 3,286 in fiscal year 2021. As shown in Figure 2, this increase coincides with a 20 percent increase in the number of Arizona licensees and certificate holders during the same time period, from 108,944 in fiscal year 2011 to 130,690 in fiscal year 2021. According to the Board, the increase in investigations has resulted in average caseloads that are above its reported caseload goal of 60 cases per investigator that it believes would enable staff to resolve complaints within 180 days.²¹ For example, on July 29, 2021, the average caseload was approximately 87 cases per investigator.

To help address its high caseloads, the Board requested and received an additional 3.5 FTE investigative positions for fiscal year 2022, which it expects will help lower its caseloads.²²

Figure 2
Number of (1) complaints received or opened and (2) licensees and certificate holders
Fiscal years 2011 through 2021
(Unaudited)



Source: Auditor General staff review of Board documents.

²¹ The Board calculated its caseload goal of 60 cases per investigator by taking the average number of hours an investigator works annually divided by the average number of hours to investigate a complaint. Additionally, a 2020 NCSBN survey of 26 state nursing regulatory bodies found that the majority of the states reported 50 cases or less per investigator as an ideal caseload for completing investigations within 6 months.

²² The Board reported it discussed the need for additional investigative staff with State budget staff in prior years but did not receive support for a staffing increase until preparing its fiscal year 2022 budget request.

Recommendations

The Board should:

1. Investigate and adjudicate complaints within 180 days and, as necessary, use its complaint-prioritization categories to focus its resources on resolving the highest-risk complaints first.
2. Assess the impact of the requested investigator positions on its complaint-resolution timeliness and determine if it needs to request additional resources to resolve complaints within 180 days. If the Board determines that it needs additional resources, it should work with the Legislature to obtain these resources.

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 protect and promote the welfare of the public by ensuring that each person holding a nursing license or certificate is competent to practice safely. The Board's responsibilities include issuing licenses and certificates to qualified individuals; approving prelicensure nursing education programs, APRN programs, and nursing assistant training programs; and investigating complaints against licensees and certificate holders.

We did not identify any states that met the Board's objectives and purpose through private enterprise. According to NCSBN, all 50 states, the District of Columbia, and 4 U.S. territories have a jurisdictional governmental body responsible for regulating nursing. Additionally, we contacted 5 states that regulate licensees and certificate holders—California, Colorado, Nevada, New Jersey, and Utah—and found that none used private enterprises to regulate nursing professionals.

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 generally met its statutory objective and purpose for several areas we reviewed. Specifically, the Board:

- **Ensured licensure and certification applicants met applicable initial licensure or certification requirements for the applications we reviewed except for ensuring 2 applicants provided adequate documentation to verify lawful presence**—Our review of random samples of 60 applications for initial licensure or certification, including 30 endorsement applications (an application based on valid licensure or certification in another state), found that the Board ensured applicants met education, examination, experience/training, and fingerprint requirements, as required by statute and rule, prior to issuing an Arizona license or certificate (see Table 3, page 14, for a summary of our review and Table 4 in Appendix A, page a-1, for a summary of key statutory and rule requirements for each license/certificate type).²³ Additionally, we reviewed a random sample of 5 of the 28 applications the Board received in fiscal year 2020 requesting prescribing and dispensing authority and found that the Board approved prescribing and dispensing authority for APRNs who met rule requirements.²⁴

However, the Board did not ensure that 2 applicants provided all documentation required to verify lawful presence. Specifically, A.R.S. §41-1080 requires the Board to obtain documentation from applicants to verify lawful presence, such as a foreign passport with a U.S. visa for non-U.S. citizens. Although the Board accepted a U.S. visa from 2 applicants, it did not also ensure these applicants submitted their foreign passports. After we discovered these deficiencies, the Board contacted the licensees and obtained copies of their foreign passports, and upon the provision of passports, the licensees then fully met the statutory documentation

²³ We reviewed the following random samples of initial licensure or certification applications the Board received in fiscal year 2020: 25 of the 7,405 RN licensure applications; 5 of the 270 RN international education licensure applications; 10 of the 877 LPN licensure applications; 10 of the 1,864 LNA licensure applications; and 10 of the 4,133 CNA certification applications.

²⁴ The Board grants prescribing and dispensing authority to APRNs to order a medication, medical device, or appliance for a patient and to dispense a controlled substance or legend drug to an ultimate user.

requirement for lawful presence. The Board explained that staff error caused the deficiency in both instances and provided its policy and a separate document that includes guidance for Board staff to ensure applicants submit the required documentation to verify lawful presence. Additionally, during the audit and in response to our identifying this deficiency, the Board reported that it provided training to its licensing staff to ensure staff understand the statutory requirement to verify lawful presence.

Table 3
Summary of Board’s key licensure/certification requirements we reviewed

License or certificate type	Education 	Examination 	Practice Requirement ¹ 	Lawful presence 	Fingerprint-based criminal history check 
Registered nurse	All 25 verified	All 25 verified	All 15 endorsement applications verified	All 25 verified	All 25 verified
Registered nurse with international education	All 5 verified	All 5 verified	All 4 endorsement applications verified	2/5 partially verified	All 5 verified
Licensed practical nurse	All 10 verified	All 10 verified	All 5 endorsement applications verified	All 10 verified	All 10 verified
Licensed nursing assistant	All 10 verified	All 10 verified	Both endorsement applications verified	All 10 verified	All 10 verified
Certified nursing assistant	All 10 verified	All 10 verified	All 3 endorsement applications verified	All 10 verified	N/A

¹ LNA endorsement applicants who have completed their nursing assistant training program and passed the required examination within 2 years of application are not required to also meet the practice requirement. One of the 3 LNA endorsement applicants we reviewed completed a training program and passed the required examination within 2 years of applying for licensure.

Source: Auditor General staff review of 60 applications for initial licensure or certification the Board received in fiscal year 2020.

- Ensured all renewal licensure or certification applications we reviewed met statute and rule requirements**—Rule requires RN, LPN, LNA, and CNA licensure or certification renewal applicants to attest to completing practice hours (see Sunset Factor 11, page 24, for additional information on the practice requirement). RN and LPN applicants must attest to completing a minimum of 960 practice hours within the 5 years prior to renewal, LNA applicants must attest to completing 160 practice hours every 2 years since the last license issuance date, and CNA applicants must attest to completing a least 8 practice hours within the past 24 consecutive months. Based on our review of a random sample of 10 renewal applications, the Board ensured that all 10 applicants either attested to meeting the applicable practice requirement or provided additional information to verify meeting the practice requirement when the database flagged the application for manual review because the applicant did not attest to meeting this requirement.^{25,26}

Rule also requires RN, LPN, and LNA license renewal applicants to disclose pending investigations and/or disciplinary action taken against the applicant’s license and to also provide information about criminal activity

²⁵ The Board has an automated process for renewal applications, and all licenses/certificates are automatically renewed unless there is an issue with a renewal application, in which case the application is sent to Board staff for manual review. For example, a renewal application may be forwarded to staff for manual review because the applicant did not attest to meeting the practice-hour requirement or disclosed disciplinary action against their license since the last renewal, or for administrative matters such as a change of name or address.

²⁶ We reviewed a random sample of 10 of the 1,147 renewal applications the Board received in fiscal year 2020 that we worked with Board staff to identify as flagged because these applications reflected a deficiency connected to a key statutory or rule requirement, such as not meeting the practice requirement or indicating criminal activity.

since initial issuance or last renewal of the license.²⁷ Of the 10 renewal applications we reviewed, the database flagged 5 for manual review—3 applications because the applicant indicated a pending investigation and/or disciplinary action and 2 applications because the applicant indicated criminal activity. We found that Board staff ensured all 5 applicants provided sufficient details about the matters to determine the disclosures did not prohibit license renewal.

Finally, A.R.S. §32-3248.02 requires APRNs who are authorized to prescribe schedule II controlled substances and have a valid U.S. Drug Enforcement Administration (DEA) registration number to complete a minimum of 3 hours of opioid-related, substance use disorder-related, or addiction-related continuing education each license renewal cycle. Our review of a random sample of 5 APRN certification renewal applications found that Board staff ensured all 3 applicants required to submit documentation verifying completion of 3 hours of continuing education did so.²⁸

- **Issued and renewed licenses or certificates in a timely manner for the applications we reviewed—**The Board issued and renewed licenses and certificates we reviewed within its established time frames. Specifically, AAC R4-19-102 requires the Board to review individual licensure and certification applications and issue/deny or renew the license or certificate within the following time frames:
 - Initial RN, LPN, LNA, and CNA applications within 150 days if the Board does not open an investigation during the licensure process and 270 days if the Board opens an investigation.
 - Renewal RN, LPN, LNA, and CNA applications within 120 days if the Board does not open an investigation during the renewal and 270 days if the Board opens an investigation.
 - Initial and renewal APRN applications within 150 days if the Board does not open an investigation and 270 days if the Board opens an investigation.
- **Denied licenses to RN and LPN applicants who did not meet requirements for the applications we reviewed—**Our review of a random sample of 5 initial RN and 3 initial LPN applications the Board denied found that it appropriately denied all 8 applications.²⁹ Specifically, 2 of the 5 RN applicants self-declared to the Board an inability to safely practice nursing; a 3rd RN applicant failed to meet standards of patient documentation and refused to enter into a consent agreement to obtain licensure; a 4th RN applicant failed to disclose criminal activity; and the 5th RN applicant failed to meet the statutory requirement for absolute discharge from all felony convictions 3 years prior to the application submission date. Two of the 3 initial LPN applicants violated multiple statutes, including failure to disclose criminal activity. The 3rd initial LPN applicant failed to respond to the Board's request for additional information about criminal activity the applicant did not disclose on the licensure application.
- **Denied all but 1 application we reviewed in a timely manner—**Of the 8 denied licensure applications we reviewed, the Board denied all but 1 in a timely manner. Specifically, AAC R4-19-102 requires the Board to deny all initial licensure applications within an overall time frame of 270 days if the Board opens an investigation during the licensure process. For the 1 application, the Board exceeded this overall time frame to deny the

²⁷ Although rule does not include these requirements for CNA renewal applicants, the Board's CNA renewal application requires applicants to provide this information.

²⁸ We reviewed a stratified random sample of 5 of 16 APRN certification renewal applications the Board received in fiscal year 2020 and that the database flagged for manual review when the applicant indicated they had a DEA registration number and did not complete 3 hours of continuing education hours for renewal.

²⁹ We reviewed a random sample of 5 of the 13 initial RN licensure applications and all 3 LPN applications the Board denied between May 2019 and May 2020. We did not review denials of other license/certificate application types because the process to deny a license/certificate is the same regardless of license/certificate type, and our review of RN and LPN licensure denials sufficiently tested the Board's process to deny licensure/certification applications.

license by 412 days.³⁰ The Board explained that various unique circumstances contributed to the delay in processing this application, including transitioning to a new computer system, staff-caused delays, and the lack of timely responses from the applicant to multiple requests for information during the investigation. When the Board received this application in 2017, it reported that it was using a manual process to track licensure investigations. The Board has since implemented a database that allows Board staff to track investigations and generate a report for each investigator that indicates how long an investigation has been opened for each pending license application. Board staff explained that these licensure investigation monitoring reports are provided to investigative staff each month. Board staff further confirmed that since implementing the new database, the Board has not experienced timeliness delays with investigations during the licensure process.

However, we identified deficiencies in 3 Board processes. Specifically, the Board:

- **Allowed an APRN certificate to remain active after the RN license expired**—Rule requires initial APRN certification applicants to hold a current Arizona RN license in good standing or an RN license in good standing from another compact state with multistate privileges.³¹ According to rule, APRN certificates should expire no later than when the RN license expires.³² However, we identified an APRN certificate that remained active after the nurse's multistate RN license issued by another compact state had expired. The nurse's RN license expired on April 30, 2021, and on Monday, May 3, 2021, the Board's database reflected that the APRN certificate remained active. Based on our inquiry, Board staff reviewed the status of the certificate and changed it to "expired." Board staff explained that its database is not able to link an Arizona APRN certificate to a multistate RN license issued by another compact state but that NCSBN notified the Board that this will be a future upgrade to the database. Until this change is made, Board staff reported that staff generate a monthly report that is used to compare the Arizona APRN certificate expiration date to the multistate RN license expiration date. When the APRN certificate expiration date is a later date than the expiration date of the RN license expiration date, staff manually adjust the APRN expiration date in the database to align with the RN license expiration date.

Based on our inquiry, the Board discovered that after recent staff turnover, a miscommunication about which staff person should run the report resulted in no one running the report, which resulted in the error discussed above. In May 2021, the Board developed a new policy that documented its practice to generate the monthly report and make the changes to the APRN certificate expiration date, as necessary, and requires supervisory review of the process. The Board began implementing this new policy in June 2021 and reported that, as of August 2021, staff were working to manually change the APRN certificate expiration dates to match the RN license expiration dates for all active APRN certificate holders.

- **Had not developed policies and procedures to periodically review fees**—A.R.S. §32-1643 establishes the maximum amounts the Board may charge for all license and application fees except CNA certification fees for applicants who apply by endorsement. The Board has charged the maximum statutory amount for all its fees since 2002. Although the Board performed an analysis comparing its regulatory costs to fee revenues in January 2021, the Board had not developed policies and procedures to regularly review the appropriateness of its fees as recommended by best practices. Specifically, government fee-setting standards and guidance state that user fees should be based on the costs of providing a service and reviewed periodically to ensure

³⁰ The Board opened an investigation during the licensure process because the applicant did not provide information to the Board about criminal activity that occurred 2 days after he submitted his application for licensure to the Board. Because the Board did not deny the applicant's request for licensure within established time frames, A.R.S. §41-1077 requires the Board to refund all application fees to the applicant within 30 days after the overall time frame expires and pay a penalty to the State General Fund. Board staff confirmed in July 2021 that they did not refund the application fees or pay the penalty; however, based on our work, the Board agreed that it is subject to this statutory requirement and will refund the fees and pay the penalty to the State General Fund. As of July 9, 2021, the Board reported it had been unable to locate the applicant to refund the fees.

³¹ AAC R4-19-505.

³² AAC R4-19-506.

they are based on the costs of providing a service.³³ During the audit, in July 2021, the Board developed a new policy and procedures that require Board staff to review the appropriateness of its fees every 5 years by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, determining the appropriate licensing fees, and then revising its fees as needed.

- **Has not remitted all required revenues to the State General Fund**—A.R.S. §§32-1611 and 32-1663.01 require the Board to remit 100 percent of civil and administrative penalties and 10 percent of all other revenues (except federal monies) to the State General Fund. However, the Board did not properly classify its credit card revenues in fiscal year 2018, which resulted in the Board remitting less of its nonpenalty revenues than required to the State General Fund. The Board attributed this error to an outdated cashiering system and manual accounting processes that have since changed. Further, although the Board made accounting adjustments in fiscal years 2019 and 2020 to help correct this error and remitted additional monies to the State General Fund, the Board estimated that it still needed to remit approximately \$348,000 in nonpenalty revenues to the State General Fund as of July 2021.

Additionally, the Board has not remitted 100 percent of both civil and administrative penalties to the State General Fund, which also impacts this estimate. Specifically, Board staff remitted 100 percent of civil penalties but reported remitting only 10 percent of administrative penalties prior to November 2019. In November 2019, Board staff began remitting 100 percent of administrative penalties but only 10 percent of civil penalties. The Board will need to research how long it has not remitted 100 percent of both penalties to determine the correct amount owed to the State General Fund and reported that it plans to remit all monies owed once it determines the correct amount it must remit.

Recommendations

The Board should:

3. Continue to implement its new policy to review and align Arizona APRN certificate expiration dates with the expiration date of the multistate RN license issued by another state when the RN license expiration date is before the APRN certificate expiration date to ensure Arizona APRN certificate holders have an active RN license.
4. Implement its new policy and procedures to periodically review the appropriateness of its fees.
5. As soon as possible, determine the correct amount that should be remitted to the State General Fund due to its misclassification of fiscal year 2018 credit card revenues and unremitted civil and administrative penalties, including researching how long it has not remitted 100 percent of both penalties, and remit these monies to the State General Fund.
6. Ensure it remits 100 percent of future civil and administrative penalties to the State General Fund.

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 and certifying individuals and approving prelicensure nursing education programs and nursing assistant training programs. However, we found that the Board had not complied with some conflict-of-interest requirements prior to our audit and could further enhance its conflict-of-interest practices by implementing some recommended practices.³⁴ Arizona law requires employees of public agencies and public officers, including Board members, to avoid conflicts of interest that might influence or

³³ We reviewed fee-setting guidelines from the Arizona State Agency Fee Commission, Government Finance Officers Association, Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review, U.S. Government Accountability Office, and U.S. Office of Management and Budget (see Appendix B, pages b-1 through b-3, for more information).

³⁴ See Appendix B, page b-2, for additional information on recommended practices we reviewed.

affect their official conduct.³⁵ These laws also require certain interests to be fully disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Statute further requires that public officers/employees who have disclosed conflicts to refrain from participating in matters related to the disclosed interests. To help ensure compliance with these statutory requirements, the Arizona Department of Administration's (ADOA) State Personnel System employee handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an "affirmative no." Finally, statute requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest and to make this file available for public inspection.

In addition, recommended practices indicate that conflict-of-interest disclosure statements should affirm no conflict exists and be signed annually, which reminds public officers/employees of the importance of complying with conflict-of-interest laws and helps ensure that potential conflicts are disclosed if their circumstances change. These recommended practices also indicate that agencies develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

The Board was taking some steps to ensure its decisions were free of conflicts of interest prior to our audit. Specifically, we reviewed the Board's meeting minutes between September 2019 and July 2020 and found instances where Board members verbally recused themselves during Board meetings for specific matters on the agenda, and the Board's official minutes documented members' verbal recusals. Additionally, Board members who verbally recused themselves refrained from voting in matters when they declared having a conflict. However, the Board did not adhere to all conflict-of-interest statutory requirements prior to our audit, including documenting the details of Board members' recusals in the official record and maintaining a special file containing conflict-of-interest documentation available for public review. Consequently, the Board could not ensure, or assure the public, that its decisions were free of conflict and/or undue influence.

During the audit, the Board implemented a conflict-of-interest policy to align with statutory requirements and recommended practices, including requiring Board members who verbally recuse themselves during a Board meeting to complete a conflict-of-interest form that includes details of the recusal and requiring Board members and staff to sign an annual disclosure statement that also affirms if no conflicts exist. The policy also includes a process for addressing disclosed conflicts, and Board members received conflict-of-interest training at the November 2020 Board meeting. As of January 2021, all Board members and staff had completed an annual disclosure statement. Additionally, the Board provided evidence of an electronic file containing conflict-of-interest documentation that is available to the public.

Recommendation

7. The Board should continue to implement its new conflict-of-interest policy.

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.

A review of the Board's statutes and rules found that it has adopted rules when statutorily required to do so. According to A.R.S. §32-1606(A), the Board has authority to adopt rules to carry out its statutory duties, which include licensing and certifying individuals and approving prelicensure nursing programs and nursing assistant training programs. The Board has revised its rules 3 times since 2017. The Board most recently revised its rules in 2020, which included (1) several administrative revisions, such as eliminating the requirement for prelicensure nursing programs seeking Board approval to submit paper copies of documents and (2) public health benefit

³⁵ A.R.S. §38-501 et seq.

revisions, such as allowing the Board to issue temporary licenses to applicants while waiting for the results of criminal history records checks, which can cause licensing delays, so that applicants may begin working.

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 by involving the public in adopting rules and providing disciplinary information about licensees on its website. Specifically, the Board:

- **Involved the public in adopting rules**—The Board informed the public of its recent rulemakings, including providing opportunities for public input and documenting the expected impact of the changes as part of the rules it finalized in July 2017, June 2019, and December 2020. Specifically, the Board published notices of rulemaking docket opening in the Arizona Administrative Register that included contact information for Board staff who would receive public input about the proposed rulemaking, informed the public when it would accept written comments on proposed rule changes that extended at least 30 days after it published the notice, and included a meeting date when the public could provide input. Additionally, the Board published notices of its proposed rulemakings and included a statement detailing these proposed rules' impact on the public.
- **Provided accurate and appropriate disciplinary information on its website for the RN and LPN licensees we reviewed**—We compared the Board's online licensing information for 13 RNs and LPNs when the Board took disciplinary action and 1 LPN when it took nondisciplinary action from the random sample of 20 complaints closed by the Board that we reviewed in our complaint sample (see Finding 1, pages 8 through 12, and Sunset Factor 6, pages 22 through 23, for additional information about our complaints review).³⁶ We found the Board's website appropriately included disciplinary information for the 13 licensees when it substantiated the complaint allegations and appropriately did not include information about nondisciplinary action taken against 1 licensee, as required by A.R.S. §32-3214.

However, we found that the Board did not consistently comply with open meeting law requirements we reviewed and did not provide sufficient information for anonymous phone calls we made or on its website for some licensees and certificate holders. Specifically, the Board:

- **Did not consistently comply with open meeting law requirements we reviewed**—We attended 6 public meetings held between November 2020 and March 2021, including 3 Board meetings (which occur over 2 days), 2 Education Committee meetings, and 1 Scope of Practice Committee meeting. Although the Board complied with some provisions of open meeting law we reviewed for these meetings, we also found instances of noncompliance.³⁷ For example:
 - The Board posted meeting notices and agendas on its website at least 24 hours in advance for 5 of the 6 meetings, although for 1 of these meetings, the Board posted an incorrect notice and agenda (see next bullet). For the 6th meeting, although the Board posted the notice and agenda for the November 2020 Board meeting on its website 24 hours in advance, it should have posted it 48 hours in advance because a State holiday preceded the meeting date. Statute requires a 24-hour notice of public meetings to the public and specifies that State holidays are excluded from this 24-hour period. The Board reported it was not aware that State holidays should be excluded when considering the 24-hour posting requirement, and it ratified all legal action taken at its next Board meeting.
 - The Board included statutorily required information in the notices and agendas for 5 of the 6 meetings we tested, including providing the date and time of the meeting and listing agenda items. For the sixth

³⁶ We also reviewed an additional 5 complaints the Board's Executive Director either dismissed or responded to by issuing a letter of concern to the nurse. For each of these 5, the dismissal and the letter of concern would not appear in the nurses' online records per statutory requirements.

³⁷ A.R.S. §38-431 et seq.

meeting—the February 5, 2021, Education Committee meeting—the Board did not post the correct notice and agenda and, thus, held the meeting in violation of open meeting law. The Board discovered its mistake during the meeting and abruptly adjourned then rescheduled the meeting for February 12, 2021. The Board explained that technical difficulties with its website caused the error.

- The Board did not provide meeting minutes within 3 working days for 1 of the 3 meetings where we tested for this requirement. The Board explained that the delay resulted from a staff misunderstanding concerning the process to provide written minutes.

Arizona has enacted open meeting laws to protect both the public and the Board. These laws are designed to maintain integrity of government, to inform the public, and to build trust between the government and the people of Arizona. When the Board does not comply with open meeting law requirements, it may be viewed as a lack of transparency and may negatively impact the public's trust in the Board. Additionally, the lack of adequate public notice of a meeting may limit public participation/prevent people from attending the Board's meeting who may want to attend and/or participate in these public meetings.

During the audit, the Board developed 2 new open meeting law policies. The first policy provides guidance for staff to ensure the correct meeting notice and agenda for its public meetings is posted and available to the public as required by open meeting laws, including information on holiday exclusions for the 24-hour posting time frame, and requires multiple Board staff reviews of public meeting notices and agendas before and after posting to the Board's website. The second policy requires staff to post a digital recording or the draft minutes for all public meetings to its website within 3 days to avoid confusion with providing written minutes and to ensure compliance with open meeting laws. Finally, the Board added a statement to its website informing the public that it records all public meetings and also included links to obtain audio recordings for all public meetings.

- **Did not provide sufficient public information in response to anonymous phone calls we made**—We placed a total of 3 anonymous phone calls to the Board in March and April 2021 and requested information about licensees with varying disciplinary histories to test the Board's compliance with statutory requirements and to determine whether the Board provided helpful, accurate, and appropriate information to the public.³⁸ A.R.S. §32-3214 indicates the Board should provide public records related to any licensee or certificate holder, including dismissed complaints and nondisciplinary actions, when contacted directly, such as contacting the Board by phone. For all 3 phone calls, the Board provided some accurate information about the licensees, including confirming license status and referring the callers to Nursys for disciplinary information about the licensees, and appropriately did not disclose a pending investigation against 1 licensee.³⁹ However, the Board also provided insufficient information in our calls. For example:
 - For 2 calls, Board staff did not disclose to either caller that both nurses had a dismissed complaint or inform the callers that the Board could provide general information about the nurse, such as license status and any nondisciplinary actions. Although the staff person referred the callers to Nursys in both instances, statute prohibits the Board from including dismissed complaints on the website.
 - For all 3 calls, when the callers asked how they may obtain additional information about the licensee, Board staff referred all 3 to Nursys but did not inform callers that the Board could provide additional information over the phone about a nurse, such as dismissed complaints or nondisciplinary actions.

During the audit, the Board revised an existing policy and procedure and developed a new policy and procedure to address issues we encountered. The revised policy indicates that requests for public information may be made in person, in writing, by phone, or by email and identifies the types of documentation that must

³⁸ We judgmentally selected 3 licensees from our random samples of closed and open complaints, including 2 RNs who both have an APRN certificate—1 RN with a dismissed complaint and 1 RN with a substantiated complaint whose license is on probation as of June 2021—and 1 LPN with an ongoing complaint investigation as of May 2021 (See Appendix B, pages b-1 through b-3, for additional information about our samples).

³⁹ See the Introduction, page 4, for additional information about Nursys.

be disclosed in response to information requests, including letters of dismissal, consent agreements, and letters of concern. The Board also developed a new policy that includes guidance specifically for providing information over the phone. The new policy directs Board staff to refer callers to the website to obtain license/certificate and disciplinary information about a licensee or certificate holder.⁴⁰ The new policy also requires staff to inquire whether the caller would like additional information, such as for dismissed complaints, and to offer to provide this information. Finally, the policy also confirms that all Board staff will release information as required by A.R.S. §32-3214, including disciplinary and nondisciplinary information and dismissed complaints. Additionally, the Board reported it provided a training for its staff to clarify the information that should be provided to ensure all staff comply with statutory requirements to provide publicly available information.

- **Did not provide all required public information on its website for some LNA licensees and CNA certificate holders we reviewed**—We compared the Board’s online licensing information to random samples of 6 of the 25 instances where the Board took disciplinary action against LNAs and 5 of the 9 instances where the Board substantiated complaints against CNAs in fiscal year 2020 to ensure its website provided information as required by statute.⁴¹ We found that the Board’s website did not reflect disciplinary information for 4 of the 6 LNAs or substantiated complaint information for all 5 CNAs. According to the Board, the database that supports the website contained the information for 2 of the 4 LNAs; however, technical issues resulted in the information being visible on the website to only some users but not to others. Additionally, the Board reported that the website did not display the information for the remaining 2 LNAs and all 5 CNAs because the former staff member responsible for this process did not follow the Board’s procedures for ensuring the information is available on the Board’s website.⁴²

In response to and during the audit, the Board reported that it provided guidance to the new staff person responsible for this process on its procedures for ensuring that disciplinary information for LNAs and substantiated complaint information for CNAs is accurately uploaded to its database and displayed on its website. The Board also reported that it will update its written policies and procedures to reflect these procedures after its database undergoes a substantial upgrade, which will change how the database functions and should be completed by August 2021.

Finally, statute requires health profession regulatory boards to display a statement on their website that a person may obtain public records related to any licensee or certificate holder, including dismissed complaints or nondisciplinary actions, by contacting the Board directly. Although the Board had included this statement on its website prior to the audit, it was located only in the LNA/CNA directory. During the audit, the Board added the statement to its more accessible “Contact Us” webpage.

Recommendations

The Board should:

8. Continue to implement its new open meeting law policies and procedures.
9. Continue to implement its new and revised public information policies and procedures.
10. Continue to follow its procedures for ensuring that disciplinary information for LNAs and substantiated complaint information for CNAs is accurately uploaded to its database and displayed on its website, and update its written policies and procedures to reflect these procedures after its database is upgraded.

⁴⁰ The new policy also specifies that if an individual would prefer to have information provided over the phone that staff should direct the call to the appropriate staff person to provide this information.

⁴¹ A.R.S. §32-1646 limits the Board’s regulation of CNAs to investigating allegations of abuse, neglect, or misappropriation of property and does not give the Board the authority to take disciplinary action against CNAs. If complaint allegations are made against a CNA, the Board follows its investigative process, and if it finds a CNA has violated statute and/or rule, it substantiates the complaint and reports this information on its website.

⁴² We confirmed that as of July 2021, the Board updated the online records for all 4 LNAs and all 5 CNAs to include accurate public information.

11. Conduct a risk-based review of its online information for LNAs and CNAs to ensure the information on its website is complete and accurate.

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

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

The Board has statutory authority to investigate and adjudicate complaints within its jurisdiction and may take various actions based on the complaint investigation outcomes (see textbox).⁴³ The Board reported that it received 2,036 complaints against licensees and certificate holders in fiscal year 2020 (excluding complaints the Board opened as part of the licensure/certification process). Our review of random samples of 37 complaints found that the Board followed its policies and procedures for handling these complaints.⁴⁴ For example, the Board/ Board staff:

- Followed the Board's investigative process as documented in policy when it investigated and adjudicated the 25 closed complaints we reviewed, including notifying the licensee/certificate holder, interviewing witnesses, and issuing subpoenas, as applicable.⁴⁵
- Complied with statutory requirements to promptly hold a hearing after summarily suspending a license for the 2 summary suspensions we reviewed.⁴⁶
- Followed the Board's process for determining whether licensees are eligible for the ATD Program and completed the required documentation to enroll them in the program within 180 days of making this determination during the complaint-resolution process.⁴⁷ Specifically, for the 5 complaints we reviewed that the Board transferred to the ATD program, it ensured that licensees completed an initial screening or provided

Actions Board may take based on complaint investigation outcomes

- Disciplinary actions:
 - Civil penalty (not to exceed \$1,000 per violation)
 - Decree of censure
 - Limited licensure
 - Probation
 - Restitution
 - Revocation
 - Suspension
 - Voluntary surrender
- Nondisciplinary actions:
 - Letter of concern
 - Administrative penalty
- Dismissal

Source: Auditor General staff analysis of A.R.S. §§32-1601, 32-1663.01, and 32-1664, and the *Arizona agency handbook*. Arizona Office of the Attorney General. (2018). *Arizona agency handbook*. Phoenix, AZ. Retrieved 12/16/2020 from <https://www.azag.gov/outreach/publications/agency-handbook>.

⁴³ If the Board determines that the public's health, safety, or welfare imperatively require emergency action, A.R.S. §41-1064(C) authorizes the Board to immediately suspend the license or certificate.

⁴⁴ We reviewed a total of 37 complaints the Board received in fiscal year 2020, including random samples of 20 of 194 complaints the Board closed; 5 of 131 complaints the Executive Director closed through dismissal or by issuing a letter of concern; 5 of 823 complaints the Board determined it did not need to investigate; 5 of 48 complaints transferred to the ATD Program; and 2 of 7 complaints that resulted in summary suspension.

⁴⁵ A.R.S. §32-1605.01(C) authorizes the Board's Executive Director to dismiss complaints in specific circumstances or issue letters of concern, and requires these actions to be reported to the Board at the next regular Board meeting. Five of the 25 closed complaints we reviewed were closed by the Executive Director under this authority, and we found the Executive Director reported these actions to the Board at the next regular Board meeting as required.

⁴⁶ Although statute does not indicate a time frame to hold a hearing after a summary suspension, the Arizona Attorney General's *Arizona agency handbook* indicates that the hearing should generally be held less than 60 days after the summary suspension. The Board complied with this time frame for both summary suspensions we reviewed.

⁴⁷ The Board completed its process to determine eligibility and prepare the documentation for all 5 ATD transfers we reviewed within 180 days of making the determination that the ATD program was a viable option for the nurse; however, in 1 instance, the overall time frame to finalize the nurse's participation took 203 days because the next regularly scheduled Board meeting to get the Board's approval was scheduled 28 days after the Board completed the process.

the required documentation to determine eligibility for the ATD Program and signed the stipulated agreement, as required by Board policy, within 180 days of determining that the ATD Program may be a viable option for the licensee.

- Ensured the 5 complaints we reviewed for which the Board did not open an investigation met the criteria. Board policy states that it does not need to open an investigation for complaints that meet certain criteria. For example, complaints with allegations that do not violate its statutes and rules, such as billing disputes or staffing issues, and complaints submitted with insufficient information to enable the Board to conduct an investigation can be closed by the Board without opening an investigation. The Board made the determination not to open an investigation between 0 and 33 days after receipt of the 5 complaints we reviewed.

Finally, as discussed in Finding 1 (see pages 8 through 12), the Board had not resolved some complaints in a timely manner, which is an issue we had identified in previous audits. The Board has implemented recommendations from these past audits and attributed the untimely complaint resolution identified in this current audit to high investigative caseloads. To help address its high caseloads, the Board requested and received an additional 3.5 FTE investigative positions for fiscal year 2022. We recommended that the Board assess the impact of the additional investigator positions on its complaint-resolution timeliness and determine if it needs to request additional resources to resolve complaints within 180 days.

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.

According to A.R.S. §41-192, the Attorney General serves as the Board's legal advisor and provides legal services as the Board requires. Additionally, various enabling statutes authorize criminal and civil legal actions for violations of specified Board statutes.

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 that it addressed deficiencies in its enabling statutes when it sought statutory changes in 2017 to revise the scope of practice and prescribing authority for certified registered nurse anesthetists (CRNAs) and exempting physicians or surgeons from liability concerning CRNA malpractice. Specifically, Laws 2017, Ch. 182, §2, amended A.R.S. §32-1634.04 to allow CRNAs to include controlled substances in medication orders for drugs or medications to be administered as specified in statute. The law also gave CRNAs prescribing authority to administer anesthetics or issue medication orders within specific settings. Further, it added language to specify that physicians or surgeons are not liable for the professional actions of CRNAs. According to the Board, these revisions clarified the scope of practice for CRNAs to promote accessible and cost-effective surgical care and removed any perception of physician or surgeon liability for CRNA malpractice.

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 the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board's regulations help protect the public through licensing and certifying qualified individuals and reviewing and approving related educational and training programs. According to the Board, the public relies on nurses for a broad range of critical services requiring professional judgment and complex, technical skills that, if performed incompetently, could cause harm or death. Additionally, the Board helps protect the public by receiving and investigating complaints against licensees, certificate holders, and educational and training programs, and taking appropriate disciplinary action upon substantiating complaints. For example, the Board facilitated a voluntary surrender of a license within 6 days of receiving a complaint notifying the Board of the nurse's arrest on child exploitation charges. Finally, federal law requires states to

establish a registry of nursing assistants that includes information such as the individual's name and details of any substantiated complaints.

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.

We judgmentally selected 5 states—California, Colorado, Nevada, New Jersey, and Utah—to compare their level of regulation with the Board and found the regulatory structure for licensees and certificate holders varies among the states.⁴⁸ For example, in California, 2 boards and 1 state agency regulate nurses and nursing assistants. Colorado and Nevada are similar to Arizona in that both states have a board of nursing that regulates nurses and nursing assistants. New Jersey and Utah both have a board of nursing that regulates nurses and a separate agency that regulates nursing assistants. Additionally, as mentioned in the Introduction (see page 2), Arizona both licenses and certifies nursing assistants, whereas the other 5 states only certify nursing assistants.

Despite these differences in regulatory structure, we found the level of regulation the Board exercises for licensees and certificate holders is similar to the level of regulation in the 5 states we reviewed. For example:

- **Education requirements**—Arizona and all 5 states require nursing applicants to complete an approved educational program and nursing assistant applicants to complete an approved training program. Additionally, Arizona and all 5 states require APRN applicants to have a graduate degree in nursing.
- **Examination requirements**—Arizona and all 5 states require nursing applicants to take the NCLEX to be licensed as an RN or LPN. Additionally, Arizona and all 5 states require APRNs to be nationally certified in their specialty area and require nursing assistant applicants to pass examinations for certification.
- **Continuing education**—Arizona and Colorado do not have continuing education requirements for nurses but instead have practice-hour requirements. However, California, Nevada, and New Jersey require nurses to complete at least 30 hours of continuing education every 2 years, and Utah requires nurses to meet a certain number of practice and/or continuing education hours.

Additionally, Arizona, Colorado, and Utah do not have continuing education requirements for nursing assistants but instead have practice-hour requirements. However, Nevada requires nursing assistants to complete both continuing education and practice hours every 2 years, whereas California and New Jersey require nursing assistants to complete in-service training or education.

- **Fingerprint requirements**—Arizona and all 5 other states require nursing applicants to submit fingerprints for criminal history records checks. Additionally, California, Nevada, New Jersey, and Utah have a fingerprint requirement for certified nursing assistants, while Colorado does not. Arizona does not have a fingerprint requirement for certified nursing assistants, although it does have a fingerprint requirement for licensed nursing assistants.

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 third-party vendors to assist in the performance of some of its duties. For example, in fiscal year 2019, the Board entered into a participation agreement with NCSBN to use its cloud-based electronic records management system for licensing and certifying applicants and managing complaint investigations.⁴⁹ Additionally, in fiscal year 2020, the Board contracted with consultants to provide expert review of investigative records, as necessary. The Board also paid for information technology services in fiscal year 2020 to assist with migrating existing web applications to the Google Cloud. Finally, as discussed in the Introduction (see pages 5 through 6), the Board uses RecoveryTrek, a third-party administrator and treatment-monitoring provider, to assist

⁴⁸ LPNs are also referred to as licensed vocational nurses, and nursing assistants as nurse aides. For consistency, we use the terms LPN and nursing assistant in our report.

⁴⁹ The Board entered into this agreement as part of the Compact, and the agreement is automatically renewed every 2 years unless terminated by either party.

in monitoring participants' compliance with ATD Program requirements, although the participants bear the cost of this service.

We compared the Board's use of contractors for these services to those used by 5 states—California, Colorado, Nevada, New Jersey, and Utah. Three states—California, New Jersey, and Utah—reported they did not use contractors in performing their duties. Colorado reported it contracts with a peer assistance provider to assist nurses with substance abuse and mental health disorders affecting their ability to practice with reasonable skill and safety. Additionally, Nevada reported it uses a contractor to provide information technology and database services.

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



SUMMARY OF RECOMMENDATIONS

Auditor General makes 11 recommendations to the Board

The Board should:

1. Investigate and adjudicate complaints within 180 days and, as necessary, use its complaint-prioritization categories to focus its resources on resolving the highest-risk complaints first (see Finding 1, pages 8 through 12, for more information).
2. Assess the impact of the requested investigator positions on its complaint-resolution timeliness and determine if it needs to request additional resources to resolve complaints within 180 days. If the Board determines that it needs additional resources, it should work with the Legislature to obtain these resources (see Finding 1, pages 8 through 12, for more information).
3. Continue to implement its new policy to review and align Arizona APRN certificate expiration dates with the expiration date of the multistate RN license issued by another state when the RN license expiration date is before the APRN certificate expiration date to ensure Arizona APRN certificate holders have an active RN license (see Sunset Factor 2, pages 13 through 17, for more information).
4. Implement its new policy and procedures to periodically review the appropriateness of its fees (see Sunset Factor 2, pages 13 through 17, for more information).
5. As soon as possible, determine the correct amount that should be remitted to the State General Fund due to its misclassification of fiscal year 2018 credit card revenues and unremitted civil and administrative penalties, including researching how long it has not remitted 100 percent of both penalties, and remit these monies to the State General Fund (see Sunset Factor 2, pages 13 through 17, for more information).
6. Ensure it remits 100 percent of future civil and administrative penalties to the State General Fund (see Sunset Factor 2, pages 13 through 17, for more information).
7. Continue to implement its new conflict-of-interest policy (see Sunset Factor 3, pages 17 through 18, for more information).
8. Continue to implement its new open meeting law policies and procedures (see Sunset Factor 5, pages 19 through 22, for more information).
9. Continue to implement its new and revised public information policies and procedures (see Sunset Factor 5, pages 19 through 22, for more information).
10. Continue to follow its procedures for ensuring that disciplinary information for LNAs and substantiated complaint information for CNAs is accurately uploaded to its database and displayed on its website, and update its written policies and procedures to reflect these procedures after its database is upgraded (see Sunset Factor 5, pages 19 through 22, for more information).
11. Conduct a risk-based review of its online information for LNAs and CNAs to ensure the information on its website is complete and accurate (see Sunset Factor 5, pages 19 through 22, for more information).



Licensure and certification requirements

The Board issues multiple types of licenses and certificates. Applicants must meet key requirements in statute or rule as shown in Table 4.

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

License/Certificate	Key requirements	Legal reference
Registered nurse (RN)	<ul style="list-style-type: none"> Graduate from a Board-approved prelicensure nursing education program. Pass national NCLEX examination. Attest to experience requirement (endorsement applicants). Submit fingerprints for a criminal history records check. Provide lawful presence documentation. Provide documentation to verify graduation from an international nursing program that met standards equivalent to U.S. programs and evidence of English language proficiency (applicants with international education). 	A.R.S. §32-1632 A.R.S. §32-1633 A.R.S. §32-1634.01 A.R.S. §32-1634.02 A.R.S. §41-1080 AAC R4-19-301 AAC R4-19-302 AAC R4-19-312
Licensed practical nurse (LPN)	<ul style="list-style-type: none"> Graduate from a Board-approved prelicensure nursing education program. Pass national NCLEX examination. Attest to experience requirement (endorsement applicants). Submit fingerprints for a criminal history records check. Provide lawful presence documentation. Provide documentation to verify graduation from an international nursing program that met standards equivalent to U.S. programs and evidence of English language proficiency (applicants with international education). 	A.R.S. §32-1637 A.R.S. §32-1638 A.R.S. §32-1639.01 A.R.S. §32-1639.02 A.R.S. §41-1080 AAC R4-19-301 AAC R4-19-302 AAC R4-19-312
Licensed nursing assistant (LNA)	<ul style="list-style-type: none"> Complete Board-approved nursing assistant training program. Pass Board-approved written and skills examinations. Attest to experience requirement (endorsement applicants). Submit fingerprints for a criminal history records check. Provide lawful presence documentation. 	A.R.S. §32-1645 A.R.S. §32-1647 A.R.S. §41-1080 AAC R4-19-806 AAC R4-19-807
Certified nursing assistant (CNA)	<ul style="list-style-type: none"> Complete Board-approved nursing assistant training program. Pass Board-approved written and skills examinations. Submit evidence of being listed on another state's nursing assistant registry (endorsement applicants). Provide lawful presence documentation. 	A.R.S. §32-1645 A.R.S. §32-1647 A.R.S. §41-1080 AAC R4-19-810
Advanced practice registered nurse (APRN)	<ul style="list-style-type: none"> Hold an active RN license in good standing. Complete a Board-approved graduate program in role and population focus. Provide documentation to verify graduation from an international graduate nursing or APRN program that met standards equivalent to U.S. programs (applicants with international education). Evidence of national certification in the role and population focus. Submit fingerprints for a criminal history records check. 	A.R.S. §32-1601 A.R.S. §32-1634.03 AAC R4-19-505
Prescribing & Dispensing (P&D) authority	Key requirements	Legal reference
APRN P&D	<ul style="list-style-type: none"> Be certified by the Board as an APRN. Submit evidence of completing a minimum of 45 contact education hours in the topics of pharmacology and/or clinical management of drug therapy. 	A.R.S. §32-1651 AAC R4-19-511

Source: Auditor General staff review of statute and rule.



Scope and methodology

The Arizona Auditor General has conducted this 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.

We used various methods to study the issues in this performance audit and sunset review of the Board. These methods included reviewing Board statutes, rules, and policies and procedures; interviewing Board staff; and reviewing information from the Board's website. In addition, we used the following specific methods to meet the audit objectives:

- To evaluate whether the Board issued initial licenses and certificates to qualified applicants in accordance with statute and rule requirements and in a timely manner, we selected and reviewed random samples of licensure and certification applications the Board received in fiscal year 2020. Specifically, we reviewed random samples of 25 of 7,405 RN license applications; 5 of 270 RN license applications for applicants with international education; 10 of 877 LPN license applications; 10 of 1,864 LNA license applications; and 10 of 4,133 CNA certification applications. To determine if the Board approved prescribing and dispensing authority for APRNs in accordance with rule, we reviewed a random sample of 5 of 28 applications the Board received in fiscal year 2020 requesting this authority. Additionally, to determine whether the Board denied licenses to individuals according to its statutes and rules, we selected and reviewed a random sample of 5 of 13 RN license applications and all 3 LPN license applications the Board denied between May 2019 and May 2020. Finally, to determine whether the Board renewed licenses and certificates according to its statutes and rules, we selected and reviewed a random sample of 10 of the 1,147 licensure and certification renewal applications submitted in fiscal year 2020 that we worked with the Board to identify as automatically flagged by the database for manual review by Board staff because these applications reflected a deficiency connected to a key statutory or rule requirement, such as not meeting the practice requirement or indicating criminal activity.⁵⁰ Additionally, we reviewed a random sample of 5 of 16 APRN certification renewal applications for APRNs that were flagged by the Board's database for manual review because the applicant indicated they had a DEA number and did not complete continuing education hours.
- To evaluate the Board's complaint investigation and adjudication processes, including the timeliness of complaint resolution, we reviewed a total of 37 complaints the Board received in fiscal year 2020, including random samples of 20 of 194 complaints the Board closed; 5 of 131 complaints the Executive Director closed through dismissal or by issuing a letter of concern; 5 of 823 complaints the Board determined it did not need to investigate; 5 of 48 complaints transferred to the Alternative To Discipline Program; and 2 of 7 complaints that resulted in summary suspension. Finally, we selected and reviewed a random sample of 10 of 534 complaints the Board received in fiscal year 2020 that had an open status as of December 18, 2020.

⁵⁰ The Board explained that license and certificate renewal is automatically processed by its database unless a renewal application is flagged by the database for manual review. An application may be flagged because an applicant answered "yes" to a background question, such as reporting disciplinary action against their license since the last renewal period, or for administrative reasons, such as a name change.

- To determine whether the Board has established its fees based on costs, we reviewed Board documentation and best practices for fee setting developed by government and professional organizations.⁵¹
- To assess whether the Board provided information to the public as required by statute, we judgmentally selected 3 licensees from our random samples of 25 closed complaints and 10 open complaints, including 2 RNs who both have an APRN certificate—1 RN with a dismissed complaint and 1 RN with a substantiated complaint whose license is on probation as of March 2021—and 1 LPN with an ongoing complaint investigation as of March 2021. We placed 3 anonymous phone calls to Board staff in March and April 2021 requesting information about the nurses and evaluated the information the Board provided to us against statutory requirements. Additionally, we reviewed information on the Board’s website for 13 of the 20 licensees with complaints closed by the Board from our complaint file review that resulted in disciplinary action and 1 licensee where the Board took nondisciplinary action to assess whether the information on its website was accurate and consistent with statutory requirements. Finally, we selected random samples of 6 of the 25 instances where the Board took disciplinary action against LNAs and 5 of the 9 instances where the Board substantiated complaints against CNAs in fiscal year 2020 and reviewed the online records to determine whether the information on the website was accurate and consistent with statutory requirements.
- To obtain additional information for the Introduction, we reviewed statute, rule, and Board-provided information regarding Board member vacancies and the number of active licensees and certificate holders as of June 2021. In addition, we compiled and analyzed unaudited information from the AFIS *Accounting Event Transaction File* for fiscal years 2019 through 2021, the State of Arizona *Annual Financial Report* for fiscal years 2019 and 2020, and Board-provided estimates for revenue sources in fiscal years 2019 and 2020.
- To obtain additional information for the Sunset Factors, we reviewed information in the Arizona Administrative Register regarding the Board’s most recent rulemakings from July 2017, June 2019, and December 2020 and assessed the Board’s compliance with various provisions of the State’s open meeting law for 6 Board and committee meetings held between November 2020 and March 2021. In addition, to assess the Board’s compliance with the State’s conflict-of-interest laws and alignment with recommended practices, we reviewed statute, Board policy and disclosure forms, and recommended practices.⁵² Finally, we judgmentally selected and contacted 5 states—California, Colorado, Nevada, New Jersey, and Utah—and reviewed their regulation of licensees and certificate holders and use of private contractors.⁵³
- Our review on internal controls included reviewing the Board’s policies and procedures for ensuring compliance with Board statutes and rules and, where applicable, testing its compliance with these policies and procedures. Our internal control work was limited to reviewing the control activities component of internal control and its related principles, which were significant to our objectives. We reported our conclusions on these internal controls and, where applicable, Board efforts to improve its controls in Finding 1 and 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.

⁵¹ We reviewed the following fee-setting best practices: Arizona State Agency Fee Commission. (2012). *Arizona State Agency Fee Commission report*. Phoenix, AZ; U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC. Retrieved 9/15/2021 from <https://www.gao.gov/assets/gao-08-386sp.pdf>; Michel, R.G. (2004). *Cost analysis and activity-based costing for government*. Chicago, IL: Government Finance Officers Association; Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS. Retrieved 9/15/2021 from <https://www.peer.ms.gov/reports/rpt442.pdf>; and U.S. Office of Management and Budget. (1993). *OMB Circular No. A 25, revised*. Washington, DC. Retrieved 9/15/2021 from <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf>.

⁵² Organization for Economic Cooperation and Development (OECD). (2003). *Recommendation of the council on OECD guidelines for managing conflicts of interest in the public service*. Paris, France. Retrieved 9/13/2021 from <https://www.oecd.org/gov/ethics/2957360.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 9/13/2021 from <https://www.ethics.org/knowledge-center/conflicts-of-interest-report/>; Controller and Auditor General of New Zealand. (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 9/13/2021 from <https://oag.parliament.nz/2020/conflicts>.

⁵³ We selected these states based on nurse population and membership in the Nurse Licensure Compact. Specifically, we picked 2 states that are compact members, 2 states that are not compact members, and 1 state in the process of entering the compact.

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

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

BOARD RESPONSE

Doug Ducey
Governor



Joey Ridenour
Executive Director

Arizona State Board of Nursing

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September 20, 2021

Ms. Lindsey Perry, Auditor General
2910 N. 44th Street, Suite 410
Phoenix, Arizona 85018

Regarding: 2021 Arizona State Board of Nursing Sunset Review

Dear Ms. Perry,

On behalf of the Arizona Board of Nursing, I am pleased to respond to the audit report. We value your audit team for their utmost professionalism and integrity in reviewing our performance. The findings are thorough, thoughtful, and represent many years of collaborative work. The findings are agreed to and the audit recommendations will be implemented.

Sincerely,

A handwritten signature in cursive script that reads "Joey Ridenour RN MN FAAN".

Joey Ridenour, RN, MN, FAAN
Executive Director
Arizona State Board of Nursing

Finding 1: Board has not resolved some complaints in a timely manner, which may affect patient safety

Recommendation 1: The Board should investigate and adjudicate complaints within 180 days and, as necessary, use its complaint prioritization categories to focus its resources on resolving the highest-risk complaints first.

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

Response explanation: The Board is strongly committed to continue to focus resources on those complaints having the highest- risk complaints.

Recommendation 2: The Board should assess the impact of the requested investigator positions on its complaint-resolution timeliness and determine if it needs to request additional resources to resolve complaints within 180 days. If the Board determines that it needs additional resources, it should work with the Legislature to obtain these resources.

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

Response explanation: The Board will assess impact of 3.5 new FTE's for FY 2022. Currently working with OSPB regarding potential additional resources needed and the Board will work with the legislature to request additional resources.

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 3: The Board should continue to implement its new policy to review and align Arizona APRN certificate expiration dates with the expiration date of the multistate RN license issued by another state when the RN license expiration date is before the APRN certificate expiration date to ensure Arizona APRN certificate holders have an active RN license.

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

Response explanation: The new policy implemented includes a monthly report that will identify future expiration dates to remind out of state APRN's with a multistate license to renew their APRN certificate.

Recommendation 4: The Board should implement its new policy and procedures to periodically review the appropriateness of its fees.

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

Response explanation: The Board has periodically reviewed the fee structure and has not increased overall fees since 1999. The new model of determining actual cost of

Board Programs and fees charged for fiscal year 2022 was presented to the Board Members and did not result in a recommendation to increase fees.

Recommendation 5: The Board should, as soon as possible, determine the correct amount that should be remitted to the State General Fund due to its misclassification of fiscal year 2018 credit card revenues and unremitted civil and administrative penalties, including researching how long it has not remitted 100 percent of both penalties, and remit these monies to the State General Fund.

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

Response explanation: The Board's new Fiscal Officer has updated the Accounting monthly close checklist to include the transfer to the State General Fund of 100% of future civil and administrative penalties and the 10% of all other revenues (except federal monies). Once the monthly transfer to the State General Fund has been prepared, the Accountant I will notify the Fiscal Officer that it is ready for review. The Fiscal Officer will review the calculation and ensure that all civil and administrative penalties are being transferred. Both the Accountant I and the Fiscal Officer will sign and date the monthly close checklist to indicate when the transfer was prepared, reviewed, approved and processed.

Recommendation 6: The Board should ensure it remits 100 percent of future civil and administrative penalties to the State General Fund.

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

Response explanation: The Board's new Fiscal Officer has ensured that 100% of civil and administrative penalties are being remitted to the general fund. An audit of the prior fiscal years will be done by November 1, 2021 to ensure all funds are correctly remitted as required.

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

Recommendation 7: The Board should continue to implement its new conflict-of-interest policy.

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

Response explanation: Each January the board members and staff are now required to sign the conflict of interest form and not just upon appointment to the position. Also, when Board or Staff members recuse themselves due to a conflict of interest, a signed form will be required for uploading into the electronic file as well as continuing to enter into the Board Minutes the declaration of the conflict of interest.

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.

Recommendation 8: The Board should continue to implement its new open meeting law policies and procedures.

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

Response explanation: New policy was implemented in January 2021 regarding posting of the agenda within 24 hours of not only the Board Meetings but also any advisory committee or subcommittee meetings. Recordings of all meeting will be posted on the website within three days of the meeting,

Recommendation 9: The Board should continue to implement its new and revised public information policies and procedures.

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

Response explanation: New policy states board staff will also provide information to the public if the person requesting the licensee or certificate holder information, also requests if there was ever a complaint submitted against the person.

Recommendation 10: The Board should continue to follow its procedures for ensuring that disciplinary information for LNAs and substantiated complaint information for CNAs is accurately uploaded to its database and displayed on its website, and update its written policies and procedures to reflect these procedures after its database is upgraded.

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

Response explanation: Certified and Licensed Nursing Assistant information is on website and to enable a better search option, upgrade to data base has been requested.

Recommendation 11: The Board should conduct a risk-based review of its online information for LNAs and CNAs to ensure the information on its website is complete and accurate.

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

Response explanation: Complete review will be done no later than January 2, 2022.

