

PERFORMANCE AUDIT

BOARD OF PSYCHOLOGIST EXAMINERS

Report to the Arizona Legislature
By the Auditor General
May 1989
89-3

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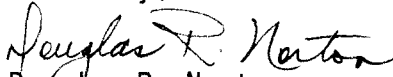
Members of the Arizona Legislature
The Honorable Rose Mofford, Governor
Miguela Rivera, Ph.D.
Chairperson
State Board of Psychologist Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona State Board of Psychologist Examiners. This report is in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in Arizona Revised Statutes §§41-2351 through 41-2379.

The report concludes that although there is a need to regulate psychologists, certification will continue to adequately protect public health and welfare. In addition, the report addresses suggestions to improve complaint handling.

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

Sincerely,


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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona State Board of Psychologist Examiners in response to a June 2, 1987 resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The board was established in 1965 to protect the health and welfare of the public as it relates to the practice of psychology. To accomplish this purpose, the board performs a variety of functions including: examining, certifying, and renewing certifications of duly qualified applicants; conducting investigations, hearings, and proceedings concerning violations; and disciplining violators. Currently, the seven-member board is responsible for regulating approximately 1,200 certified psychologists.

Certification of Psychologists Adequately Protects Public Health and Welfare

Certification of psychologists provides adequate public protection. Because the practice of psychology exposes the public to some risk, regulation is warranted. Persons who seek psychological services usually do so at a time when they are particularly vulnerable to unprofessional conduct by a psychologist. In addition, psychological evaluations are the basis for many decisions made by courts and government agencies concerning individuals' personal liberty, custody of children, or the amount of disability income.

In our 1979 report of the Board of Psychologist Examiners, we recommended that psychologists be licensed. However, based on statutory changes made since the last audit and additional data available, we now believe that certification provides an adequate level of regulation.

Licensure would require that the scope of practice be defined. Such activities could be performed by licensed psychologists only. However,

many activities which fall within the practice of psychology also fall within the activities of several professions. Therefore, defining and enforcing a scope of practice which is not overly broad is difficult if not impossible.

Further, because the incidence of harm is low, certification and legal remedies provide adequate public protection. By restricting the use of the title "psychologist" to persons who meet specific qualifications, certification aids the public in identifying qualified psychologists. Disclosure of pertinent information to prospective clients could also reduce risks of unprofessional conduct. If harm still occurs, action can be taken against the psychologist's certification and/or against the psychologist through the courts.

**Although the Board's Complaint Handling Has Improved,
Further Improvements Can Still Be Made**

The board has improved its timeliness in resolving complaints in recent years, although some changes could further improve the process. During the last three years the average time to dispose of a complaint has decreased from 243 days in 1986 to 114 days in 1988. However, some delays in case disposition continue. For example, nearly one-quarter of the cases received in 1986-88 took seven months to over a year to close.

Two factors appear to cause delays in complaint handling: inadequate disciplinary options and the practice of using board members to investigate complaints. Currently, the board lacks the authority to issue intermediate disciplinary measures. The board's only disciplinary options are probation, suspension, or revocation. As a result, many complaints are resolved using consent agreements - a process which often involves lengthy negotiations over wording. By adding a wider range of dispositions, such as letters of concern, decrees of censure, and civil penalties, the board may be able to reduce the time required to resolve complaints.

In addition, board members, who serve part-time only, currently perform most complaint investigations. Because board members perform

investigations while also engaging in their professional practices, complaint investigations are often delayed. Many other licensing boards now use consultants to investigate complaints. This can both improve the timeliness and quality of investigations. However, if a consultant is used in all Psychology Board cases, the board may need \$16,000 to \$18,000 in additional funding.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona State Board of Psychologist Examiners in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona State Board of Psychologist Examiners was established in 1965. Its purpose is to protect public health and welfare as it relates to the practice of psychology.⁽¹⁾ To accomplish this purpose, the board performs a variety of functions including: examining, certifying, and renewing certifications of duly qualified applicants; conducting investigations, hearings, and proceedings concerning violations; and disciplining violators. Currently, there are approximately 1,200 psychologists certified by the board. Although others may offer services similar to a psychologist's, statutory provisions prohibit use of the title "psychologist" unless the individual is board certified.

The board consists of seven members appointed by the Governor for five-year terms. The board members include five certified psychologists and two public members. Two of the members represent the state universities' departments of psychology and two members must be private practice psychologists.

Staffing and Budget

To assist the board in carrying out its functions, it has a full-time executive director. The board also has one investigator and one consultant on contract to assist in the investigation of some complaint cases. Monies are appropriated for board operations from the

(1) The practice of psychology is the assessment of behavioral and mental conditions; the diagnosis of neuropsychological disorders and dysfunctions; the prevention and treatment of behavioral and mental disorders and dysfunctions; and the maintenance and enhancement of physical, intellectual, emotional, social, and interpersonal functioning.

Psychologist Examiners Fund. The fund is comprised of fees collected for applications for examination and certification, certificate renewals, and other miscellaneous income. The board receives 90 percent of fees collected for operations, while the remaining 10 percent is deposited in the General Fund. Table 1 (page 3) illustrates the board's actual and budgeted revenues and expenditures for fiscal years 1986-87 through 1988-89.

Scope of Audit

This audit contains findings in two major areas:

- The need to regulate the practice of psychology.
- The need to further improve the complaint handling process.

The audit was conducted in accordance with generally accepted governmental auditing standards.

The Auditor General and staff express appreciation to the board members and the executive director for their cooperation and assistance during the course of the audit.

TABLE 1

STATE BOARD OF PSYCHOLOGIST EXAMINERS
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
FISCAL YEARS 1986-87 AND 1987-88, AND 1988-89 BUDGET
(unaudited)

| | <u>1986-87</u> <u>Actual</u> | <u>1987-88</u> <u>Actual</u> | <u>1988-89</u> <u>Budget</u> |
|-------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Revenues (a) | \$ 112,501 | \$ 45,779 | \$ 126,700 |
| Expenditures | | | |
| Personal services | \$ 25,552 | \$ 26,891 | \$ 30,100 |
| Employee related expense | 5,613 | 5,561 | 6,800 |
| Professional and outside services | 32,235 | 40,155 | 69,800 |
| Travel, in-state | 1,674 | 1,499 | 3,900 |
| Travel, out-of-state | 2,228 | 1,548 | 900 |
| Other operating expenses | 6,831 | 10,032 | 12,700 |
| Capital outlay | 348 | -0- | 200 |
| Total Expenditures | <u>74,481</u> | <u>85,686</u> | <u>124,400</u> |
| Excess of revenues over (under) expenditures | 38,020 | (39,907) | 2,300 |
| Other financing uses: | | | |
| Remittances to State General Fund | 10,597 | 3,840 | |
| Excess of revenues over (under) expenditures and other uses | 27,423 | (43,747) | |
| Beginning fund balance | <u>105,040</u> | <u>132,463</u> | <u>95,500</u> (b) |
| Ending fund balance | <u>\$ 132,463</u> | <u>\$ 88,717</u> | <u>\$ 97,800</u> |

(a) The Board of Psychologist Examiners has a biennial licensing cycle.

(b) The fiscal year 1988-89 budget beginning balance was estimated prior to the end of fiscal year 1987-88. Therefore, the actual ending balance for fiscal year 1987-88 does not agree with the budgeted beginning balance for fiscal year 1988-89.

Source: Joint Legislative Budget Committee Appropriations Report for fiscal year 1988-89 and Arizona Financial Information System reports for fiscal years 1986-87, 1987-88, and 1988-89.

SUNSET FACTORS

1. Objective and purpose in establishing the board

Although the board's enabling statutes do not contain an explicit statement of objective or purpose, the board has defined its purposes as the following:

The goals and objectives of the State Board of Psychologist Examiners are to establish and maintain high standards of qualification and performance for persons who are certified as psychologists and to regulate the practice of psychologists for the protection of the public.

To accomplish this purpose, the board establishes criteria for certification, tests applicants, and certifies and disciplines psychologists.

2. The effectiveness with which the board has met its objective and purpose and the efficiency with which it has operated

The board has been generally effective in regulating the psychology profession through examination, certification, and complaint disposition. The board has promulgated rules and regulations establishing standards and qualifications for certification. The board has also improved its timeliness in resolving complaints. (See Finding II, page 17.)

3. The extent to which the board has operated within the public interest

The board has acted in the public interest by taking disciplinary action against psychologists who have violated the statutes. During the past three years the board has placed four psychologists on probation and revoked or suspended three psychologists' certifications.

4. The extent to which rules and regulations promulgated by the board are consistent with legislative mandate

The board has promulgated rules and regulations that are consistent with its legislative mandate. The Attorney General's office reviews and certifies all proposed rules.

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

The board has complied with the Open Meeting Law and has otherwise encouraged input from the public before promulgating its rules and regulations. The most recent rule changes occurred in 1987-88. Board records show that certified psychologists were notified of the proposed changes and were encouraged to send written comments to the board or attend a public hearing. Further, the board has notified the Secretary of State's office where meeting notices will be posted. In addition, the board's executive director distributes meeting notices to the press.

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

Although the board has effectively investigated and disposed of complaints as recommended in our 1979 report, changes could further improve the complaint resolution process. (See Finding II, page 17.) Currently, the board sometimes uses investigators and consultants to investigate complaints; however, cases are initially assigned to a board member. Because the number of complaints received each year has increased substantially since the 1979 audit, the investigative process may require considerable time on the part of a board member. The number and complexity of cases assigned to a board member may impede timely investigations. The current process also lacks a uniform method of investigation and documentation. To correct this, the board should initially assign cases to the consultant and relieve the board members of investigative work.

Limited disciplinary options may also have impeded the board in resolving some complaints. The board can suspend or revoke a certification, or place a psychologist on probation. Unlike other Arizona regulatory boards, the Psychology Board does not have the authority to issue letters of concern, decrees of censure, or levy fines. According to some board members, some cases could have been resolved with a less severe form of discipline. The board may have avoided lengthy legal delays with additional disciplinary options available.

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

According to the board's Attorney General representative, the board's statutes provide sufficient authority to prosecute.

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

According to the board's executive director, the board has not initiated any legislation during the last three years.

9. The extent to which changes are necessary in the laws of the board to adequately comply with the factors listed in the Sunset Laws

Based on our audit work we recommend that the Legislature consider the following changes to the board's statutes.

- Amend A.R.S. §32-2061 et. seq. to require psychologists to disclose to clients the information necessary for clients to make informed decisions regarding risks to their health and welfare from the practice of psychology. (See Finding I, page 9.)
- Amend A.R.S. §32-2081 to allow the board to issue letters of concern, decrees of censure, and levy fines. (See Finding II, page 17.)
- Amend A.R.S. §32-2074 to raise the statutory limit on fees. (See Finding II, page 17.)

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

Termination of the board would harm the public. The practice of psychology involves the diagnosis and treatment of behavioral and mental disorders. Individuals seeking psychological services may do so at a time when they are particularly vulnerable to unprofessional practices. Also, clients may not have sufficient information to

evaluate the qualifications of the psychologist. In addition, courts and government agencies use psychologists to make evaluations which affect individuals' personal liberty, custody of children, and disability income. These institutions informed us that they rely upon the State certification process to help identify qualified professionals to perform these services.

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

Based on our review, the level of regulation exercised by the board appears appropriate. As discussed in Finding I (page 9), certification with restrictions on the use of the title of psychologist appears to offer adequate protection to the public.

12. The extent to which the board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished

The board currently contracts for three services: hearing officer, investigator, and consultant. As discussed in Finding II (page 17), we recommend the board make greater use of investigators and psychologist consultants to assist in resolving complaints.

FINDING I

CERTIFICATION OF PSYCHOLOGISTS ADEQUATELY PROTECTS PUBLIC HEALTH AND WELFARE

The State should continue to certify psychologists. Regulation is warranted because the practice of psychology exposes the public to some risks. Certification, however, rather than licensure, provides an adequate level of regulation.

Regulation of a profession is necessary when the public's health and safety are threatened. The Council of State Governments notes that regulation may be needed if an occupation poses a risk to consumers' life, health and safety, or economic well-being. Regulation should also be considered when potential users cannot be expected to have adequate knowledge to properly evaluate the qualifications of those offering the services.⁽¹⁾ All states see the need for regulating psychologists either through certification or licensure.⁽²⁾

The Practice of Psychology Poses Risks to the Public

Regulation of psychologists is needed to protect the public. Clients seeking psychological services may be vulnerable to unprofessional practices. Furthermore, psychologists conduct evaluations that affect critical decisions concerning a person's liberty, family, or some types of disability income.

Vulnerability of clients - Persons seeking psychological services usually do so when they are particularly vulnerable to unprofessional conduct by a psychologist. In recent years greater public attention has

(1) The Council of State Governments has prepared and published several works and guides on occupational licensing. For example, in 1978 the Council published Occupational Licensing: Questions a Legislator Should Ask, written by Benjamin Shimberg and Doug Roederer.

(2) Arizona and four other states (Illinois, Indiana, New Mexico, and Rhode Island) certify psychologists; the remaining forty-five states license them.

focused on this vulnerability as it relates to sexual misconduct. The major insurer of psychologists in the United States reports that nationally about 125 malpractice suits are brought each year against the 32,000 psychologists it insures. Approximately one-half of these cases involve allegations of sexual abuse.

There is evidence that sexual misconduct by psychologists also occurs in Arizona. In the years 1986-1988, six complaints were filed with the Board of Psychologist Examiners alleging sexual misconduct by a psychologist. Investigation by the board resulted in disciplinary action in four cases: two certificates were revoked, one was suspended, and one psychologist was placed on probation. Of the remaining two cases, one case was dismissed and the other is pending.

Legally mandated evaluations - Thousands of individuals each year risk loss of personal liberty, custody of children, or disability income as a result of legally mandated psychological evaluations ordered by courts and government agencies in Arizona. For example:

- The criminal courts order hundreds of psychological evaluations each year to help determine competency to stand trial, and danger to self or others. Decisions to prosecute, sentence, incarcerate, or commit may be affected by the findings.
- The Domestic Relations Court orders over one thousand psychological evaluations of children and parents each year in connection with litigated divorce cases. In addition, the Department of Economic Security (DES), Division of Social Services orders several hundred psychological evaluations in order to determine custody of children.
- The Disability Determination Service Administration of the DES orders about 1,200 psychological evaluations a year in fulfilling its responsibilities under the U.S. Social Security Act. Benefits granted or withheld in accordance with the findings amount to an average of \$750 per month for a worker with dependents. Since the average disability claim runs for six to seven years, more than \$54,000 is at risk for such a worker.

Court officials claim that they rely upon the State's certification process to help identify qualified professionals. The courts are not set up to review and determine the competency of individuals offering psychological services. Without the State performing certification, the courts would be forced to find alternative methods of assessing qualifications.

Certification Is an Adequate Level of Regulation

In our 1979 report on the Psychology Board, we recommended that psychologists be licensed. We found that Arizona lacked a statutory definition for the practice of psychology and therefore had no restriction on who may offer such services to the public. Further, we found that there was a potential for financial, psychological, and physiological harm from incompetent or unscrupulous providers. Finally, we found that potential users of psychological services could not be expected to possess the knowledge to properly evaluate the qualifications of those offering services. However, based on statutory changes made since the last audit and the additional data available, we now believe that certification provides an adequate level of regulation.

Scope of practice is difficult to define - Licensure requires that the scope of practice be defined and, by doing so, makes it illegal for unlicensed individuals to provide the services falling within the scope. In the case of psychologists it is difficult to define a scope of practice without being too broad and potentially restricting activities engaged in by numerous other persons. For example, in its 1987 model act the American Psychological Association defines the practice of psychology as:

. . . the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health.⁽¹⁾

Such activities, while falling within the practice of psychology, also fall within the daily activities of many people's professional and personal lives. Social workers, teachers, clergy, family therapists, and

(1) The act further states that the practice of psychology includes, but is not limited to, psychological testing, counseling, psychotherapy, hypnosis, biofeedback, diagnosis and treatment of mental and emotional disorders, alcoholism and substance abuse, as well as the psychological aspects of physical illness, accident, injury, and disability.

numerous other occupations observe, evaluate, and interpret behavior. They counsel to eliminate undesired behavior and/or enhance relationships and individual mental health. In addition, individuals may in their personal lives counsel friends or family members on problems. Therefore, defining and enforcing a scope of practice which is not overbroad is difficult, if not impossible.

In addition, the continued use of certification rather than licensure for psychologists is consistent with the passage of recent legislation addressing other behavioral health professionals. As of July 1, 1989, social workers, counselors, and marriage and family therapists will be certified by the Board of Behavioral Health Examiners. These professions, which provide many of the same services as psychologists, will be certified and not licensed.

Incidence of harm does not warrant licensure - In our 1979 report on the board, we also found that there was a potential for financial, psychological, and physiological harm from incompetent or unscrupulous providers. However, recent statistics indicate that although harm does occur, the incidence of harm is not frequent enough to warrant licensure. Further, other measures exist to address harm when it does occur.

Because licensure is the most severe form of regulation, it should be reserved for professions with the greatest threat of harm to the public. Although harm can occur from the practice of psychology, the incidence of harm does not warrant licensure. National malpractice statistics indicate harm is uncommon. According to the major malpractice insurance provider previously cited, psychologists are a "low-risk group" nationwide. The psychologists' annual rate of \$450 per one million dollars of liability coverage has not changed for years, and the company has never paid for damage to a claimant's mental health from psychotherapy. In addition, the insurance carrier reported that less than two percent of the cases, two to three cases per year, involve improper treatment or evaluation. Similarly, officials of two of

Arizona's largest behavioral health-care providers stated that no malpractice suit against their institutions has ever named a psychologist as a party.

Complaints filed against Arizona psychologists also indicate a limited risk. Although the board certifies about 1,200 psychologists, the board received only 26 complaints during 1986-88 alleging some form of harm (sexual misconduct and improper evaluation). Nineteen of the complaints were dismissed, two are pending, and five had disciplinary action taken against the doctor's certification.

If harm from the practice of psychology occurs, options exist to address it. The Board of Psychologist Examiners can place a psychologist on probation, or suspend or revoke the psychologist's certification for unprofessional conduct. Upon suspension or revocation, the offending psychologist can no longer offer services under the title "psychologist," although he or she may be able to do so under a different title. However, after July 1, 1989, this option will be limited with the creation of the Board of Behavioral Health Examiners.

Furthermore, persons harmed by the practice of psychology or the unprofessional conduct of a psychologist may also seek redress through civil and criminal procedures. At least four such cases are now before the courts in Arizona.

An additional option to strengthen certification is to amend the statutes to directly address particularly serious harms, such as the risk of unprofessional behavior involving sexual misconduct. Minnesota recently passed legislation which makes it a felony for a psychologist to have sexual relations with a client and eliminates consent of the client as a defense. Minnesota's law prohibits such relations for a two-year period following termination of treatment.

Methods exist to allow evaluation of qualifications - In our 1979 report on the Board of Psychologist Examiners, we indicated that potential users of psychological services could not be expected to

possess the knowledge needed to properly evaluate the qualifications of those offering services. However, based on our current review of the qualifications required for certification and licensure, we find that certification requires psychologists to meet essentially the same requirements as licensure. Further, in recent years some states have improved prospective clients' ability to evaluate psychologists' qualifications and have reduced the risks of unprofessional conduct by requiring psychologists to disclose pertinent information to the clients.

Certification requires psychologists to meet essentially the same qualifications as might be required for licensure. To be eligible for certification in Arizona, an applicant must have a doctorate from an accredited program with the majority of coursework done in psychology. He or she must also pass a nationally developed examination. Further, although Arizona does not require a period of supervised clinical practice or internship, it could do so under certification.⁽¹⁾

Disclosure of pertinent information to prospective clients could reduce the risks of unprofessional conduct. The need for disclosure is explained by one authority on regulating psychologists: "A major problem besetting the field of psychotherapy has been the lack of information available to the public. People enter psychotherapy without a clear picture of the process . . . and in what situations harm is likely to occur."⁽²⁾ Disclosure would permit clients to make more informed decisions regarding their own health and welfare concerning behavioral health services. Some states now require disclosure by psychologists and/or other behavioral health-service providers. For example:

- Washington state requires that psychologists disclose information at the commencement of treatment in accordance with guidelines set by the examining board. Statutes stipulate that the information must include:
 - the purposes of and resources available under the licensing statute,

(1) Of the four other states which certify psychologists, all require a two-year internship.

(2) Daniel Hogan, A Study of the Philosophy and Practice of Professional Regulation, vol. 1 of The Regulation of Psychotherapists (Cambridge, Mass., 1979), 381.

- the right of the client to refuse treatment and the client's responsibility for choosing the treatment modality best suited to his need,
- the education, training, and therapeutic orientation of the psychologist's practice,
- the proposed course of treatment where known,
- the extent of confidentiality provided by statute, and
- financial requirements.

In practice, the examining board prepares an informational brochure for distribution by the psychologist and guidelines for information to be provided directly by the psychologists.

- The state of Minnesota requires psychologists to provide each prospective client with a prescribed statement regarding the client's rights vis-a-vis the psychologist and the right to seek redress under the statutes. Minnesota requires unlicensed mental health service providers who are registered with a state board to provide prospective clients with information stating their education, training, experience, and the fact that Minnesota has no uniform educational and training standards for mental health service providers.

RECOMMENDATIONS

1. The State of Arizona should continue to certify psychologists.
2. The Legislature should consider amending A.R.S. §32-2061 et. seq. to require psychologists to disclose to clients the information necessary to make informed decisions regarding risks to their health and welfare from the practice of psychology.

FINDING II

ALTHOUGH THE BOARD'S COMPLAINT HANDLING HAS IMPROVED, FURTHER IMPROVEMENTS CAN STILL BE MADE

The Arizona State Board of Psychologist Examiners has improved its complaint handling process in recent years, but some changes can further improve the process. Although the board has improved its timeliness of case dispositions, some delays continue. By adding more disciplinary measures and changing the way it conducts investigations, the board could further improve timeliness as well as improve consistency of investigations.

The board receives approximately 35 to 50 complaints a year. Complaints received address such items as violation of title (e.g., a person advertises as a "psychologist," though not certified), fees and billing, improper evaluations, and sexual misconduct. Table 2 illustrates the disciplinary actions taken on the 108 cases that were presented to the board during the years 1986-88 and for which a final decision has been made.

TABLE 2
DISCIPLINARY ACTIONS TAKEN BY THE BOARD
FOR COMPLAINTS RECEIVED IN 1986-88

| <u>Type of Action</u> | <u>Number of Cases</u> |
|-----------------------|------------------------|
| Dismissal | 101(a) |
| Probation | 4 |
| Suspension | 1 |
| Revocation | <u>2</u> |
| Total | <u>108</u> |

- (a) The board dismissed 56 of the cases through informal administrative measures. For example, the executive director notified individuals by correspondence to cease using the term psychologist without being certified.

Source: Auditor General review of Psychology Board complaint files for the years 1986, 1987, and 1988.

Complaint Dispositions
Have Become More Timely
but Problems Remain

The board has shortened the length of time necessary to resolve complaints. During the last three years the average time to dispose of a case has decreased substantially. However, delays in resolving some cases continue.

As illustrated in Table 3, the board has steadily improved its timeliness in complaint disposition since 1986. The average time to dispose of a case has dropped from 243 days in 1986 to 114 days in 1988.

TABLE 3
AVERAGE LENGTH OF CASE DISPOSITION
FOR ALL CASES, 1986-1988

| <u>Year</u> | <u>Average Number of Days to Disposition</u> |
|-------------|------------------------------------------------------|
| 1986 | 243 |
| 1987 | 148(a) |
| 1988 | 114(b) |

- (a) This figure is current as of March 6, 1989. One pending case will go to a hearing on April 7, 1989. Should the case close within a month after the hearing, the 1987 average will increase only slightly, to 150 days.
- (b) As of March 6, 1989, 12 cases from 1988 remain open. If the 12 cases close in an average of five additional months, the 1988 average will remain lower than that of 1987.

Source: Auditor General review of complaint files for years 1986, 1987, and 1988.

However, some delays in case disposition continue. Of the 121 cases that were received from 1986 to 1988, 108 have been closed and 13 are still pending. As illustrated in Table 4 (page 19), about one-quarter of the closed cases took anywhere from 7 months to over a year to complete. In addition, 4 of the 13 pending cases have been open for more than a year. Table 5 (page 19) illustrates how long cases still pending have been open.

TABLE 4
LENGTH OF TIME FOR CASE DISPOSITION
COMPLAINTS RECEIVED IN 1986-1988

| <u>Time Period</u> | <u>Number of Complaints</u> |
|--------------------|-----------------------------|
| 0 - 3 Months | 54 |
| 4 - 6 Months | 25 |
| 7 - 9 Months | 16 |
| 10 - 12 Months | 3 |
| Over 12 Months | 10 |
| Total | <u>108</u> |

Source: Auditor General review of complaints files for years 1986, 1987, and 1988.

TABLE 5
LENGTH OF TIME OPEN CASES HAVE BEEN PENDING,
COMPLAINTS RECEIVED IN 1986-88(a)

| <u>Time Period</u> | <u>Number of Complaints</u> |
|--------------------|-----------------------------|
| 0 - 3 Months | 2 |
| 4 - 6 Months | 6 |
| 7 - 9 Months | 0 |
| 10 - 12 Months | 1 |
| Over 12 Months | 4 |
| Total | <u>13</u> |

(a) As of March 6, 1989.

Source: Auditor General review of complaints files for years 1986, 1987, and 1988.

Delays in timeliness are sometimes linked to legal difficulties caused by disagreement over consent agreement wording. When a psychologist has been found to be acting inappropriately, the board will sometimes use a consent agreement. The executive director, in collaboration with the Attorney General's Office, drafts a consent agreement which contains facts and conclusions, and recommends disciplinary steps by which the psychologist must abide. The psychologist's attorney, however, often requests language and conditions that are less severe and that will least hinder the practice of the psychologist. As a result, cases are delayed as the parties attempt to reach agreement on the precise wording and sanctions to be issued in the consent agreement.

In addition, delays in timeliness are sometimes caused by the board's failure to expeditiously investigate complaints. When complaints are received, they are assigned to a board member for investigation.⁽¹⁾ Because all board members are employed outside of the board and are often assigned more than one case, they frequently must prioritize investigations. This prioritizing forces other investigations to be placed "on hold" until the more important investigations are concluded. In one instance, a board member was assigned three very complex cases. The board member assigned priority to a sexual abuse case and spent as much as sixty hours one month conducting investigative work. As a result, investigation of the other two cases virtually halted for over six months.

**Refinements in Disciplinary Measures
and Investigative Procedures Could
Improve Timeliness and Provide
Additional Benefits**

Additional disciplinary measures and changes in investigative procedures could improve timeliness in complaint handling as well as provide additional benefits. In contrast to other Arizona regulatory boards, the Board of Psychologist Examiners lacks the authority to issue intermediate disciplinary measures, and unlike other Arizona regulatory boards, the Psychology Board utilizes only minimal assistance from outside consultants. The implementation of changes such as these and others mentioned below could improve the board's complaint handling process.

Disciplinary measures - The board lacks statutory authority to issue intermediate disciplinary measures against psychologists. Currently, A.R.S §32-2081 provides that "[t]he certificate of any person certified by the board may be suspended or revoked . . . or the person may be placed on probation. . . ." The complaint may also be dismissed. No sanctions exist between dismissal and probation.

(1) Although a contract investigator may be employed, board members often conduct an entire investigation themselves.

Board members have expressed frustration and concern over the lack of intermediate sanctions. They state that in some cases, like those involving poor billing practices, psychologists may be dealt with more effectively with disciplinary measures such as a civil penalty, or a decree of censure. Board members contend that such intermediate sanctions allow greater flexibility to deal with cases in which there is probably not enough evidence to issue a stronger disciplinary measure (i.e., probation, suspension, or revocation), and consequently, the case would probably be dismissed. Also, the ability to issue a letter of concern may speed up the complaint disposition process because the board could then avoid drafting consent agreements or holding hearings for the less serious violations.

As shown in Table 6, other regulatory boards have a wider range of dispositional measures than the Psychology Board. These options include letters of concern, decrees of censure, and fines.

TABLE 6
DISPOSITIONAL OPTIONS OF ARIZONA MEDICAL BOARDS

| | <u>Letter of Concern</u> | <u>Censure</u> | <u>Civil Penalties</u> | <u>Probation</u> | <u>Suspension/ Revocation</u> |
|--------------------------------|------------------------------|----------------|----------------------------|------------------|-----------------------------------|
| <u>Regulatory Board</u> | | | | | |
| Psychology Board | | | | x | x |
| Board of Medical Examiners | x | x | x | x | x |
| Chiropractic Board | | x | x | x | x |
| Dental Board | | x | x | x | x |
| Osteopathic Board | x | x | x | x | x |
| Board of Optometry | x | x | x | x | x |
| Board of Nursing | x | x | x | x | x |

Source: Arizona Revised Statutes, Title 32.

Changes in procedure - Changes in investigative procedures could also improve the complaint disposition process. Currently, board members perform most complaint investigations as was recommended in our 1979 report. However, a substantial increase in the number of complaints received each year may prohibit board members from investigating complaints in a timely and consistent manner. A better approach would be to have a consultant initially process complaints and prepare recommendations for board action. If a consultant is used, the board may need to increase funds.

The current complaint investigation process relies heavily on board members to initiate and complete investigations. Board members are assigned complaints and conduct investigations while engaged in their own professional practices. Further, the investigative process also lacks uniformity; board members follow no set investigative procedures. Only one board member has consistently provided written reports to the board. Most board members provide their findings to the board orally and file their notes or dispose of them after completing the investigation. In addition, board members receive no formalized training for complaint investigation such as that offered by the National Clearinghouse on Licensure, Enforcement, and Regulation (CLEAR). CLEAR's National Certified Investigator Training (NCIT) curriculum includes training in interviewing techniques, evidence development, fundamentals of administrative law, and report writing.

Furthermore, public members may not have the expertise to investigate complaints. As complaints are received, they are assigned to board members, including public members, on a rotating basis. The two public board members are not psychologists; therefore, they may have less understanding of the practice and standards of psychology than the psychologists on the board.

Rather than relying on board members to initiate and complete investigations, it may be better to use a consultant for this purpose. Some other regulatory boards give cases initially to a consultant. Such consultants review the case, determine its merit, and offer

recommendations. The case is only later given to the board for further action or decision. For example, the Board of Medical Examiners (BOMEX) directs all of its cases initially to a staff physician. The physician reviews the case, conducts necessary investigative work, and files a report with the board. The board determines what action is necessary to complete the case.

In November 1988, the board contracted with a psychologist to review certain cases and to provide a professional opinion. Although board members still receive the complaint initially and only a few cases have been reviewed by the consultant, board members feel that the consultant has provided guidance and time savings in the complaint review process.

To involve a consultant in all Psychology Board cases the board may need to increase its funding for consultant and investigative services. BOMEX staff physicians are employed half-time at a starting salary of \$28,340. The Osteopathic Board employs a consultant at a cost of \$25,852. If the Psychology Board were to establish a similar position, it may require an additional \$16,000 to \$18,000. Currently the board has \$10,000 budgeted for consultant fees.

Funding additional consultant services may require a statutory change to increase fees. In 1980 the Legislature established a maximum fee of \$200. The Board raised its fee to the statutory maximum in 1988. However, the Joint Legislative Budget Committee (JLBC) analyst estimates an additional increase will be needed to meet the board's rising level of expenditures. Although the board has carryforward revenues available, the analyst indicated that even the board's current expenditures will soon deplete the reserves. He estimates the board expenditures have doubled in the last five years. Therefore, the board may need to increase its certification fees in order to finance additional consultant services. This would require amending A.R.S. §32-2074 to raise the statutory limit on fees.

RECOMMENDATIONS

1. The Legislature should consider amending A.R.S. §32-2081 to allow the board to issue letters of concern, decrees of censure, and levy civil penalties as means of disposition.
2. The board should initially assign complaints to a consultant to review and investigate, and to formulate recommendations.
3. The board should request an amendment to A.R.S. §32-2074 to increase the statutory limit on fees. This would allow the board to raise fees to cover the additional funding needed for consultant services.



State of Arizona
Board of Psychologist Examiners

1645 West Jefferson, Room 410
Phoenix, Arizona 85007
602-542-3095

May 19, 1989

Mr. Douglas R. Norton
Auditor General
2700 N. Central Avenue #700
Phoenix, Arizona 85004

Dear Mr. Norton:

The following represents the response of the State of Arizona Board of Psychologist Examiners to the recommendations of the Office of the Auditor General as contained in the performance audit report received April 27, 1989. The Board has responded to the non-controversial recommendations specifically:

FINDING I

Recommendation 1. "Continue to certify psychologists"

The Board concurs with this recommendation.

Recommendation 2. "Amend A.R.S. §32-2061 et. seq. to require psychologists to disclose to clients the information necessary to make informed decision regarding risks to their health and welfare from the practice of psychology"

The Board concurs with this recommendation.

FINDING II

Recommendation 1. "Amend A.R.S. §32-2081 to allow letters of concern, censure, levy civil penalties."

The Board concurs with this recommendation.

Recommendation 2. "Initially assign complaints to a consultant"

The Board concurs with this recommendation, providing an additional \$16,000-\$18,000 appropriation for Professional and Outside Services is granted to the Board.

Recommendation 3. "Increase limit on fees"

The Board concurs with this recommendation, as additional revenue may be necessary if all complaints are to be handled by paid consultants rather than Board members.

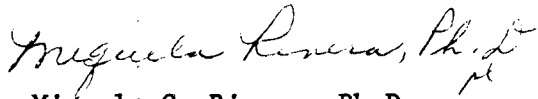
INTRODUCTION AND BACKGROUND

Staffing and Budget

The Board now has two investigators on contract. The Board has engaged the services of an additional consultant who will be hired as soon as the contract is approved by the Attorney General's Office.

The Board of Psychologists wishes to compliment you and your staff on the thoroughness of your investigations, the comprehensiveness of your final report and your sensitivity to the issues faced by this Board and by consumers of psychological services. We appreciate your recommendations, and have already moved to affect improvements. Most important, we appreciate the high degree of confidence in the Board which is represented overall by your report.

Sincerely,


Miquela C. Rivera, Ph.D.
Chairperson