



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Board of Podiatry Examiners

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Debra K. Davenport
Auditor General

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Dale Chapman, Manager and Contact Person

Emily Chipman

Robin Hakes

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DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

September 23, 2008

Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Dr. Dedrie Polakof, President
Board of Podiatry Examiners

Dee Doyle, Executive Director
Board of Podiatry Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit and Sunset Review of the Board of Podiatry Examiners (Board). This report is in response to an October 5, 2006, 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 with this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

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

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

This report will be released to the public on September 24, 2008.

Sincerely,

Debbie Davenport
Auditor General

Attachment

SUMMARY

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Podiatry Examiners (Board) pursuant to an October 5, 2006, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

The Board's mission is to protect the health, safety, and welfare of the citizens of Arizona by maintaining and regulating standards of practice in the field of podiatric medicine. The Board licenses and regulates podiatrists, who specialize in the diagnosis and treatment of the foot and its related structures. The Board's various responsibilities include issuing and renewing licenses to qualified persons, conducting investigations and hearings concerning unprofessional conduct or other statutory violations, disciplining licensees who commit violations, and providing consumer information to the public.

Board needs to improve complaint-handling practices (see pages 9 through 17)

The Board should take several steps to address problems with its complaint-handling practices, some of which were identified when the Office of the Auditor General conducted its 1998 performance audit and sunset review of the Board. Although the Board took steps to address the 1998 problems, similar problems were found during this audit. Specifically, the Board should:

- **Separate complaint investigation from adjudication**—The Board typically performs the necessary steps to investigate a complaint, but the full Board acts as both investigator and adjudicator. This practice conflicts with the Attorney General's guidance in the *Arizona Agency Handbook*, which states that to minimize problems, decision-makers, such as board members, involved in adjudicating a complaint should consider not participating in investigating that complaint. Combining the investigation and adjudication of complaints can create the appearance of bias because board members may not appear objective when adjudicating the complaint. Therefore, the Board should identify and implement a process that allows it to separate the investigative and adjudicative functions. One option the Board should consider involves assigning

one of its members to conduct complaint investigation activities and then having this board member recuse himself/herself from all other decisions and discussions regarding the complaints he/she investigates.

- **Improve complaint-handling timeliness**—The Auditor General's Office has found that Arizona health regulatory boards should typically resolve complaints within 180 days. However, it took the Board longer than 180 days to process 15 of the 106 complaints it received between July 1, 2005 and December 31, 2007. Further, 12 of the 106 complaints remained open as of June 1, 2008, and were open longer than 180 days, including 5 complaints for one licensee. Two factors contribute to the Board's inability to process all of the complaints it receives in a timely manner. First, the Board investigates complaints during its monthly meetings. Since the Board generally meets only one day per month, complaint investigations can take considerable time, particularly if the process requires multiple meetings. Separating the Board's complaint investigation and adjudication functions, as discussed above, could help it process complaints in a more timely manner.

Second, licensees are sometimes nonresponsive to board requests for information. According to statute, it is an act of unprofessional conduct to withhold some types of information from the Board. A.R.S. §32-854.01(17) states that it is an act of unprofessional conduct for a licensee to refuse "to divulge to the board on demand the means, method, procedure, modality of treatment, or medicine used in the treatment of a disease, injury, ailment or infirmity." Auditors found that for 4 of the 27 complaints open longer than 180 days and for which the Board issued letters of concern or pursued disciplinary action, the licensees did not provide information prescribed by statute and were not sanctioned by the Board. Therefore, the Board should take action against licensees who do not respond to requests for treatment information as prescribed in statute. In July 2008, the Board began using subpoenas to initially request documentation from licensees, which may facilitate how timely licensees provide documentation to the Board.

- **Improve some complaint-handling processes**—Because of inadequate processes and documentation, auditors could not always determine whether the Board addressed all allegations indicated in a complaint, the basis for its complaint decisions, and its consideration of a licensee's prior disciplinary history when determining discipline for a current complaint. Further, the Board has inconsistently communicated complaint investigation results and the decision to the complainant. In August 2008 the Board adopted a policy for consideration of a licensee's disciplinary history when taking disciplinary action against a licensee. The Board should also develop and implement complaint-handling policies and procedures that help ensure that it completely and appropriately addresses all complaints and documents its processing of all complaints.

Board should improve public information (see pages 19 through 25)

One of a regulatory board's important responsibilities is providing information that allows the public to make informed decisions about using the services of licensees whom the Board regulates. However, when auditors made calls to the Board and asked for information, board staff did not provide complete information about licensees. Complete information was similarly unavailable on the Board's Web site.

One problem that contributed to the lack of complete information was the Board's database, which is incomplete and inaccurate. The Office of the Auditor General's 1998 audit report recommended that the Board develop a complaint-tracking database and procedures to ensure its accuracy and completeness. Although the Board took steps to implement these recommendations, as of May 2008, only 37 of the 123 complaints received between calendar years 2003 and 2006 had been entered in the database. Further, auditors' tests of 113 complaint records in the database identified at least one piece of missing information for 64 of these complaints. Board staff are aware of these problems, have begun to address them, and should continue to do so. The Board should also create a database report that can detail an individual licensee's complaint and disciplinary history. As of May 2008, such a report has not been created in the database, and instead, board staff manually search the database for this information. This takes time and potentially leads to information that might be missed or not accurately disclosed to the public.

A second problem affecting the information provided to the public was the lack of written public information policies and procedures. Although the Board reported that it had developed public information guidelines for its staff in 2006, it has not developed formal, written policies. A board employee, who was hired as of September 2007 and answered auditor phone calls, was unaware of these guidelines and did not follow them. For example, contrary to board guidance, board staff provided information on dismissed complaints and a letter of concern that dated from more than 5 years before the auditor's call and did not provide information on all complaints that resulted in disciplinary action. Additionally, information on the Board's Web site is not consistent with its guidelines. To address these matters, the Board should develop and implement written public information policies and procedures.

Sunset factors (see pages 27 through 36)

Auditors analyzed the Board's performance in accordance with the 12 sunset factors outlined in A.R.S. §41-2954, including its compliance with open meeting laws. In addition to the matters already discussed above, auditors found problems in the following areas:

- **Meeting notice requirements**—Until April 2008, board meeting notices did not comply with A.R.S. §38-431.02(G), which requires state agencies, at least 24 hours in advance of the meeting, to include a meeting agenda with the posted notice or inform the public where one could be obtained. Further, the Board did not post the notice for its June 11, 2008, board meeting 24 hours in advance of the meeting. Therefore, the Board should ensure that it complies with the open meeting law requirement and post its meeting notices and appropriate agenda information 24 hours in advance of the meeting.
- **Meeting agendas**—Although the Board significantly improved its meeting agendas during the audit, additional improvements are needed. Improvements already made include more clearly and specifically identifying the items to be discussed, considered, and potentially acted upon. After these changes were made, however, auditors still found that the June 11, 2008, board meeting agenda listed two complaints without indicating the specific matters for discussion or possible action. Auditors also identified circumstances where the Board held discussions or took actions on items that had not been included on the meeting agenda. Therefore, the Board should continue to work with the Attorney General's Office to ensure the appropriateness of its meeting agendas and that it restrict board business and discussion to matters that have been appropriately included, described, and noticed on its meeting agendas.
- **Examinations inappropriately conducted**—One of the Board's duties involves administering an oral examination to those seeking to become licensed as podiatrists in Arizona. The Board inappropriately handled its December 2007 oral exam in a board meeting by failing to properly notice the meeting and executive session, post an agenda, or take and produce meeting minutes. The Board addressed these issues by holding a meeting to ratify its actions related to the December 2007 oral exam. Additionally, consistent with the advice of its Assistant Attorney General to review previous administrations of the exam to see if this would constitute a meeting and then address any potential open meeting law issues, the Board held a ratification meeting in July 2008.
- **Executive sessions**—According to A.R.S. §38-431.03, there are seven reasons that the Board may hold executive session, including discussion or consultation for legal advice, or receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law. However, the Board inappropriately conducted investigative interviews, citing witness safety concerns, in two executive sessions held during separate board meetings in December 2007 and January 2008. During its May 2008 meeting, the Board's Assistant Attorney General advised the Board of the problems associated with conducting an interview in executive session, indicating that witness fear is not a permissible reason to conduct an interview in executive session and that the information gathered would need to remain confidential. Therefore, the Board should ensure that it complies with A.R.S. §38-431.03 and uses executive session only for purposes permitted by law.

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INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Podiatry Examiners (Board) pursuant to an October 5, 2006, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

Field of podiatry

The American Medical Association defines "podiatry" as "the branch of medicine that deals with the examination, diagnosis, and treatment of diseases and malfunctions of the foot and its related structures." Under A.R.S. §32-801, podiatrists are allowed to work on any part of the leg below the knee. However, they are not allowed to administer general anesthesia or perform amputations. Typical foot problems treated by podiatrists include foot and ankle injuries, bunions, heel spurs, arch problems, and a variety of diabetes-related problems. Podiatrists generally obtain bachelor's degrees before entering a 4-year Doctor of Podiatric Medicine program.

In Arizona, podiatrists may treat any part of the leg below the knee.

Board history and responsibilities

The Board was originally created as the State Board of Chiropody Examiners and renamed the Board of Podiatry Examiners in 1964. The Board's mission is "*To protect the health, safety, and welfare of the citizens of Arizona by regulating and maintaining standards of practice in the field of podiatric medicine.*" The Board has various responsibilities that are designed to help accomplish its mission, including:

- Issuing and renewing licenses to qualified persons;
- Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- Disciplining violators; and
- Providing consumer information to the public.

Licensure requirements

As part of its responsibilities, the Board issues licenses to qualified applicants. Qualifications needed to obtain licensure include passing the National Board of Podiatric Medical Examiners' national board exams with a 75 percent or better score, graduating from podiatry school, completing a 1-year internship/residency, and paying the associated \$225 licensing fee. Applicants must also take the State's oral exam and pass with at least a 75 percent score. The Board administers this exam twice a year, which focuses on Arizona statutes that pertain to the practice of podiatry in the State. Applicants must pay a \$450 fee to take the state oral exam. Statutes also allow for the Board to issue a provisional license if an applicant meets all of the other requirements, but has not completed a 1-year internship. However, according to its staff, the Board has not issued a provisional license in several years.

Podiatrists who are licensed in another state can apply for licensure by comity. To obtain licensure by comity, the applicant must have practiced podiatry in another state for not less than 5 years within the 7 years immediately preceding his/her application for a license in Arizona. In addition, the applicant must also meet all other requirements for regular licensure, such as graduating from podiatry school and passing the state oral exam.

Licensees are required to renew their licenses annually. To obtain this renewal, licensees must complete 25 hours of continuing education in podiatric medicine and pay a \$275 renewal fee. According to board staff, in fiscal year 2007, the Board issued 14 initial licenses and renewed 346 licenses.¹

In addition to issuing licenses, the Board registers licensees to dispense prescription drugs and devices in Arizona. Licensees must complete an application, submit a current Drug Enforcement Administration Certification of Registration, and pay the associated \$200 registration fee to become registered. Additionally, this registration must be renewed annually. In addition to the authority to dispense prescription drugs, registration authorizes licensees to dispense devices for podiatric care, which, according to the Board, include ankle or foot orthotics and various braces. In fiscal year 2007, the Board issued or renewed 228 drug and device dispensing registrations.²

Regulation of licensees

The Board investigates and adjudicates complaints involving potential statutory violations and unprofessional conduct by licensed podiatrists, as authorized by statute. A.R.S. §32-852 states that the Board may, after notice and a hearing, suspend, revoke, or refuse to issue a license upon proof against the applicant or

The Board issued 14 initial and 346 renewed licenses in fiscal year 2007.

¹ Board staff reported that this information came from the Board's database, which contains unaudited information.

² Board staff reported that this information came from the Board's database, which contains unaudited information.

licensee for six actions that constitute statutory violations for licensees. These actions are:

- Willfully revealing privileged communication except as required by law;
- Making false or fraudulent statements on a licensing application or examinations;
- Having a professional association with or lending the use of his/her name to an unlicensed podiatrist or an illegal practitioner of any of the healing arts;
- Violating A.R.S. §32-854, which states that a license to practice podiatry shall not be issued to a corporation, partnership, or association, but two or more licensed podiatrists may occupy and practice in the same office space;
- Being guilty of other conduct that disqualifies the licensee to practice podiatry with regard to public safety and welfare; and
- Being guilty of unprofessional conduct as defined in A.R.S. §32-854.01.

A.R.S. §32-854.01 further defines unprofessional conduct as 24 different actions, including advertising in a false, deceptive, or misleading manner; habitual intemperance in the use of drugs and alcohol; inappropriate use of prescription drugs; gross malpractice, repeated malpractice, or any malpractice resulting in the death of a patient; and any conduct or practice which is or might be harmful or dangerous to the health of the patient.

Allegations of unprofessional conduct may be generated by the public, other podiatrists, the Arizona Podiatric Medical Association, healthcare institutions, and the Board. According to board practice, upon receiving a complaint alleging that a licensee violated statute, board staff notify the named licensee of the complaint and request that the licensee respond to the allegations and submit pertinent medical records. The Board then performs additional investigative steps depending on the circumstances of the case and the type of information that is needed. Investigative steps may include reviewing submitted medical documentation; interviewing the licensee, complainant, or witnesses; requesting medical documentation from other doctors who may have treated a complainant; and seeking evidence through ordering licensees to submit to drug or psychiatric evaluations. A complaint is adjudicated when the Board has determined that adequate information has been obtained to determine whether a violation has or has not been committed.

If after completing its investigation the Board finds that the information is or may be true, the Board may request an informal interview with the licensee. If the licensee refuses to attend the informal interview or the results of the interview indicate that license suspension or revocation may be in order, the Board is required by statute to issue a complaint and conduct a formal hearing. The Board may conduct the formal hearing itself or refer the complaint for formal hearing to the Arizona Office of

Administrative Hearings to be heard by an administrative law judge. Upon its own determination or the recommendation of the administrative law judge, the Board resolves the complaint. If the Board determines the allegations are true, but not of sufficient seriousness to merit suspension or revocation, the Board can take the following actions:

- File a letter of concern, which is an advisory letter to notify a podiatrist that although there is insufficient evidence to support a disciplinary action, the Board believes the podiatrist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the Board may result in action against the podiatrist's license;
- Fix a period and terms of probation;
- Issue a decree of censure;
- Issue a civil penalty of not more than \$2,000 per each violation; and/or
- Issue a nondisciplinary order for continuing medical education.

However, if after a formal hearing the Board finds the licensee to be guilty of violating A.R.S. §32-852, the Board may take the following actions:

- Issue a decree of censure;
- Fix a period and terms of probation; or
- Suspend or revoke a license.

In fiscal year 2007, the Board opened 38 complaints. As of May 2008, board staff reported that of these 38 complaints, 3 remain open, 30 were dismissed, 4 resulted in the Board's issuing a letter of concern, and 1 resulted in the Board's taking disciplinary action by issuing a decree of censure.¹

Organization and staffing

The Board is made up of three licensed podiatrists and two public members, each appointed by the Governor to 5-year terms. The Board employs one employee—a full-time Executive Director who is responsible for most of the Board's administrative functions, including processing licensing applications, assisting the Board with complaint handling, and responding to public information requests. In addition, the Board contracts with the Department of Administration for the use of certain support services and staff, such as accounting services, financial reporting, and recordkeeping.

¹ Board staff reported that this information came from the Board's database, which contains unaudited information.

Budget

The Board derives its revenues from examination and license fees, and registration fees for licensees to dispense drugs and medical devices. The Board deposits 90 percent of its revenues into the Podiatry Fund and the remaining 10 percent of revenues into the State General Fund. Table 1 (see page 6) illustrates the Board's actual revenues and expenditures for fiscal years 2006 through 2008. Due to increased revenues and decreased expenditures, the Board's financial situation improved in fiscal year 2008. Specifically, the Board's revenues increased by approximately 3.4 percent from fiscal years 2006 to 2007, but increased by more than \$31,000, or 25.7 percent, from fiscal years 2007 to 2008. Revenue amounts vary each fiscal year depending upon when the Board receives and processes the license and registration fees it collects from April through August of each year. Additionally, during this time, expenditures had slightly decreased. Specifically, the Board's expenditures decreased by nearly \$11,600, or 9.7 percent, from fiscal years 2007 to 2008. Most of this can be attributed to the savings that resulted from the Board's executive director position, which was vacant during part of fiscal year 2008, and to hiring a new executive director who was paid a lower salary than the previous executive director. However, an \$11,400 increase in professional and outside services costs for temporary clerical help in fiscal year 2008 partially offset these savings. As a result, the Board's fund balance increased by more than \$19,000 to nearly \$86,800 from fiscal year 2006 to 2008.

Despite this improved financial performance in fiscal year 2008 and in response to a decreasing fund balance in fiscal year 2007, in April 2008, the Board voted to increase its oral exam fee from \$450 to \$750, its initial licensure fee from \$225 to \$300, and its license renewal fee from \$275 to \$300. These proposed fee changes will require revisions to the Board's administrative rules. According to board staff, these rule revisions are in process and should be completed by June 2009.

Followup to 1998 performance audit and sunset review

The Office of the Auditor General previously performed a performance audit and sunset review of the Board in 1998 (see Report No. 98-15). The 1998 audit found that the Board should improve complaint handling by separating its investigation and adjudication processes, reviewing licensees' disciplinary history to help determine appropriate discipline for new complaints, and improving its documentation of the Board's rationale for its decisions. Although the Board took steps to implement these recommendations, during the current audit, auditors determined that the Board still needs to take steps to improve its complaint handling. For example, the Board still needs to separate its investigation and adjudication processes, as well as better document various aspects of its complaint-handling process, including documenting the rationale for its decisions (see Finding 1, pages 9 to 17).

Table 1: Schedule of Revenues, Expenditures, and Changes in Fund Balance
Fiscal Years 2006 through 2008
(Unaudited)

	2006	2007	2008
Revenues:			
License and registration fees	\$108,575	\$106,425	\$134,792 ¹
Examination fees	7,250	12,689	12,600
Fines, forfeits, and penalties	1,800	2,650	2,700
Other	<u>433</u>	<u>270</u>	<u>3,275</u>
Total revenues	<u>118,058</u>	<u>122,034</u>	<u>153,367</u>
Expenditures, operating transfers, and remittances to the State General Fund:²			
Personal services and employee-related	72,522	84,813	60,602 ³
Professional and outside services	26,789	24,988	36,428 ⁴
Travel	432	785	534
Other operating	5,387	8,355	9,860
Equipment		<u>267</u>	<u>207</u>
Total expenditures	105,130	119,208	107,631
Operating transfers out			800
Remittances to the State General Fund ⁵	<u>11,806</u>	<u>13,103</u>	<u>15,337</u>
Total expenditures, operating transfers, and remittances to the State General Fund	<u>116,936</u>	<u>132,311</u>	<u>123,768</u>
Excess (deficiency) of revenues over expenditures, operating transfers, and remittances	1,122	(10,277)	29,599
Fund balance, beginning of year	<u>66,333</u>	<u>67,455</u>	<u>57,178</u>
Fund balance, end of year	<u>\$67,455</u>	<u>\$57,178</u>	<u>\$86,777</u>

¹ License and registration fees are primarily collected during April through August of each year. Amounts fluctuated between 2006 and 2008 because in 2008 more receipts were received and processed later in the period.

² Administrative adjustments are included in the fiscal year paid.

³ Amount decreased significantly in 2008 primarily because the Board did not have an executive director for approximately 10 weeks and the new executive director was paid a lower salary than the previous executive director.

⁴ Amount increased significantly in 2008 primarily because temporary services were used when the Board did not have an executive director.

⁵ As required by A.R.S. §32-806, the Board remits 10 percent of all revenues to the State General Fund. In addition, in 2007, the Board remitted a \$1,000 civil penalty to the State General Fund.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) Accounting Event Transaction File for fiscal years 2006 through 2008; and for fund balances, the AFIS Management Information System Status of General Ledger—Trial Balance screen for fiscal years 2006 through 2008 as of August 6, 2008.

Additionally, the 1998 audit found that the Board should provide more complete information to the public by developing and validating a complaint-tracking database and adopting procedures to ensure the continuing accuracy and completeness of information in this database. Although the Board took steps to implement these recommendations, during the current audit, auditors found that the Board still needs to provide more complete information to the public and that the information in the Board's complaint database is incomplete (see Finding 2, pages 19 to 25, for more information).

Scope and methodology

This performance audit and sunset review focused on the Board's complaint investigation and adjudication processes, and its policies and practices for providing information to the public. The Board's performance was also analyzed in accordance with the 12 statutory sunset factors. This report includes findings and recommendations in the following areas:

- Although the Board typically performs the necessary complaint investigative activities, it should separate the investigation and adjudication of complaints, process complaints in a more timely manner, and improve various aspects of its complaint process; and
- The Board should improve the information it provides to the public by ensuring the completeness and accuracy of information in its database, as well as developing and implementing consistent policies and practices for providing information to the public.

In addition, this report contains a response to the 12 statutory sunset factors.

Auditors used various methods to study the issues addressed in this report. These methods included interviewing board members, the Board's Executive Director, the Board's Assistant Attorneys General, and a representative of the podiatric professional association; attending seven of the Board's regular monthly meetings from December 2007 through June 2008 and two ratification meetings in February and May 2008; reviewing the Board's statutes, rules, and practices; and reviewing the *Arizona Agency Handbook* published by the Attorney General's Office. In addition, the following specific methods were used:

- To assess the timeliness and adequacy of the Board's processes for investigating and adjudicating complaints, auditors reviewed and conducted analyses of the following:
 - A judgmental sample of 18 complaints the Board received during fiscal year 2006 through the first half of fiscal year 2008, including a sample of 5 dismissed complaints and all 13 complaints where the Board took disciplinary action; and
 - All 106 complaints the Board received during fiscal year 2006 through the first half of fiscal year 2008 for timeliness of processing, including files for all 13 complaints processed over 180 days and where the licensee appeared to have delayed sending documentation to the Board.

In addition, auditors reviewed the Board's complaint-handling documentation and monthly board meeting minutes from July 2005 through June 2008.

- To determine whether the Board provides the public with accurate and complete information regarding licensee complaint histories and disciplinary actions, three auditors posing as members of the public made telephone calls to the Board requesting information on three licensed podiatrists and compared the information received to the Board's licensee files and database. Further, auditors reviewed the Board's database for completeness by comparing complaints entered in the database to all 168 complaint files the Board received from January 1, 2003 through December 31, 2007. Additionally, auditors tested 113 complaints in the database for the completeness of five fields that contain complaint information, such as complaint number, description, status, and disposition. Auditors also observed board staff's processes for using the database to access the disciplinary history of a licensee. Further, auditors reviewed the Board's Web site to determine what information is available to the public and to determine the accuracy of complaint information reported in disciplinary histories for five licensees. Finally, auditors reviewed the Board's public information guidelines and records retention policy.
- To develop information for the Introduction and Background, auditors reviewed the Auditor General's 1998 performance audit and sunset review of the Board (see Report No. 98-15); gathered and analyzed information about the Board from the Arizona Financial Information System (AFIS) Accounting Event Transaction File for fiscal years 2006 through 2008, and AFIS Management Information System Status of General Ledger—Trial Balance screen for fiscal years 2006 through 2008 as of August 6, 2008; and reviewed information from the American Medical Association's Web site, the Board's database, and other board documents.
- To gather information for the sunset factors, auditors reviewed and analyzed a judgmental sample of 4 of the 20 license applications the Board approved in fiscal year 2007; an analysis of the Board's administrative rules performed by the Governor's Regulatory Review Council staff; and the Board's compliance with open meeting laws, including its statement of disclosure filed with the Arizona Secretary of State's Office as of January 11, 2008, and board meeting notices, agendas, and minutes. Auditors also reviewed information from the Master List of State Government Programs, the American Podiatric Medical Association, and various board contracts.

This audit was conducted in accordance with government auditing standards.

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

FINDING 1

Board needs to improve complaint-handling practices

The Board of Podiatry Examiners (Board) should take several steps to improve its complaint-handling practices, some of which were identified in the Auditor General's 1998 performance audit and sunset review of the Board (see Report No. 98-15). First, the Board should separate the investigation of complaints from the adjudication of complaints. Second, the Board should ensure that it processes all the complaints it receives in a timely manner. Finally, the Board needs to establish and implement policies and procedures for various aspects of the complaint-handling process, including ensuring that it has investigated and adjudicated all complaint allegations, clearly communicating and documenting the basis for its decisions, and considering a licensee's disciplinary history when determining discipline.

Complaint investigation and adjudication should be separated

As was previously recommended in the Office of the Auditor General's 1998 report, the Board should separate the investigation of complaints from the adjudication of complaints. Although the Board took steps to address this recommendation after the 1998 report, auditors' review of board complaint investigation practices and observations of monthly board meetings between December 2007 and May 2008 found that the Board typically performs the necessary complaint investigative steps but does not separate the investigation of a complaint from its adjudication. When a complaint against a licensee is received, the Board's staff requests that the licensee prepare a response and provide all relevant documentation. During its meetings, the full Board reviews and discusses complaint-related documentation, determines if additional documentation is needed and then requests it, interviews complainants if necessary, and conducts investigative interviews of licensees and other witnesses if

The full Board both conducts complaint investigations and adjudicates their outcome.

necessary. Following the investigation by the full Board, the Board adjudicates the complaint and may take various actions such as dismissing the complaint, scheduling and conducting an informal interview, or referring the matter to formal hearing, typically with the Office of Administrative Hearings.

The Board's practice conflicts with guidance provided by the Arizona Attorney General's Office. The Attorney General's *Arizona Agency Handbook* states that to minimize problems, decision-makers, such as board members, involved in adjudicating a complaint should consider not participating in investigating that complaint. The Board told Auditor General staff that it investigates complaints as a full board because of the medical expertise required to conduct investigations, which the three professional board members possess, and because the Board does not have the resources needed to hire an assistant who is knowledgeable in the field of podiatric medicine and expert enough to begin investigations on his/her own. However, combining the investigation and adjudication of complaints can create the appearance of bias because board members may not appear objective when adjudicating the complaint.

To help reduce the appearance of bias, the Board should separate its investigative and adjudicative practices. According to the *Arizona Agency Handbook*, investigations can normally be conducted by the Board's staff. However, the Board has reported that its Executive Director does not have the time or medical knowledge to complete investigations. Given its limited resources, the Board should identify and implement some other process that allows separation of the investigative and adjudicative functions. For example, the Board could assign one of its members to conduct complaint investigations. This board member could then perform all necessary complaint investigative activities, such as reviewing all relevant medical documentation; conducting necessary interviews of the complainant, licensee, and other appropriate witnesses; and developing an investigative report for submission to the Board. This board member should then recuse himself/herself from all other decisions and discussions regarding the complaints he/she investigates. Alternatively, the Board could determine whether current or retired podiatrists would volunteer services to the Board to assist in conducting complaint investigations or identify a combination of methods that would allow it to separate the investigative and adjudicative functions.

The Board could assign one member to investigate complaints; this member should not participate in its adjudication.

Board has not processed some complaints in a timely manner

The Board needs to take steps to improve the timeliness of complaint handling. Although the Board generally processes complaints in a timely manner, it has taken excessive amounts of time to resolve some complaints. These delays typically resulted from the Board's practice of investigating complaints during board meetings, as well as licensees' nonresponsiveness to the Board's requests.

Some complaints not processed in timely manner—The Auditor General's Office has found that Arizona health regulatory boards should typically resolve complaints within 180 days. Additionally, according to the Governor's executive budget report, the Board has set a goal to complete investigations within 70 days. As illustrated in Table 2, although the Board resolved 79 of the 106 complaints it received between July 1, 2005 and December 31, 2007, within 180 days, it took the Board longer than this time period to resolve 15 complaints. Further, 12 of the 106 complaints remained open as of June 1, 2008, and were open longer than 180 days, including 5 complaints for 1 licensee.¹ Specifically:

Twenty-seven of 106 complaints were open longer than 180 days.

- Licensee with seven open complaints**—One licensed podiatrist has seven open complaints with the Board, including five complaints that have been open between 200 and over 920 days as of June 1, 2008. According to board meeting minutes, the initial complaint filed against this licensee in November 2005 alleged unprofessional conduct and excessive billing. Although this complaint has remained open for nearly 2½ years, six more complaints were filed against this licensee in January 2006, May 2006, September 2006, and November 2007, and two in May 2008. Allegations against the doctor include excessive billing, unsanitary office conditions, fraudulent billing, practice below the standard of care and treatment, and unprofessional conduct with a cease and desist from any further communication with the patient or the patient's family.

Table 2: Status of Complaints Received
Between July 1, 2005 and December 31, 2007
As of June 1, 2008

Complaint Outcome	Number of Complaints	Complaints Open Past 180 Days
Open	12	12
Dismissed	80	8
Letter of concern or discipline	<u>14</u>	<u>7</u>
Total	<u>106</u>	<u>27</u>

Source: Auditor General staff analysis as of June 1, 2008, of all complaints received by the Board between July 1, 2005 and December 31, 2007.

The Board said it has been unable to resolve these complaints because it has not obtained all the information it needs to adequately investigate them. For example, according to board meeting minutes, the Board attempted to schedule an initial investigative interview with the licensee at several board meetings between April and November 2006 in an effort to gather evidence. However, these interviews have been continually postponed for various reasons, including at the request of the licensee's lawyers, to allow the licensee to seek new counsel, and because the Board scheduled other investigative activities. The Board again scheduled an investigative interview for its January 2008 board meeting, but was not able to conduct it until the May 2008 meeting because of the licensee's requests to postpone the interview.

¹ The 12 complaints open past 180 days as of June 1, 2008, include 3 complaints associated with lawsuits that the Board was monitoring. The remaining 9 complaints were open between 181 and 935 days.

According to board meeting minutes, additional delays resulted from attempts to schedule a psychiatric evaluation. In November 2006, and in response to four complaints that alleged excessive office visits, excessive billing, and/or unsanitary office conditions, the Board ordered the licensee to obtain an independent psychiatric evaluation. However, the doctor did not receive the information necessary to comply with the order until January 2007 and as of June 2008, the licensee had still not complied with this board order, disputing the Board's choice of psychiatrist, not scheduling the appointment, and refusing to agree with the psychiatrist's terms of service.

Finally, the licensee has not complied with multiple board orders issued to obtain evidence, including several subpoenas. For example, in January 2006, the Board subpoenaed documentation related to the first complaint. In March 2006, the Board added an allegation to the complaint for failure to comply with the subpoena. At its August 2006 meeting, the Board still had not received a response to the subpoena and requested a "definitive response" for the requested records. Despite the licensee's nonresponsiveness, it was not until its May 2008 meeting that the Board opened a seventh complaint to address the licensee's noncompliance.

Since some complaint investigations take so long, licensees with potential problems can continue to practice unchecked. Although complaints must be properly investigated for the Board to determine whether the alleged statutory violations are substantiated, lengthy investigations do not adequately serve the public because licensees who are the subject of valid complaints can continue to practice for long periods without receiving appropriate disciplinary action and without addressing the problems identified.

Two factors contribute to delays—Two factors contribute to the Board's inability to process all the complaints it receives in a timely manner. Specifically:

- **Board investigates complaints during board meetings**—As discussed above, the full Board conducts complaint investigations and does so in its board meetings. The Board generally meets only 1 day per month and as a result, generally only investigates complaints 1 day per month. Auditors observed during several board meetings that the Board tabled complaint investigations pending the request and review of additional medical documentation. This delays investigations until the Board's next scheduled board meeting, typically the following month.

Additionally, the Board scheduled investigative interviews for 22 of the complaints that were open longer than 180 days, but did not schedule 15 of these interviews for another 2 to 5 months after determining an interview was needed. As of June 1, 2008, for the 13 interviews which the Board had

Long complaint investigations can result in licensees continuing to practice unchecked.

Investigating complaints during board meetings contributes to delays in processing.

conducted, the average length of time that passed between the date that the Board determined to hold the interview and when the Board actually conducted the interview was approximately 103 days. The Board reported that delays in holding interviews are sometimes necessary because the licensee may have professional obligations already scheduled for the day of the board meeting. Separating the Board's complaint investigation and adjudication functions should help the Board process complaints in a more timely manner, since investigative activities would be conducted outside of the Board's meetings.

- **Board does not take action when licensees are not responsive—** Investigations are delayed when licensees under investigation do not cooperate with board requests. Specifically, the Board's initial step in the investigation process is to request all medical records associated with a complaint, as well as the licensee's explanation of the case. When licensees delay responding to the request, this delays the Board's investigation activities. For 12 of the 27 complaints that took more than 180 days to resolve, the licensee delayed sending the Board the requested documentation. For example, in January 2006, the Board received a complaint involving patient treatment that resulted in the amputation of a toe. At this time, board staff requested that the licensee provide relevant patient documentation. The licensee did not fully respond to this request for documentation, but the Board did not decide to subpoena the documentation until its March 2006 meeting—almost a month and a half later. The licensee's lawyer provided the requested documentation to the Board in April 2006 but also told the Board that his client had not received the subpoena. In addition, the licensee did not provide a written explanation of the case until early May 2006. Due to these and other delays, such as a 3-month delay in drafting the consent agreement and order, the Board took 15 months to investigate and resolve this complaint.

A licensee withholding some types of information requested by the Board constitutes an act of unprofessional conduct. According to A.R.S. §32-854.01(17), it is an act of unprofessional conduct for a licensee to refuse "to divulge to the board on demand the means, method, procedure, modality of treatment, or medicine used in the treatment of a disease, injury, ailment or infirmity." However, the Board has not regularly taken action against licensees who have not responded to subpoenas or written requests for medical documentation associated with complaints. For example, for 4 of the 27 complaints that were open longer than 180 days and for which the Board issued letters of concern or pursued disciplinary action, the licensed podiatrist did not respond in a timely manner to the Board's request for documentation. However, the Board did not sanction the licensees for the failure to respond in a timely manner, even though the licensees were required to provide to the Board the type of information prescribed by statute. The Board said it had not pursued action against licensees because it previously believed that it could

The Board has not regularly taken action against licensees who have not responded to requests for information.

only take action against a licensee after both requesting the documentation and then subpoenaing the documentation. Therefore, the Board should take action against licensees who do not respond in a timely manner to requests for treatment information as prescribed in statute.

In July 2008, after audit work was completed, the Board began using subpoenas to initially request documentation from licensees. Further, in August 2008, the Board formally adopted a policy to use this approach. A.R.S. §32-852.01(H) gives the Board authority to subpoena witnesses, documents, and other evidence as needed. Using a subpoena may facilitate receiving documentation in a timely manner because according to statute, the superior court may hold a person who refuses to obey a subpoena in contempt of court.

Sufficiency of complaint-handling unclear

Whether the Board is fully carrying out some parts of its complaint-handling process is unclear. Specifically, auditors could not always determine whether the Board considered all allegations indicated in a complaint, the basis for its complaint decisions, and its consideration of a licensee's disciplinary history when determining discipline. Further, the Board has inconsistently communicated complaint investigation results and its decision to the complainant. Inadequate processes and documentation increase the risk that board actions may appear to be inconsistent or biased when violations or concerns appear similar but involve different decisions.

Adequacy of some complaint processing uncertain—Because of inadequate processes and documentation, auditors could not determine whether the Board adequately processed all complaints reviewed. Specifically:

- **Consideration of all complaint allegations unclear**—Auditors were unable to determine whether the Board addressed all of the allegations identified in complaints. Although the Board lists complaint allegations in various documents, including a letter when it requests licensees to appear before the Board for an investigative interview or in board meeting minutes, these documents do not clearly indicate that the Board addressed all of the complaint allegations. Specifically, auditors' review of a judgmental sample of 18 complaints received by the Board between July 1, 2005 and December 31, 2007, found documentation supporting that the Board addressed all of the complaint allegations for only 8 of the 18 complaints. For example, the Board issued a letter of concern due to inadequate record-keeping for 6 of the complaints reviewed. However, complaint documentation and board meeting minutes do not clearly explain whether the Board addressed the additional indicated allegations of practice below the standard of care for these complaints.

The Board does not clearly address all complaint allegations.

- Basis for decision not always clear**—Neither board meeting minutes nor complaint files consistently document enough information to explain the Board's decisions to dismiss complaints or issue letters of concern. As shown in Table 3, auditors' review of a sample of 18 complaints received by the Board between July 1, 2005 and December 31, 2007, found documentation explaining the results of the Board's investigation and/or basis for its decision for 11 of these complaints. These include the 4 complaints where the Board took some form of disciplinary action, such as placing a licensee on probation. However, for 2 complaints that the Board dismissed with a nondisciplinary letter of concern, although board meeting minutes explain the Board's rationale for issuing the letter of concern, complaint documentation does not explain the Board's decision to dismiss the complaint. Finally, for the remaining 5 complaints, including 2 dismissed and 3 dismissed with a letter of concern, neither complaint file documentation nor board meeting minutes adequately explain the basis of the Board's complaint decision.

Table 3: Evaluation of Board Documentation for Complaint Resolution

Complaint Outcome	Number of Complaints Evaluated	Number of Board Decisions Adequately Documented
Dismissed	5	3
Dismissed with letter of concern	6	1
Letter of concern	3	3
Disciplinary action	<u>4</u>	<u>4</u>
Total	<u>18</u>	<u>11</u>

Source: Auditor General staff analysis of complaint documentation and board meeting minutes for a sample of 5 dismissed complaints and 13 complaints for which the Board issued a letter of concern or took disciplinary action. Sample was selected from complaints received between July 1, 2005 and December 31, 2007.

Additionally, although the Board generally discusses the basis for its complaint decision during the board meeting, auditors observed that for 3 of the 14 cases processed between December 2007 and May 2008, the Board did not clearly explain its reasoning.

The Board does not always clearly explain or document the basis for its complaint decision.

- Consideration of disciplinary history not clear**—Although the Board reported that it considers a licensee's disciplinary history, including any letters of concern, when determining discipline for a new complaint, consideration of this information and its use in helping to determine appropriate discipline is not documented. Specifically, the Board imposed discipline against licensees for 4 of the 18 complaints reviewed by auditors. Two of these four licensees had previously received discipline. However, complaint file documentation and/or meeting minutes do not indicate whether the Board received or considered information on these licensees' disciplinary histories when determining the discipline for the new complaints. The Board indicated that it sometimes relies on the historical knowledge of board members for this information or requests the information from staff. Yet, at the December 2007 board meeting, auditors observed the Board considering and then taking disciplinary action against a licensee without discussing whether or not the licensee had been disciplined in the past. This licensee had previously received a letter of concern. Additionally, the Board's staff said the Board had not asked for past disciplinary information.

In August 2008, after audit work was completed, the Board adopted a new policy to consider disciplinary history. Specifically, the policy states that when any licensee is called before the Board, the Executive Director will bring the licensee's file to the meeting. The Executive Director will retain that file until the Board determines whether or not to take action against a licensee. Only if and after the Board determines to issue discipline to the licensee will the Executive Director use the file to provide information to the Board regarding a licensee's past disciplinary history. This information will be shared for the Board's use in determining discipline for a licensee.

- **Complainant not always notified of complaint outcome**—For 15 of the 18 complaints reviewed by auditors that were opened on behalf of a member of the public, the Board inconsistently communicated the outcome of its complaint investigation and adjudication to the complainant. Specifically, for the 5 dismissed complaints reviewed by auditors, documentation for 4 of these complaints clearly indicated that the Board informed the complainant of the outcome. However, for the remaining 11 complaints, which include the 1 remaining complaint that was dismissed, 1 complaint where the Board took disciplinary action, and 9 complaints where the Board issued a nondisciplinary letter of concern, there is no documentation in the complaint file indicating that the Board communicated the results of the investigation and/or the Board's decision to the complainants.

The Office of the Auditor General's 1998 performance audit and sunset review (see Report No. 98-15) of the Board also identified similar concerns with the Board's complaint processing documentation. Although the Board took steps to address these concerns following the 1998 audit, this audit again identified that the Board did not adequately document the rationale for its disciplinary decisions and that the Board did not routinely consider licensees' disciplinary history.

Inadequate processes and documentation have negative impact—Inadequate complaint processes and documentation increase the risk that board actions may appear to be inconsistent or biased. Specifically, the Board may appear to be inconsistent or biased when it does not adequately explain or document reasons for dismissing complaints, issuing a letter of concern, or taking disciplinary action—especially when violations or concerns appear similar but involve different decisions. For example, as noted above, in March 2008 the Board dismissed a complaint after the Board told the doctor he needed to make improvements. However, auditors reviewed 6 other complaints for which the Board issued a nondisciplinary letter of concern for inadequate record-keeping. Because of the lack of documentation for the Board's decision regarding these complaints, it is unclear why the Board issued letters of concern for these instances of inadequate record-keeping, but not for the complaint the Board dismissed in March 2008. According to the Board's president, the one licensee in the most recent complaint had quite good documentation, whereas the other licensees who

were issued letters of concern for inadequate record-keeping had provided records to the Board that were grossly inadequate. However, none of this is documented.

In addition, the Board has no policies and procedures for complaint handling. The Board should establish and implement complaint-handling policies and procedures that help ensure the Board consistently and appropriately processes and documents its processing of all complaints.

Recommendations:

1. The Board should identify and implement a process that allows it to separate its investigative and adjudicative functions. Options it should consider include:
 - a. Assigning one of its members to conduct complaint investigation activities, including reviewing all relevant medical documentation; conducting necessary interviews of the complainant, licensee, and other appropriate witnesses; and developing an investigative report or summary for submission to the Board. This board member should then recuse himself/herself from all other decisions and discussions regarding the complaints he/she investigates.
 - b. Determining whether current or retired podiatrists would volunteer services to the Board to assist in conducting complaint investigations.
2. The Board should take action against licensees who do not respond in a timely manner to requests for treatment information as prescribed in statute.
3. The Board should develop and implement policies and procedures that will help ensure that all complaints are appropriately and completely addressed and that investigative and adjudicative actions are documented, including policies and procedures for:
 - a. Ensuring that all complaint allegations are addressed;
 - b. Clearly explaining and documenting the basis for complaint decisions;
 - c. Considering a licensee's disciplinary history when determining discipline for the new complaint; and
 - d. Ensuring that the complainant is informed of the Board's decision regarding the complaint.

FINDING 2

Board should improve public information

The Board of Podiatry Examiners (Board) does not provide complete and/or accurate public information, whether through staff responses to public inquiries or through the Board's Web site. The Board should take several steps to help ensure that it provides accurate and complete information to the public, including addressing deficiencies with the database used for responding to inquiries and for making information available on the Web site. Additionally, the Board should supplement its existing public information guidance with written public information policies and procedures and conform its records retention policy to its public information policy.

Access to public information important

One of a regulatory board's important responsibilities is providing information that allows the public to make informed decisions about using the services of licensees whom the board regulates. For example, by informing the public of disciplinary actions taken against licensees, boards assist consumers in selecting competent and ethical professionals. According to the *Arizona Agency Handbook*, published by the Arizona Attorney General's Office, Arizona's public records statute seeks to increase public access to government information and to make government agencies accountable to the public. According to Arizona Revised Statutes (A.R.S.) §39-121, public records and other matters in the custody of any [public] officer shall be open to inspection by any person at all times during office hours. Therefore, all available board records, unless they are expressly made confidential, should be provided to the public on request.

Providing information to the public is an important regulatory board responsibility.

Board provides incomplete and/or inaccurate complaint information

The Board has not provided the public with complete and/or accurate information regarding a licensee's disciplinary history. Auditors who made telephone calls requesting information found that board staff did not provide complete information about licensees. Similarly, the Board's Web site does not provide complete and accurate licensee complaint information.

Board does not provide complete complaint information by phone—

Auditor General staff called the Board to request information on three different licensees' complaint histories. For two of the three calls, the Board's employee provided incomplete public information regarding the licensee's complaint or disciplinary history when compared to information in the licensee's file and the Board's database, which contains some information not found in licensee files. For one call, board staff reported that the Board had received 12 complaints regarding a licensee but did not fully report the outcome of these complaints. Specifically, board staff failed to report that any disciplinary actions had been taken, although the Board had actually disciplined the licensee twice. For the second call, although board staff reported that the Board issued a letter of concern to the licensee in 1992, staff did not report that a second letter of concern was issued to the licensee in 2003.

Board does not provide complete and accurate complaint information on its Web site—

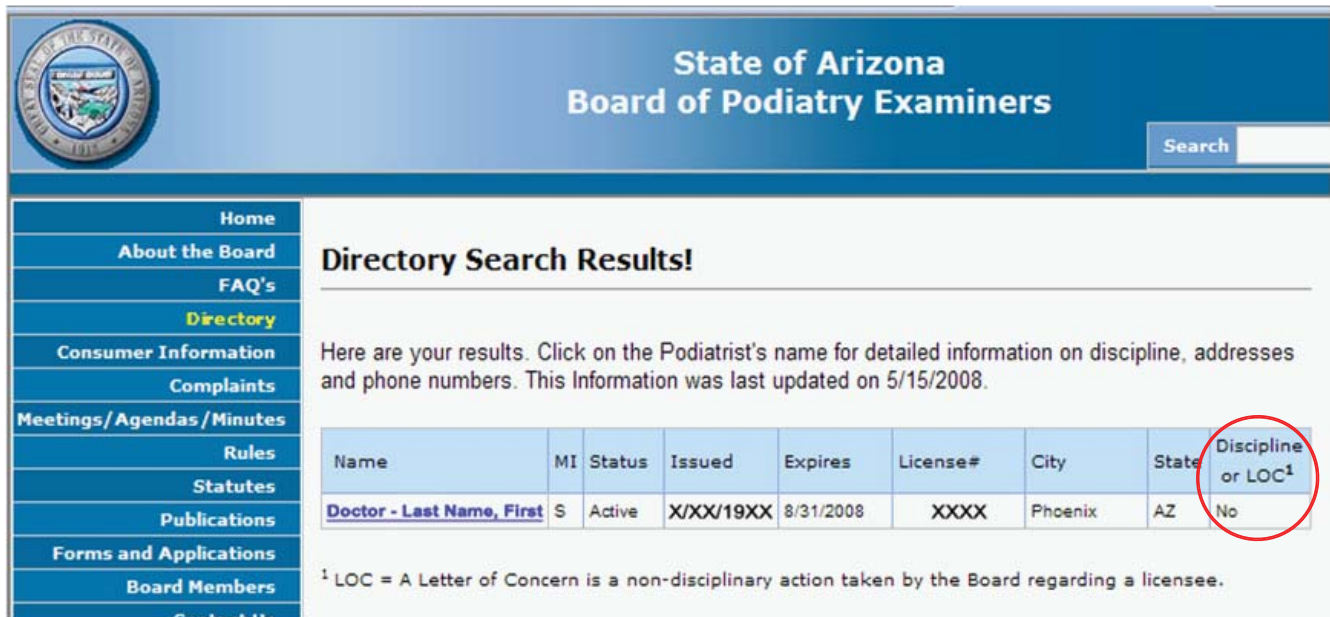
The Board's Web site, although helpful, does not contain accurate and complete information. The Board's Web site provides useful information, such as licensing forms, board meeting minutes and agendas, complaint processing information, and licensee complaint and disciplinary history. Its information about licensee complaint and disciplinary histories, however, is inaccurate. For example, in February 2008, auditors used the Board's Web site to look up information about the same three licensees who had been the subject of the auditors' calls. For two of these three licensees, the information provided by the Web site was incomplete as compared to the licensees' files.

Further, the Web site information about some licensees was inconsistent from screen to screen. The Web site directory search function takes the user to two result screens. The first is a general screen that provides information such as the licensee's name, city, license number and status, and whether the licensee has been disciplined and/or received letters of concern (see Figure 1, page 21).

If the licensee's name is selected, a second more detailed results screen is opened, which provides additional information on the licensee's disciplinary history (see Figure 2, page 22).

Board staff provided incomplete complaint information in response to auditors' phone calls.

Figure 1: Directory Search Results, Web Site Screen #1



**State of Arizona
Board of Podiatry Examiners**

Search

Home
About the Board
FAQ's
Directory
Consumer Information
Complaints
Meetings/Agendas/Minutes
Rules
Statutes
Publications
Forms and Applications
Board Members
Contact Us

Directory Search Results!

Here are your results. Click on the Podiatrist's name for detailed information on discipline, addresses and phone numbers. This Information was last updated on 5/15/2008.

Name	MI	Status	Issued	Expires	License#	City	State	Discipline or LOC ¹
Doctor - Last Name, First	S	Active	X/XX/19XX	8/31/2008	XXXX	Phoenix	AZ	No

¹ LOC = A Letter of Concern is a non-disciplinary action taken by the Board regarding a licensee.

Source: Screen copied from the Board's Web site located at www.podiatry.state.az.us as of May 21, 2008, and edited by Auditor General staff to remove the licensee's personal identifying information.

Auditors determined that for two of the three licensees referenced in auditors' phone calls, as well as for two other licensees noted during other audit work, the information shown in the first results screen contradicted the information from the second results screen. Specifically, for three of the four licensees, the first screen listed no discipline although the second screen gave information about disciplinary action the Board had taken. For the fourth licensee, the first results screen showed that the licensee had been disciplined, but the second results screen showed no discipline. Auditors made the Board aware of these discrepancies and later found that staff had corrected these inconsistencies between Web site results screens for three of the four licensees mentioned above.

Board's database incomplete and inaccurate

Problems with the Board's database directly contribute to the incomplete and inaccurate information that is provided to the public. The database forms the basis of staff responses to public inquiries and the basis of information available on the Web site. However, the database has the following problems:

- **Complaint information incomplete**—The Office of the Auditor General's 1998 performance audit and sunset review of the Board recommended that the Board develop a complaint-tracking database and procedures to ensure its accuracy and completeness (see Report No. 98-15). Although the Board took steps to implement these recommendations, many complaints have not been entered in

The Board's database directly contributes to the incomplete and inaccurate information provided to the public.

Figure 2: State of Arizona Podiatrist Information, Web Site Screen #2



Source: Screen copied from the Board's Web site located at www.podiatry.state.az.us as of May 21, 2008, and edited by Auditor General staff to remove the licensee's personal identifying information.

the database. For example, as of December 10, 2007, the database contained only 17 of the 45 complaints opened by the Board in 2007 and only 9 of the 123 complaints received between calendar years 2003 and 2006. As of May 13, 2008, auditors found that all of the calendar year 2007 complaints had been entered into the database, but only 37 of the 123 complaints had been entered for calendar years 2003 through 2006. Additionally, as of December 2007, only 1 of 23 open complaints had been entered in the database. As a result, staff cannot use the database to provide open complaint information, and instead provide information from either a complaint log or the open complaint files.

In addition, information related to many of the complaints that have been entered into the database is incomplete. Auditors tested 113 complaints in the database for the completeness of 5 fields that contain complaint information, such as complaint number, description, status, and disposition, and found that 49 of the complaints were not missing any of this information. However, 64 of the complaints were missing at least 1 piece of information in these 5 fields.

- **Incorrect field that directly results in Web site inconsistencies**—As discussed above, auditors found that the Board's Web site provides inconsistent complaint information when comparing the information on two screens. Similar to the Web site, the database also has a yes/no field that indicates whether the licensee has either been disciplined by the Board or has been issued a letter of concern. The information in this database field is manually entered and directly populates the corresponding field on the first results screen on the Web site. However, auditors have found this database field to be inaccurate when compared to other information in the database and hard-copy files. Board staff are aware that this database field is unreliable and are attempting to correct these inconsistencies as they are found in the database.
- **Limited reporting capabilities**—Although the database generates some reports, such as licensing timeliness reports and a complaint disposition report, as of May 2008, a report showing an individual licensee's complaint and disciplinary history has not been created. To provide this information, staff instead manually search the database for each complaint, record by record, and then separately total the number of open complaints, letters of concern, disciplinary actions taken by the Board, and any dismissed complaints. Not only does this take time; it presents the possibility that information might be missed and not accurately disclosed.

According to board staff, limited staff and budget resources are the main reasons for the missing and inaccurate information in the database. However, board staff reported that as inconsistencies are found, they are being corrected. To help ensure that the public receives accurate and complete complaint information, the Board should continue with its efforts to improve the quality of complaint information in its database, such as entering missing information and correcting inconsistencies, such as the manually entered yes/no field, which should also correct corresponding inconsistencies on the Web site. The Board should also develop and implement data entry and verification policies and procedures for its staff, so that problems such as inaccurate information about discipline histories can be avoided. Finally, the Board should add a report to its database that details a licensee's complaint and disciplinary history. According to the Board, it contracts for information technology assistance to make changes to its database, including developing various reports, and should have the resources available to request that its contractor create this report.¹

The Board should continue its efforts to improve the quality of complaint information in its database.

Board staff lacks clear public information guidance

In addition to the problems with the Board's database, the lack of clear public information policies and procedures has affected staff's ability to provide complete and accurate information to the public. Although the Board stated that it developed

¹ The Board contracts with the Department of Administration for this IT assistance.

The Board lacks formal, written public information policies and procedures.

public information guidance for its staff in 2006, this guidance has not been documented in written policy and procedures. According to the Board, its staff should provide information to the public as follows:

- The number of open complaints;
- The number of dismissed complaints from the previous 5 years;
- The number and nature of complaints that resulted in the Board issuing a letter of concern from the previous 5 years; and
- The number and nature of all complaints resulting in board disciplinary action.

However, absent written policies and procedures, the Board's staff may not be aware of the Board's guidance, especially if there is turnover. For example, the board staff member who was hired in September 2007 and answered the auditor's phone calls reported that she was unaware that any policy or guidance existed for the provision of public information. As a result, she did not follow this guidance when providing information to Auditor General staff over the phone. In the auditor phone call regarding the licensee who received 12 complaints, board staff did not provide information on the 2 complaints resulting in disciplinary action, despite the fact that board guidelines require the provision of this information. Additionally, for this same phone call, board staff provided information on some complaints that were dismissed and a letter of concern issued more than 5 years before the auditor's call. Further, the Board's Web site also does not comply with the Board's public information guidelines. For example, although board guidelines require staff to report any open complaints and to report dismissed complaints from the past 5 years, directory search results on the Web site do not include any information about open or dismissed complaints.

The Board should develop written policies and procedures for its staff that incorporate its public information guidance and specify exactly what information should be provided to the public. Additionally, once the Board develops these policies and procedures, it should ensure that its Web site is consistent with them.

Finally, once the Board has developed written public information policies and procedures, it should conform its records retention schedule to these policies and procedures. A.R.S. §41-1346 requires each agency to develop a records retention schedule, which should detail how long each public record will be maintained. Although the Board has a records retention schedule, this schedule conflicts with the Board's public information guidelines. For example, the Board's records retention schedule requires that dismissed complaints where the Board takes no disciplinary action should be retained for 3 years, while the Board's public information guidelines indicate that information regarding dismissed complaints should be provided to the public from the previous 5 years. Therefore, the Board should revise its records retention schedule to conform with its public information policies and procedures.

The Board's records retention schedule conflicts with its public information guidelines.

Recommendations:

1. To help ensure that accurate and complete information is provided to the public, the Board should improve the quality of complaint information in its database by:
 - a. Continuing with its efforts to correct inaccurate information in its database as it is identified, entering missing complaint information, and entering complaint information in the database as complaints are received;
 - b. Developing and implementing data entry and verification policies and procedures;
 - c. Continuing with its efforts to address the manually entered yes/no field in the database, which will correct inconsistencies on the Board's Web site; and
 - d. Creating a database report that details a licensee's complaint and disciplinary history.
2. The Board should develop and implement written policies and procedures that incorporate its public information guidance and specify the type of information that staff should disclose regarding complaints. The Board should also ensure that information provided by its Web site complies with its written policies and procedures.
3. The Board should revise its records retention schedule to conform with its public information policies and procedures.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Podiatry Examiners (Board) should be continued or terminated.

1. The objective and purpose in establishing the Board.

The Board licenses and regulates doctors of podiatric medicine who specialize in the diagnosis and treatment of the foot, ankle, and lower leg. The Board evaluates the professional competency of podiatrists seeking to be licensed in the State of Arizona. Further, the Board promotes continued competency and fitness by investigating complaints made against practitioners, holding hearings, monitoring the activities of its licensees, and enforcing the standards of practice for the podiatric profession as set forth by law. The Board also registers licensees who wish to dispense drugs or podiatric devices.

The Board's mission is *"To protect the health, safety, and welfare of the citizens of Arizona by regulating and maintaining standards of practice in the field of podiatric medicine."* To accomplish its mission, the Board reported that it has established the following goals: 1) To ensure that licenses and renewals are issued in a timely manner to competent physicians with high standards of professional and ethical conduct; 2) To investigate complaints and enforce standards of practice in a timely manner in order to protect the public from incompetent services; and 3) To ensure agency policies and procedures, including testing, renewal, initial licensing, and customer satisfaction, are effective and efficient.

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

The Board has effectively met some of its prescribed purposes and objectives, but should improve in several areas. For example, the Board approves continuing education programs and ensures that licensees meet the required amount of continuing education prior to renewing their licenses. In addition:

- **Overall licensing time frame met**—The Board processed most of the initial licensing applications auditors reviewed within the 90-day overall time frame. According to the Board's Administrative Rule R4-25-104, the Board must conduct an administrative review of a license application within 30 days of receipt to verify that the application is complete and a substantive review and disposition of the application within 60 days, for an overall time frame of 90 days for both reviews. Auditors' review of a sample of 4 of the 20 license applications processed in fiscal year 2007 found that the Board processed 3 of these applications within the required overall time frame of 90 days; the fourth license application was processed in 92 days.
- **Revised oral exam procedures**—As a requirement for licensure, A.R.S. §32-825 requires applicants to take and pass a state oral exam. In June 2008, the Board implemented a revised biannual oral exam to include questions on Arizona podiatry statutes. Prior to this time, the Board's oral exam predominantly focused on the general practice of podiatry, which, according to the Board, is content that is also covered in the three national exams that each license applicant must take and pass. According to the Board, this change in focus for its state oral exam is in line with other states' practices and acknowledges applicants successfully passing the national podiatric exams. In addition to revising the oral exam, the Board improved the examination procedures. Previous examinations were given during board meetings and violated several open meeting laws (See Sunset Factors, pages 27 through 33). The Board did not conduct the June 2008 oral exam in a board meeting, thus avoiding any potential open meeting law violations.

However, this audit found that the Board can improve the effectiveness and efficiency of its complaint processing. Specifically:

- **Improve processing timeliness of all complaints**—The Board needs to investigate and adjudicate the complaints it receives in a timely manner. Auditors' review of complaints found that for the 106 complaints the Board received between July 1, 2005 and December 31, 2007, 27 were open for more than 180 days, including 12 that were still open as of June 1, 2008. The 12 complaints included 3 complaints associated with lawsuits that the Board was monitoring as they progress through the court system. As of June 1, 2008, the remaining 9 open complaints had been open from 181 to 935 days, including 5 complaints that were open against one licensee. Because the full Board both investigates and adjudicates complaints, and it conducts complaint investigations during its board meetings, cases proceed in accordance with the Board's meeting schedule—one day a month, which sometimes leads to processing delays. Separating the Board's investigative and adjudicative functions should help the Board process complaints in a more timely manner. Additionally, separating the investigative and adjudicative functions would reduce the potential

appearance of bias. Having the full Board perform investigative steps, including conducting investigative interviews, creates a potential problem because the Board cannot ensure that all board members then appear objective when adjudicating the complaint.

Complaint-processing delays also result from licensees failing to respond in a timely manner to board requests for documentation needed for the Board's investigation. According to A.R.S. §32-854.01(17), it is an act of unprofessional conduct for a licensee to refuse "to divulge to the Board on demand the means, method, procedure, modality of treatment, or medicine used in the treatment of a disease, injury, ailment, or infirmity." Although authorized to take action when a licensee is unresponsive, the Board has not regularly done so. Therefore, the Board should take action against licensees who do not respond in a timely manner to board requests for information as prescribed in statute (see Finding 1, pages 9 through 17).

In July 2008 the Board began using subpoenas to initially request documentation from licensees. A.R.S. §32-852.01(H) gives the Board authority to subpoena witnesses, documents, and other evidence as needed. Using a subpoena may facilitate receiving documentation in a timely manner because, according to statute, the superior court may hold a person who refuses to obey a subpoena in contempt of court.

- **Improve complaint-handling policies and procedures**—The Board should establish and implement policies and procedures for various aspects of its complaint handling. These include the following:
 - Investigation of all complaint allegations—Auditors were unable to determine whether the Board addressed all of the allegations identified in complaints. Although the Board lists complaint allegations in various documents, including a letter when it requests licensees to appear before the Board for an investigative interview or in board meeting minutes, these documents do not clearly indicate that the Board addressed all of the indicated complaint allegations. Auditors' review of a judgmental sample of 18 complaints received by the Board between July 1, 2005 and December 31, 2007, found documentation supporting that the Board addressed all of the complaint allegations for only 8 of these 18 complaints.
 - Basis for Board's decision—Auditors' review of this same sample of 18 complaints found that for 7 of these complaints, neither board meeting minutes nor complaint files clearly document enough information to explain the Board's decisions to dismiss complaints or issue letters of concern. Additionally, although the Board generally discusses the basis for its complaint decision during board meetings, auditors observed that for 3 of 14 cases processed between December 2007 and May 2008, the Board did not clearly explain its reasoning.

- o Consideration of disciplinary history—The Board imposed discipline against licensees for 4 of the 18 complaints reviewed by auditors; 2 of these licensees had previously received discipline. However, complaint file documentation and/or meeting minutes do not indicate whether the Board received and or considered information on these licensees' disciplinary histories when determining the discipline for the new complaints. In August 2008, the Board adopted a new policy to consider a licensee's disciplinary history once the Board determines to take disciplinary action against a licensee.
- o Complainant notification—For 15 of the 18 complaints reviewed by auditors that were opened on behalf of a member of the public, the Board inconsistently communicated the outcome of its complaint investigation and adjudication to the complainant. Specifically, for 11 complaints, which include 1 complaint that was dismissed, 1 complaint where the Board took some form of disciplinary action, and 9 complaints where the Board issued a nondisciplinary letter of concern, there is no documentation in the complaint file indicating that the Board communicated the results of the investigation and/or the Board's decision to the complainant (see Finding 1, pages 9 through 17).

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

The Board has operated in the public interest in some areas, but can improve in others. For example, the Board has a Web site that provides information to the public on licensees and board activities. This includes information regarding licensing and continuing education requirements, licensed podiatrists, scheduled public meetings, meeting agendas, and minutes from previous meetings. The Web site also provides access to application forms and provides information about the Board's complaint process, including how to file a complaint with the Board. However, auditors identified other areas in which the Board could better serve the public interest. Specifically:

- **Improve the completeness and accuracy of public information**—Auditors' phone calls to the Board and a review of the Board's Web site found that the Board does not provide complete and accurate information to the public. Specifically, auditors called the Board to request information on three different licensees' complaint histories. For two of three requests, board staff provided incomplete public information regarding the licensees' complaint or disciplinary history, when compared to information in the licensee's file and/or in the Board's database. Additionally, auditors used the Board's Web site to look up information about these same three licensees and for two of these licensees the information provided by the Web site was both incomplete and inaccurate as compared to the licensees' files. Information in the Board's database, which is used by staff

to provide public information and is the source of the Board's Web site information, directly contributes to the problem of incomplete and inaccurate information. Board staff are aware of the problems with the database, have begun to address them, and should continue with these efforts. The Board should also create a database report that will provide the complaint and disciplinary history for a licensee.

Additionally, the lack of clear, written public information policies and procedures has affected staff's ability to provide complete and accurate information to the public. Although the Board reported developing public information guidance, this guidance has not been documented in written policy and procedures. Therefore, the Board should develop written policies and procedures that incorporate its guidance and provide specific direction on the information that the Board should provide to the public. Finally, the Board should ensure that its record retention schedule conforms to its public information policies and procedures (see Finding 2, pages 19 through 25).

- **Improve documentation to support applicant's qualifications**—Auditors' review of a sample of 4 of the 20 licensee applications processed in fiscal year 2007 found documentation to support that the Board adequately determined that 3 of the 4 applicants met the necessary qualifications to receive licenses. For these applicants, the Board's licensing files included documentation of passing scores on the three national board exams, proof of graduation from podiatry school, completion of a 1-year internship/residency program, and a completed application. However, for the fourth license application, the file did not contain documentation to support that the applicant satisfied all licensure requirements. Specifically, the Board did not document the receipt of passing scores for 1 of the 3 required national board exams and did not document a copy of the applicant's podiatry license issued in another state. Although additional audit work verified that the licensee possessed an active license from another state at the time he applied for licensure in Arizona, auditors could not determine whether the applicant passed one of the required national exams. Therefore, the Board should ensure that it retains documentation to show that applicants have met all licensure requirements.
4. **The extent to which rules adopted by the Board are consistent with the legislative mandate.**

General counsel for the Auditor General has reviewed an analysis of the Board's rule-making statutes by the Governor's Regulatory Review Council (GRRC) staff, performed at auditors' request, and believes that the Board has fully established rules required by statute.

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

The Board last amended its rules in fiscal year 2005. In revising its rules, the Board took a number of steps to inform and involve the public and stakeholders in the process. For example, the Board filed a formal notice of rulemaking with the Secretary of State's Office and provided for a period of public review and comment. Additionally, the Board reported providing information on rules to the Arizona Podiatric Medical Association (APMA) for their comments and to allow APMA members to review the changes.

However, the Board has not fully complied with open meeting laws. Auditors identified several areas where the Board needs to improve its compliance with these laws. Specifically:

- **Meeting notice requirements**—According to A.R.S. §38-431.02(A)(1), agencies must file a statement with the Office of the Secretary of State identifying where they will post meeting notices. Until January 2008, the Board did not have such a statement on file with the Secretary of State. Additionally, until April 2008, board meeting notices did not comply with A.R.S. §38-431.02(G), which requires state agencies to include a meeting agenda with the posted notice or inform the public where one could be obtained at least 24 hours in advance of the meeting. Further, the Board did not post the notice for the June 11, 2008, board meeting 24 hours in advance of the meeting. Therefore, the Board should ensure that it complies with Open Meeting Laws and posts its meeting notices and appropriate agenda information 24 hours in advance of the meeting.
- **Meeting agendas**—Although the Board significantly improved its meeting agendas to comply with open meeting laws during the audit, additional improvements are needed. At its April 2008 meeting and with the assistance of the Attorney General's Office, the Board began improving its agendas by more clearly and specifically identifying the items that it would be discussing, considering, and potentially acting upon, as required by A.R.S. §38-431.02(H). However, problems were again identified with its June 2008 board meeting agenda. Specifically, the Board listed two complaints on its agenda without listing the specific matters for discussion or possible action for these complaints. Absent this information, the public, and in particular, parties to these complaints, do not have sufficient information to determine whether or not to attend the meeting.

Auditors also identified circumstances where the Board held discussions or took actions on items that had not been included on the meeting agenda. This included acting to open new complaints in the March and April 2008

board meetings. Additionally, in the January and March 2008 board meetings, the Board discussed matters raised during the call to the public segment, which is prohibited by A.R.S. §38-431.01(H). Therefore, the Board should continue to work with the Attorney General's Office to ensure the appropriateness of its meeting agendas and that it restrict board business and discussion to matters that have been appropriately included, described, and noticed on its meeting agendas.

- **Examinations inappropriately conducted**—The Board has inappropriately handled board meetings in which it conducts its oral exams. The Board holds its oral exam twice a year and, because of the confidential nature of the exam materials, conducts the exam in an executive session of a board meeting. However, for the Board's December 2007 oral exam it did not properly notice the meeting and executive session, post an agenda, or take and produce meeting minutes. The Board addressed these issues by holding a meeting to ratify board actions related to the December 2007 exam. Additionally, consistent with the advice of its Assistant Attorney General to review previous administration of the exams and then address any potential open meeting law issues, the Board held a ratification meeting in July 2008.
- **Executive sessions**—According to A.R.S. §38-431.03, there are seven reasons that the Board may hold executive session, including discussion or consultation for legal advice, or receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law. However, in two executive sessions held during separate board meetings in December 2007 and January 2008, the Board inappropriately conducted investigative interviews, citing witness safety concerns. During its May 2008 meeting, the Board's Assistant Attorney General advised the Board of the problems associated with conducting an interview in executive session, indicating that witness fear is not a permissible reason to conduct an interview in executive session and that the information gathered would need to remain confidential. Therefore, the Board should ensure that it complies with A.R.S. §38-431.03 and uses executive session only for purposes permitted by law.

In addition to these noted violations, a complaint was filed with the Arizona Attorney General's Office regarding potential violations of open meeting law committed by the Board at the January and February 2008 board meetings. This complaint alleged several open meeting law violations, including failure to properly post meeting notices and agendas, that board meeting agendas are vague, and that the Board failed to properly notice and convene executive sessions. The Attorney General's Office concluded its investigation in July 2008 and found that although the Board's January 9, 2008, meeting agenda did not include an investigative interview as the subject of an executive session, the

Board remedied this violation by holding another meeting at which this subject was properly included on the agenda. The Attorney General's Office noted that the other allegations of the complaint were unfounded and that the Board has greatly improved its meeting agendas by providing more specificity and detail.

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

The agency has sufficient statutory authority and disciplinary options to investigate and adjudicate complaints within its jurisdiction. However, as indicated in Sunset Factor 2 (see pages 28 through 29), the Board has not investigated all complaints in a timely manner and should take steps to process complaints in a more timely manner, including separating the complaint investigation and adjudication functions, both of which the full Board performs. Additionally, the Board should develop and implement policies and procedures for various aspects of its complaint handling, including addressing all complaint allegations, clearly explaining and documenting the basis for its complaint decisions, considering a licensee's disciplinary history when determining discipline, and notifying complainants of the complaint investigation results and decision (see Finding 1, pages 9 through 17).

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.

A.R.S. §41-192 authorizes the Attorney General's Office to prosecute actions and represent the Board. The Board is currently represented by one part-time Assistant Attorney General.

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, it has not had any proposed legislation since 2003 and is not planning to pursue any changes to its enabling statutes.

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

This audit did not identify any needed changes to board statutes.

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

Terminating the Board and not otherwise regulating the podiatry profession would harm the public health, safety, and welfare. The Board is responsible for ensuring that only qualified applicants are licensed as podiatrists, and investigating and adjudicating complaints against licensees. Without state laws establishing educational and competency standards, the public could be subject to unqualified or incompetent podiatrists. According to information provided by the American Podiatric Medical Association, all 50 states regulate podiatrists, but use different regulatory structures for doing so. Thirty-six states use a podiatry board, 10 use a medical board, and 4 use another form of regulation; for example, Illinois' Department of Financial and Professional Regulation and Kansas' State Board of Healing Arts.

In January 2008, the Governor proposed consolidating a number of health regulatory boards. In May 2008, the Governor's Office reported that the proposed plan would entail consolidating the administrative services of ten health-related regulatory boards, including the Board of Podiatry Examiners, while still maintaining separate boards to hear complaints. According to the Governor's Office, the model would provide increased accountability to the public, set a uniform process for licensing in Arizona, and increase the number of investigators available to the board, resulting in more protection to the public and leaving more time for the board members to focus on the regulation of the profession. The Governor's Office invited feedback from the affected regulatory boards and in June 2008, the Board sent a response to the Governor's Office declining the invitation to participate in the consolidation efforts. According to the Board, it chose not to participate in the consolidation because it believes it would make it more difficult for the public to easily access information about podiatrists and associated complaints because there would not be a person the public could speak with who is specialized in podiatry and the complaints filed with the Board. However, the Governor's Office reported that it plans to continue to pursue the option because of its benefits for both Arizona licensees and the public.

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.

The audit found that the current level of regulation exercised by the Board is generally appropriate.

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 uses contractors to perform certain services. For example, the Board contracts with the Department of Administration for the development and support of its database and Web site, accounting services, clerical support, and several other functions. The Board also contracts for administrative rules development. Additionally, the Board has contracted with private investigators in the past but reported that it typically does not use private investigators to assist with complaint investigations because it generally needs investigators with specialized medical expertise to effectively investigate the types of complaints against licensed podiatrists and because of the Board's financial situation. Instead, the Board relies on the expertise of its three professional members to investigate complaints.

The audit did not identify any additional opportunities to contract for services.

AGENCY RESPONSE



State Of Arizona Board of Podiatry Examiners
1400 W. Washington, Ste. 230
Phoenix, AZ 85007 www.podiatry.state.az.us
Email: dee.doyle@podiatry.az.gov
(602) 542-3095 Fax: 542-3093

Janet Napolitano
Governor

Dee Doyle
Executive Director

September 19, 2008

Ms. Debbie Davenport, CPA
Auditor General
2910 N. 44th Street, Suite 410
Phoenix, AZ 85018

RE: Board Response

Dear Ms. Davenport:

Enclosed please find the State of Arizona Board of Podiatry Examiners response to the Performance Audit recently conducted by your Staff. We appreciate the opportunity to respond to the Audit Report and Sunset Findings. We also recognize the diligent effort put forth by your staff in their efforts to understand the Podiatry medical profession and the Board's regulation of the profession. The Board is grateful for your work. The Board has addressed the findings as required by law.

Even though the report is lengthy, it indicates only two findings, which state the following:

- 1) The Board needs to improve complaint-handling process.
- 2) The Board should improve public information.

The Board agrees with the findings #1 and #2 and has already instituted numerous steps to implement the recommendations. The Board feels that the Legislature should consider the best method of regulation of Podiatric Medicine in the State of Arizona, and make a truly informed choice. We believe that a separate Board of Podiatric Medical Examiners is essential both to protect the public AND to provide continued availability of these forms of treatment for the public.

Board members do not agree with all of the remarks stated in the Report and recognize that perceptions regarding the regulated profession are oftentimes misleading. Hopefully, our Agency Response will allow persons reading the Report an opportunity to come to a reasonable conclusion regarding the Board and the difficulties faced by the agency and its staff.

Thank you again for the efforts of your staff to improve the performance of the Board.

Sincerely,

State of Arizona Board of Podiatry Examiners

Dedrie Polakof, DPM

Barry Kaplan, DPM

Joseph Leonetti, DPM

Jeanne Reagan, Public Member

Paula Hollins, Public Member

Enclosed: Agency Response to Performance Audit Report and Sunset Review Findings.

FINDING I

Recommendations:

1. The Board should identify and implement a process that allows it to separate its investigative and adjudicative functions. Options it should consider include.
 - a. Assigning one of its members to conduct complaint investigation activities, including reviewing all relevant medical documentation; conducting necessary interviews of the complainant, licensee, and other appropriate witnesses; and developing an investigative report or summary for submission to the Board. This board member should then recuse himself/herself from all other decisions and discussions regarding the complaints he/she investigates.
 - b. Determining whether current or retired podiatrists would volunteer services to the Board to assist in conducting complaint investigations.
2. The Board should take action against licensees who do not respond to requests for treatment information.
3. The Board should develop and implement policies and procedures that will help ensure that all complaints are appropriately and completely addressed and that investigative and adjudicative actions are documented, including policies and procedures for:
 - a. Ensuring that all complaint allegations are addressed;
 - b. Clearly explaining and documenting the basis for complaint decisions;
 - c. Considering a licensee's disciplinary history when determining discipline for the new complaint; and
 - d. Ensuring that the complainant is informed of the Board's decision regarding the complaint.

Response: The finding is agreed to and the recommendations will be implemented.

Status: The Board agrees that a process needs to be implemented to adjudicate complaints. However, there is a concern that the recommendation for an improved process may result in the Board being less timely in resolving complaints.

The Board could contract with an investigator who is licensed, bonded and an insured podiatrist. The investigator would be used when difficult complaint cases arise and when the need to obtain testimony from witnesses and obtain medical information from various sources for the Board to make a more informed decision.

The Board has used licensed podiatrists as expert witnesses in cases to review the medical record and testify.

Due to severe budget constraints, the Board has not used the contract investigator as often as they would like, however the possible use of a retired podiatrist to volunteer would have to be checked into by the Board.

The Board has taken action against licensees who do not respond in a timely manner in requests for medical documentation. The Board may also issue disciplinary action against the doctor's license in the form of a Decree of Censure and/or civil penalty if records are not provided within the time frame. One license renewal was denied due to not complying with a Board Order and subpoenas.

The Board will develop and implement policies and procedures that will help ensure that all complaints are appropriately and completely addressed, including policies and procedures for ensuring that all complaint allegations are addressed; clearly explaining and documenting the basis for complaint decisions; considering a licensee's disciplinary history when determining discipline for the new complaint; and ensuring that the complainant is informed of the Boards' decision regarding the complaint.

FINDING II

Recommendations:

1. To help ensure that accurate and complete information is provided to the public, the Board should improve the quality of complaint information in its database by:
 - a. Continuing with its efforts to correct inaccurate information in its database as it is identified, entering missing complaint information, and entering complaint information in the database as complaints are received;
 - b. Developing and implementing data entry and verification policies and procedures;
 - c. Continuing with its efforts to address the manually entered yes/no field in the database, which will correct inconsistencies on the Board's Web site;
 - d. Creating a database report that details a licensee's complaint and disciplinary history.
2. The Board should develop and implement written policies and procedures that incorporate its public information guidance and specify the type of information that staff should disclose regarding complaints. The Board should also ensure that information provided by its Web site complies with its written policies and procedures.
3. The Board should revise its records retention schedule to conform to its public information policies and procedures.

Response: The finding is agreed to and the recommendations will be implemented.

Status: The Board agrees that accurate and complete information is to be provided to the public. The Board needs to hire a temporary employee to address this need. However, there is a hiring freeze at present and the Governor's office has denied the Board the need to hire another Executive Director and a temporary employee to address these needs.

Due to the tremendous increased work load over the past few years on regulation for the Board(s) there is a need to hire a permanent part-time employee to help complete the recommendations by the auditors and everyday work load and to cover the office at all times. To correct inaccurate information in its database as identified, entering missing complaint information, and entering complaint information in the database as complaints are received; develop and implement data entry and verification policies and procedures; create a database report that details a licensee's complaint and disciplinary history.

The Board will contact the contract IT person to implement the recommended reports listed above.

The manually entered yes/no field in the database have been implemented to automatically update this field using the information input into the complaint section of the database. Once the complaint section has been updated completely this field will be correct.

The Board will revise its record retention schedule to conform to its public information policies and procedures.

SUNSET FACTORS

Recommendation:

1. Improve documentation to support applicant's qualifications.

Response: The finding is agreed to and the recommendation will be implemented.

2. Meeting notice requirements.

Response: The finding is agreed to and the recommendation will be implemented.

3. Meeting agendas.

Response: The finding is agreed to and the recommendation will be implemented.

4. Examinations inappropriately conducted.

Response: The finding is agreed to and the recommendation will be implemented.

5. Executive sessions.

Response: The finding is agreed to and the recommendation will be implemented.

Status: Several of the recommendations from the auditors on the Sunset Factors have been improved already to date, the Board will continue to improve the findings from the auditors and act upon them.

Performance Audit Division reports issued within the last 24 months

06-09	Department of Health Services—Behavioral Health Services for Adults with Serious Mental Illness in Maricopa County	07-11	Arizona Supreme Court, Administrative Office of the Courts—Juvenile Detention Centers
07-01	Arizona Board of Fingerprinting	07-12	Department of Environmental Quality—Vehicle Emissions Inspection Programs
07-02	Arizona Department of Racing and Arizona Racing Commission	07-13	Arizona Supreme Court, Administrative Office of the Courts—Juvenile Treatment Programs
07-03	Arizona Department of Transportation—Highway Maintenance	08-01	Electric Competition
07-04	Arizona Department of Transportation—Sunset Factors	08-02	Arizona’s Universities—Technology Transfer Programs
07-05	Arizona Structural Pest Control Commission	08-03	Arizona’s Universities—Capital Project Financing
07-06	Arizona School Facilities Board	08-04	Arizona’s Universities—Information Technology Security
07-07	Board of Homeopathic Medical Examiners	08-05	Arizona Biomedical Research Commission
07-08	Arizona State Land Department		
07-09	Commission for Postsecondary Education		
07-10	Department of Economic Security—Division of Child Support Enforcement		

Future Performance Audit Division reports

Arizona Department of Juvenile Corrections—Rehabilitation and Community Reentry
Arizona Sports and Tourism Authority