

Arizona State Board of Optometry

Board did not comply with some State conflict-of-interest requirements, did not answer or respond to our anonymous phone calls or provide some required information on its website, and licensed some applicants without ensuring they met all requirements

Performance Audit and
Sunset Review

April 2022
Report 22-102

A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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

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April 27, 2022

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Ms. Margaret Whelan, Executive Director
Arizona State Board of Optometry

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona State Board of Optometry*. This report is in response to a December 17, 2020, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona State Board of Optometry agrees with most of the findings and plans to implement or implement in a different manner all the recommendations. My Office will follow up with the Board in 6 months to assess its progress in implementing the recommendations.

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

Sincerely,

Lindsey A. Perry

Lindsey A. Perry, CPA, CFE
Auditor General

Arizona State Board of Optometry

Board did not comply with some State conflict-of-interest requirements, did not answer or respond to our anonymous phone calls or provide some required information on its website, and licensed some applicants without ensuring they met all requirements

Audit purpose

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

Key findings

The Board:

- Was established in 1907 to protect the health, safety, and welfare of the public by licensing and regulating optometrists.
- Did not comply with some State conflict-of-interest requirements and had not fully aligned its conflict-of-interest process with recommended practices, such as requiring all employees and Board members to complete a conflict-of-interest disclosure form upon hire/appointment, reminding all employees and Board members to update their disclosure form at least annually or as their circumstances change, and maintaining a special file for substantial interest disclosures.
- Did not answer or respond to any of the 8 anonymous phone calls we made and did not provide some required public information on its website, such as nondisciplinary orders.
- Issued and renewed licenses we reviewed in a timely manner, but did not verify some licensure requirements, such as lawful presence, for 17 of 35 initial and renewal applications we reviewed.
- Resolved all 11 complaints we reviewed within its 120-day time frame, but did not ensure that licensees provided a written response to the notice of a complaint within 20 days for 4 of 11 complaints we reviewed, as required by statute.

Key recommendations

The Board should:

- Revise its internal conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and alignment with conflict-of-interest recommended practices.
- Comply with all statutory requirements for providing public information, including providing public records and information to the public by ensuring that staff answer phone calls and timely return voicemail messages; and posting nondisciplinary orders to its website.
- Develop and implement written policies and procedures to help ensure staff comply with public information requirements.
- Ensure that applicants meet all statute and rule requirements for licensure.
- Develop and implement internal policies and procedures for tracking licensee responses to complaints.



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Board overview

The Arizona State Board of Optometry (Board) is responsible for regulating the optometry profession by issuing licenses and certificates, resolving complaints, and providing information to the public about licensees. Statute requires the Board to consist of 7 members appointed by the Governor for 4-year terms. As of February 2022, the Board had 2 vacant positions—1 licensee position and 1 public member position. According to the Board, the public member position has been vacant for at least 3 years. In fiscal year 2022, the Board was appropriated 2 full-time equivalent staff positions. The Board does not receive any State General Fund appropriations. Rather, the Board’s revenues consist primarily of licensing and related fees.

Active individual licenses as of February 2022	Complaints received during calendar year 2021
1,319	19

Audit results summary

Key regulatory areas reviewed		
Initial licenses —Process initial license applications within required time frames and ensure applicants meet all license qualifications.	Issued timely ✓	Ensured all qualifications met ✗
License renewals —Process renewal applications within 45 days and ensure renewal applicants meet all qualifications.	Issued timely ✓	Ensured all qualifications met ✗
Complaint handling —Investigate complaints it receives and take action to address violations.	Resolved complaints in a timely manner ✓	Followed all complaint-handling requirements ✗
Public information —Provide specific complaint and licensee/certificate holder information to the public upon request.	Provided accurate information via phone ✗	Provided all required disciplinary information on website ✗
Other responsibilities reviewed		
Fee setting —Establish policies and procedures to ensure fees are based on costs of providing services and periodically review fees.	Established fee-setting policies and procedures ✗	Fees recently reviewed ✗
Conflicts of interest —Requirements and recommended practices include signing a disclosure form annually and maintaining a special file to document substantial interest disclosures.	Board members and staff signed annual disclosure form ✗	Maintained special file to document substantial interest disclosures ✗
Rulemaking and open meeting law —Requirements include involving the public in rulemaking and making meeting minutes or a recording of Board meetings available in 3 working days.	Involved public in rulemaking ✓	Meeting minutes available within 3 working days ✗



The Arizona Auditor General has completed a performance audit and sunset review of the Arizona State Board of Optometry (Board). This performance audit and sunset review provides responses to the statutory sunset factors and determined whether the Board (1) complied with State conflict-of-interest requirements and aligned its conflict-of-interest processes with recommended practices, (2) provided information to the public as required by statute, (3) issued and renewed licenses in accordance with statute and rule requirements, and (4) resolved complaints in a timely manner.

Mission and responsibilities

The Board was established in 1907 to protect the health, safety, and welfare of the public by licensing and regulating optometrists (see textbox). The Board's mission is "to protect the health, safety, and welfare of Arizona citizens by regulating and achieving the highest standards in the optometry profession." Its responsibilities include:

Optometrist—Medical providers who examine, diagnose, treat, and manage diseases and disorders of the visual system and eye through the prescription of certain medications, devices, or lenses.

Source: Auditor General staff review of Arizona Revised Statutes (A.R.S.) §32-1701 and Board documents.

- Issuing licenses to qualified applicants to practice optometry in the State (see Sunset Factor 2, pages 11 through 13, for more information on licensing requirements).^{1,2} Licensed optometrists must renew their license biennially on or before their birthday. As of February 2022, the Board reported 1,319 licensed optometrists in Arizona.
- Investigating and adjudicating complaints against licensees. According to the Board, it received 16 and 22 complaints in calendar years 2019 and 2020, respectively. The Board reported it received 19 complaints in calendar year 2021 (see Sunset Factor 6, pages 15 through 16, for more information on the Board's processes for handling complaints).
- Providing information about licensees to the public, including licensees' disciplinary and nondisciplinary histories (see Finding 2, pages 8 through 10, for more information on problems we identified with the Board's provision of public information).

Organization and staffing

Statute requires the Board to consist of 7 Governor-appointed members, including 5 licensees and 2 public members. Board members are eligible to serve no more than 2 consecutive 4-year terms.³ As of February 2022, the Board had 2 vacant positions—1 licensee position and 1 public member position. According to the Board, the public member position has been vacant for at least 3 years.⁴

¹ The Board also issues certificates of special qualification to optometrists licensed by the Board before July 1, 2000, to continue practicing at a lower scope of practice for those optometrists who do not meet the education requirements to prescribe, administer, and dispense certain pharmaceutical agents. As of October 2021, the Board reported 34 active licensees with a certificate of special qualification in Arizona.

² A.R.S. §32-1722.

³ A.R.S. §32-1702.

⁴ The Board reported that it planned to continue working with the Governor's Office of Boards and Commissions to fill its vacant Board member positions.

The Board was appropriated 2 full-time equivalent staff positions for fiscal year 2022. As of October 2021, the Board was staffed by an executive director and a licensing administrator.

Budget

The Board does not receive any State General Fund appropriations. Instead, the Board's revenues consist primarily of optometrist licensing and certification fees. Statute requires the Board to remit 10 percent of all monies received to the State General Fund and to deposit the remaining 90 percent of these revenues into the Board of Optometry Fund.⁵ In fiscal years 2019 through 2021, most of the Board's revenues consisted of licensing and related fees, and most of its expenditures were for personnel and other operating expenses, such as rent and information technology (IT) (see Table 1). During fiscal years 2019 through 2021, the Board's end of year fund balance increased by approximately \$125,500, from approximately \$332,600 to more than \$458,000.

Table 1
Schedule of revenues, expenditures, and changes in fund balance
Fiscal years 2019 through 2021
(Unaudited)

	2019	2020	2021
Revenues			
Licensing and fees	\$296,592	\$330,467	\$300,957
Publications and reproductions	4,197	7,414	5,049
Fines, forfeits, and penalties	500	50	
Other			20
Total gross revenues	301,289	337,931	306,026
Net credit card	(4,277)	(3,908)	(4,139)
Remittances to the State General Fund ¹	(29,392)	(33,246)	(29,853)
Total net revenues	267,620	300,777	272,034
Expenditures			
Payroll and related benefits	170,980	174,382	161,528
Professional and outside services ²	90	1,110	
Travel	4,700	260	
Other operating ³	43,987	52,850	51,610
Furniture and equipment ⁴	1,382		5,565
Total expenditures	221,139	228,602	218,703
Net change in fund balance	46,481	72,175	53,331
Fund balance, beginning of year	286,111	332,592	404,767
Fund balance, end of year	\$332,592	\$404,767	\$458,098

¹ The Board is required to remit to the State General Fund all civil penalties and 10 percent of all its other revenues in accordance with A.R.S. §32-1705 and §32-1744.

² Professional and outside services expenditures for fiscal year 2020 were primarily for expert witnesses and legal services costs.

³ Other operating expenditures consisted of items such as rent, telecommunication, insurance, accounting services, information technology, and software support and maintenance expenditures.

⁴ Furniture and equipment expenditures primarily consisted of chairs and computer equipment purchases in fiscal years 2019 and 2021, respectively.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2019 through 2021 and the State of Arizona *Annual Financial Report* for fiscal years 2019 and 2020.

⁵ A.R.S. §32-1705.



Board did not comply with some State conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

Statute addresses conflicts of interest for public agency employees and public officers

Arizona law requires employees of public agencies and public officers to avoid conflicts of interest that might influence or affect their official conduct. To determine whether a conflict of interest exists, employees/public officers must first evaluate whether they or a relative has a “substantial interest” in (1) any contract, sale, purchase, or service to the public agency or (2) any decision of the public agency.

If an employee/public officer or a relative has a substantial interest, statute requires the employee/public officer to fully disclose the interest and refrain from voting upon or otherwise participating in the matter in any way as an employee/public officer.^{6,7}

The interest must be disclosed in the public agency’s official records, either through a signed document or the agency’s official minutes. To help ensure compliance with these statutory requirements, the Arizona Department of Administration (ADOA)’s State Personnel System employee handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” In addition, A.R.S. §38-509 requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes, and to make this file available for public inspection.

Key terms

- **Substantial interest**—Any direct or indirect monetary or ownership interest that is not hypothetical and is not defined in statute as a “remote interest.”
- **Remote interest**—Any of several specific categories of interest defined in statute that are exempt from the conflict-of-interest requirements. For example, an employee or public officer who is reimbursed for actual and necessary expenses incurred while performing official duties.

Source: Auditor General staff review of A.R.S. §38-502 and the *Arizona Agency Handbook*. Arizona Office of the Attorney General. (2018). *Arizona agency handbook*. Phoenix, AZ. Retrieved 4/05/2021 from <https://www.azag.gov/outreach/publications/agency-handbook>.

⁶ See A.R.S. §§38-502 and 38-503(A) and (B).

⁷ A.R.S. §38-502(8) defines “public officer” as all elected or appointed officers of a public agency established by charter, ordinance, resolution, State constitution, or statute. According to the *Arizona Agency Handbook*, public officers include directors of State agencies and members of State boards, commissions, and committees—whether paid or unpaid.

In response to conflict-of-interest noncompliance and violations investigated in the course of our work, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, we have recommended several practices and actions to various school districts, State agencies, and other public entities.⁸ Our recommendations are based on guidelines developed by public agencies to manage conflicts of interest in government and are designed to help ensure compliance with State conflict-of-interest requirements by reminding employees/public officers of the importance of complying with the State's conflict-of-interest laws.⁹ Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually to help remind them to update their disclosure form if their circumstances change and that the form include a field for the employee/public officer to provide an "affirmative no," if applicable. These recommended practices also indicate that agencies develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

Board had not complied with some State conflict-of-interest requirements and its conflict-of-interest process was not fully aligned with recommended practices

The Board did not comply with some State conflict-of-interest requirements, and its conflict-of-interest process was not fully aligned with recommended practices designed to help ensure that employees/public officers comply with State requirements. Specifically, the Board:

- **Used a disclosure form for Board members that did not address all statutorily required disclosures—**The Board developed and implemented a disclosure form for memorializing conflicts of interest disclosed by Board members during Board meetings. The Board's disclosure form required Board members to provide the reason(s) for declaring the conflict, such as being in direct competition with the parties involved in the matter listed for discussion, having special knowledge of the matter, and/or having any other apparent conflict of interest with a complaint investigation or other agenda item. However, the form did not specifically require disclosures of substantial financial interests in contracts, sales, purchases, and services of the Board, as required by statute.¹⁰ Although the Board's disclosure form referenced the State's conflict-of-interest statutes, it did not provide specific examples or guidance to help Board members know the required conflicts to disclose.
- **Did not require employees to complete a disclosure form upon hire—**The Board did not require its employees to complete a disclosure form when they were hired or when their circumstances changed, as required by ADOA. As of January 2022, neither of the Board's 2 employees had completed a conflict-of-interest disclosure form.
- **Lacked a special disclosure file as required by statute—**The Board stored some conflict-of-interest meeting disclosures along with written meeting minutes at the Board's office; however, it did not have a special file to store all disclosures of substantial interest for public inspection, as required by statute.¹¹

⁸ See, for example, Auditor General Reports 21-402 *Higley Unified School District—Criminal Indictment—Conspiracy, Procurement Fraud, Fraudulent Schemes, Misuse of Public Monies, False Return, and Conflict of Interest*, 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*, and 17-405 *Pine-Strawberry Water Improvement District—Theft and misuse of public monies*.

⁹ Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2021). *Recommendation of the council on OECD guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 11/18/2021 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 11/18/2021 from <https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining-Preventing-Identifying-Addressing.pdf>; and Controller and Auditor General of New Zealand (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 11/18/2021 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

¹⁰ A.R.S. §38-503.

¹¹ A.R.S. §38-509.

Finally, the Board had not fully aligned its conflict-of-interest process with recommended practices. Specifically, although not required by statute or the ADOA, the Board did not require its employees to annually complete a disclosure form, annually remind them to complete a disclosure form when their circumstances change, or develop a process for remediating potential employee conflicts. Similarly, the Board did not require its members, who are public officers, to complete a disclosure form when appointed or annually remind them to complete a disclosure form when their circumstances change. Additionally, the Board had not provided periodic conflict-of-interest training for its employees and members related to their unique programs, functions, or responsibilities.

Board's noncompliance with State conflict-of-interest requirements increased the risk that employees and Board members did not disclose substantial interests that might influence or affect their official conduct

The Board's noncompliance with State conflict-of-interest requirements and not fully aligning its conflict-of-interest process with recommended practices increased the risk that employees and Board members would not disclose all substantial interests, which might influence or affect their official conduct. For example, by not requiring employees/Board members to complete a disclosure form that addressed all statutorily required disclosures upon hire/appointment, or by reminding them to update their form at least annually or as their circumstances change, the Board could not ensure that all employees and Board members disclosed both financial and decision-making substantial interests and refrained from participating in any manner related to these interests, as required by statute.¹² Consequently, the Board may have been unaware of potential conflicts and the need to take action to mitigate those conflicts.

Additionally, because the Board did not store completed forms disclosing substantial interests in a special file, the Board lacked a method to track Board members' substantial interest disclosures and make this information available in response to public requests, as required by statute.

Board lacked comprehensive conflict-of-interest policies and procedures

The Board had not developed comprehensive internal conflict-of-interest policies and procedures, which contributed to the problems noted previously. For example, the Board had not developed internal policies and procedures that required all employees and Board members to complete a disclosure form upon hire or appointment, or that reminded them to update their form at least annually or as their circumstances change. Additionally, the Board's policies did not include a process for reviewing and remediating any disclosed employee conflicts and establishing training requirements for both employees and Board members.¹³ Additionally, Board staff reported that they were unaware of some statutory conflict-of-interest requirements, such as the need for a special disclosure file. During the audit, the Board began drafting updates to its internal conflict-of-interest policies and procedures to address these deficiencies, such as requiring Board members and employees to complete an annual conflict-of-interest form.

Recommendations

The Board should:

1. Revise its internal conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements, including:

¹² A.R.S. §38-503.

¹³ The Board's policies and procedures require Board members to disclose any potential conflicts and to publicly recuse themselves from participating in any Board decisions related to the disclosed conflict.

- a. Requiring all employees and Board members to complete a conflict-of-interest disclosure form upon hire/appointment, and reminding them at least annually to update their form when their circumstances change, including attesting that no conflicts exist, if applicable, consistent with State requirements and recommended practices.
 - b. Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest, as required by statute.
 - c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection, as required by statute.
 - d. Establishing a process to review and remediate disclosed employee conflicts, consistent with recommended practices.
2. Provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and Board members on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities.



Board response: As outlined in its [response](#), the Board does not agree with parts of the finding but will implement the recommendations.

Board did not answer or respond to any of our anonymous phone calls or provide some required information on its website, restricting access to information public needs to make informed decisions about eye care

Statute requires the Board to provide certain information regarding licensees to the public

The Board is statutorily required to provide information about its licensees to the public, including providing information over the phone and by posting certain required licensee complaint information to its website (see Table 2 for the types of complaint information that should be made available to the public). For example, statute requires health profession regulatory boards to post disciplinary and some nondisciplinary actions or orders to their websites, such as a suspended license or a nondisciplinary order for continuing education (see Sunset Factor 6, page 15, for examples of the Board's disciplinary and nondisciplinary options to address violations).^{14,15} Additionally, statute requires the Board to post a statement to its website explaining that a person may obtain additional public records related to any licensee, including dismissed complaints and nondisciplinary actions and orders, by contacting the Board directly.¹⁶ Providing accurate and complete information about licensees is important so that the public can make informed decisions when choosing an optometrist.

Table 2
Statutory requirements for providing complaint information to the public

	Phone 	Website 
Dismissed complaints	✓	✗
Open complaint investigations	✗	✗
Nondisciplinary actions and orders ¹	✓	✓
Disciplinary actions	✓	✓

¹ Although nondisciplinary actions and orders such as orders to receive additional continuing education are required to appear on the Board's website, A.R.S. §32-3214(B) exempts nondisciplinary letters of concern or advisory letters from appearing on a board's website.

Source: Auditor General staff review of A.R.S. §§32-3209, 32-3214, and 39-121.

¹⁴ A.R.S. §32-3201 defines health professional and establishes the Board as a health profession regulatory board.

¹⁵ A.R.S. §32-3214 requires disciplinary actions and nondisciplinary actions and orders to be posted to the Board's website for not more than 5 years.

¹⁶ A.R.S. §32-3214.

Board did not answer or respond to our anonymous phone calls or provide some required information on its website

Board did not answer or respond to any of the 8 anonymous phone calls placed during business hours—The Board did not answer or respond to any of the 8 anonymous phone calls we placed using personal phone numbers during business hours in August 2021. For 5 of the 8 phone calls, we left voicemail messages requesting a call back to personal phone numbers, but the Board did not return our calls. Because Board staff did not answer or return our anonymous calls, we were unable to request, and the Board did not provide, public information about licensees over the phone, such as current license status and disciplinary histories, as required by statute.

Board did not provide some required public information on its website—The Board did not comply with all statutory requirements for posting information on its website.¹⁷ Specifically, the Board:

- **Did not post nondisciplinary order on its website**—The Board issued a nondisciplinary order for continuing education to 1 licensee in calendar year 2020, but did not include this information on its website, as required by statute.
- **Did not include required public records statement on its website**—The Board had not provided the statutorily required statement on its website explaining that a person may obtain public records related to any licensee by contacting the Board directly, including dismissed complaints or nondisciplinary actions. As of November 2021, the Board had added this statement to its website.

Board did not provide some disciplinary action information on its website, inconsistent with other health profession regulatory boards' practices—The Board posted more limited information on its website regarding disciplinary actions as compared to other health profession regulatory boards. Specifically, for the 1 disciplinary action issued by the Board since 2019, the Board's website only included a checkbox indicating that the licensee had a history of disciplinary action and the associated complaint number. In contrast, 3 other health profession regulatory boards we reviewed posted full copies of disciplinary actions issued against licensees on their websites, including consent agreements that explained the findings of the board related to complaint investigations and details of the disciplinary actions.¹⁸

Board's policies lack guidance to ensure it provides public information in accordance with statutory requirements

Board staff were unable to explain why they did not answer or respond to any of our 8 anonymous calls. Additionally, the Board lacks written guidance for its staff on returning phone calls, including time frames for responding to voicemail messages. Further, the Board had not developed internal policies and procedures for updating its website to include public information related to disciplinary and/or nondisciplinary actions.

Recommendations

The Board should:

3. Comply with all statutory requirements for providing public information, including:
 - a. Providing public records and information to the public; ensuring that its staff answer phone calls and timely return voicemail messages; and determining whether its staff need to respond to any prior voicemail messages.

¹⁷ We use the term "website" in referring to both the Board's website and its online licensing system. The Board uses an online licensing system as a directory of its licensees to provide certain types of public information.

¹⁸ We reviewed the websites for the Arizona State Board of Physical Therapy, the Arizona Board of Occupational Therapy Examiners, and the Arizona Board of Psychologist Examiners.

- b. Posting nondisciplinary actions and orders required by statute, such as nondisciplinary orders for continuing education hours, to the Board's website, and maintaining these records on its website for not more than 5 years.
4. Develop and implement written internal policies and procedures to help ensure staff comply with public information requirements that include:
 - a. Providing complete and accurate public records and information to the public in a timely manner, during business hours and over the phone, including establishing required time frames for returning phone calls requesting public records and information and processes for reviewing public requests for information to ensure Board staff respond to all requests.
 - b. Ensuring required disciplinary and nondisciplinary actions and orders are posted to the Board's website as allowed and required by statute and are maintained for not more than 5 years.
 - c. Requiring the Board's executive director to review Board staff's compliance with the policies and procedures, including time frames for doing so.
 5. Post records of disciplinary actions to its website, such as copies of Board orders or agreements, consistent with other health profession regulatory boards, and maintaining these records on its website for not more than 5 years.

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



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

Sunset factor 1: The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.

The Board was established in 1907 and its mission is “to protect the health, safety, and welfare of Arizona citizens by regulating and achieving the highest standards in the optometry profession.” The Board is responsible for issuing optometrist licenses to qualified individuals and investigating and adjudicating complaints against licensees alleging violations of Board statutes and rules. The Board is also responsible for providing information to the public regarding licensees’ disciplinary history and license status.

We did not identify any states that met a similar objective and purpose through private enterprise. According to the U.S. Bureau of Labor Statistics and the Association of Regulatory Boards of Optometry (ARBO) website, all 50 states require optometrists to be licensed by a state regulatory entity.^{19,20} Additionally, we reviewed the regulation of optometry in 4 states—California, Nevada, New Mexico, and Rhode Island—and found that none used private enterprises to regulate optometrists.

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

The Board met its statutory objective and purpose for 1 area we reviewed. Specifically, the Board’s administrative rules require it to approve or deny initial and renewal license applications within 75 days and 45 days, respectively.²¹ The Board issued or renewed licenses within these required time frames for a stratified random sample of 35 initial and renewal license applications approved by the Board in calendar year 2020 that we reviewed.²²

We also identified some areas where the Board did not meet its statutory objective and purpose. Specifically, the Board:

- **Did not verify that applicants met all licensure requirements for some license applications we reviewed**—Applicants can apply for licensure by examination, by endorsement, or by universal recognition (see textbox on page 12 for the respective licensing requirements). Although the Board ensured that applicants we reviewed met most licensure requirements, such as ensuring initial applicants submitted fingerprints for a criminal history records check and renewal applicants provided the required continuing education documentation, the Board did not verify some licensure requirements for 17 of the 35 initial and renewal applications we reviewed. Specifically, the Board:

¹⁹ U.S. Bureau of Labor Statistics. (2021). *Occupational outlook handbook: Optometrists*. Washington, DC: U.S. Department of Labor. Retrieved 8/31/21 from <https://www.bls.gov/ooh/healthcare/optometrists.htm#tab-4>.

²⁰ The ARBO website provides resources to regulatory boards of optometry and includes member boards in all 50 United States, Puerto Rico, Virgin Islands, Australia, Canada, and New Zealand. Retrieved 8/9/21 from <https://www.arbo.org/memberboards>.

²¹ Arizona Administrative Code (AAC) R4-21-103.

²² We reviewed a stratified random sample of 15 of the 48 applications for licensure by examination, 5 of the 17 applications for licensure by endorsement, and 15 of the 648 applications for licensure renewal the Board received in calendar year 2020.

- **Did not ensure that some applicants for initial licensure provided adequate documentation to verify lawful presence**—Statute requires the Board to obtain government-issued documentation from applicants that contains a photograph, such as an Arizona driver's license or a United States passport, to verify lawful presence.²³ However, the Board accepted lawful presence documentation that did not meet the photograph requirement for 10 of the 20 initial licensure applications we reviewed, such as accepting a birth certificate without an accompanying government-issued document containing a photograph. The Board's use of an outdated citizenship verification form that did not address the statutory requirement for photographic identification likely contributed to this deficiency. During the audit in October 2021, the Board updated and implemented its citizenship verification form to include this statutory requirement.

- **Did not ensure CPR certification requirements were met for some initial and renewal applicants**—Rule requires that all initial and renewal license applicants submit a CPR certification card or other documentation with an expiration date received from a CPR course as recommended by the American Heart Association, the American Red Cross, or the National Safety Council.²⁴ Although all of the applications we reviewed included a recently issued CPR card, 3 of the 35 initial and renewal applications did not include a CPR card with an expiration date. Additionally, 5 of the 35 initial and renewal applications included CPR cards that were issued by a course provider for which we could not identify a recommendation by the American Heart Association, the American Red Cross, or the National Safety Council.

According to the Board, the CPR requirements specified in rule are difficult to consistently enforce and may need to be changed.²⁵ For example, the CPR certification cards issued by some approved course providers do not include an expiration date. Additionally, the CPR course providers do not always provide

Key Licensure Requirements

Licensure by examination

- Passing score on the National Board of Examiners in Optometry (NBEO) exam.¹
- Transcript from an accredited optometry program.
- Lawful presence documentation.
- Passing score on the jurisprudence exam.
- Fingerprints for a criminal history records check.²
- Copy of current CPR certification.

Licensure by endorsement

- Includes the same requirements listed above for licensure by examination, except for NBEO scores.
- Licensed to practice no less than 4 of the past 5 years in another state.
- Board certification and license verification from another state.

Licensure by universal recognition

- Hold a comparable license or certification from another state.
- Practiced for at least 1 year.
- Be in good standing in each state where a license or certification is held.
- Establish Arizona residence.

Licensure renewal

- 32 hours of continuing education credits.
- Copy of current CPR certification.

¹ The NBEO administers clinical board exams to students graduating from a Doctor of Optometry program.

² Pursuant to A.R.S. §32-1743, the Board may deny an application for a license if the applicant has been convicted of a felony or any crime involving moral turpitude.

Source: Auditor General staff review of statute, rule, and information from the U.S. Bureau of Labor Statistics.

²³ A.R.S. §41-1080 requires applicants for licensure to provide lawful presence documentation. If an applicant submits lawful presence documentation without a photograph, such as a birth certificate, statute requires they also provide a government-issued document containing a photograph.

²⁴ AAC R4-21-201, R4-21-202, R4-21-205, and R4-21-205.1.

²⁵ Executive order 2022-01, "Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative rules," has continued restrictions on State agencies' rulemaking. This moratorium restricts rulemaking without the prior written approval of the Governor's Office and provides justification for exceptions to the rule-making moratorium, such as reducing regulatory burden or preventing a significant threat to the public health or safety.

an indication that their courses are recommended by the American Heart Association, the American Red Cross, or the National Safety Council.

- **Has not evaluated the appropriateness of its fees**—The Board’s application, licensure, and examination fees are set forth in statute and rule.²⁶ For example, the Board charges a \$150 application fee for licensure by examination, a \$300 application fee for licensure by endorsement, and a \$450 biennial licensure renewal fee. Additionally, both licensure by examination and licensure by endorsement applicants pay a \$450 license issuance fee. Although these fees were last revised in 2016, the Board lacks internal fee-setting policies and procedures for periodically evaluating the appropriateness of its fees to help ensure they are commensurate with the costs of its regulatory activities. As a result, the Board may be collecting more revenue than it needs to operate. For example, as shown in Table 1 (see Introduction, page 3), the Board’s fund balance has increased from approximately \$332,600 at the end of fiscal year 2019 to more than \$458,000 at the end of fiscal year 2021—more than double its fiscal year 2021 expenditures. Government fee-setting standards and guidance state that user fees should be based on the costs of providing a service and reviewed periodically to ensure they are based on these costs.²⁷

Recommendations

The Board should:

6. Ensure that applicants meet all statute and rule requirements for initial and renewal licensure, including:
 - a. Submitting a government-issued photograph to help verify lawful presence.
 - b. Working with its Assistant Attorney General to determine whether and when it can make rule changes to modify its CPR requirements. These rule changes should ensure that the Board can assess license applicant compliance with and enforce all CPR requirements as specified in rule.
7. Develop and implement internal policies and procedures for periodically reviewing the appropriateness of its fees that direct it to analyze the costs of its regulatory processes, compare these costs to the associated fees, determine the appropriate licensing fees, and then revise its fees as needed.

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

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

The Board serves the entire State by licensing optometry applicants and investigating and adjudicating complaints against licensees throughout the State.

However, we found that the Board did not comply with some conflict-of-interest requirements and had not fully aligned its conflict-of-interest process with recommended practices, such as requiring all employees and Board members to complete a conflict-of-interest disclosure form upon hire/appointment, reminding all employees and Board members to update their disclosure form at least annually or as their circumstances change, and maintaining a special file for substantial interest disclosures. We recommended that the Board update and implement its policies and procedures to help ensure it complies with State conflict-of-interest requirements (see Finding 1, pages 4 through 7).

²⁶ A.R.S. §32-1727 establishes application fees, and AAC R4-21-102 establishes license issuance and renewal fees.

²⁷ We reviewed fee-setting guidelines from the Arizona State Agency Fee Commission, the Government Finance Officers Association, the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review, and the U.S. Government Accountability Office (see Appendix A, page a-2, for more information).

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

Our review of the Board's statutes and rules indicates that the Board has adopted rules when required to do so.²⁸ According to A.R.S. §32-1704(A), the Board has authority to adopt rules to carry out its statutory duties, including establishing examination requirements for applicants seeking licensure. The Board most recently revised its rules in 2019, including revisions that require Board staff to audit license renewal applicants' continuing education hours.

Additionally, as explained in Sunset Factor 2 on pages 12 through 13, we recommended that the Board work with its Assistant Attorney General to determine whether and when it can modify its CPR requirements in rule to ensure it can assess license applicant compliance with and enforce all CPR requirements as specified in rule.

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

The Board has encouraged input from the public before adopting its rules and informed the public as to its actions and their expected impact. For example, during its most recent rulemaking in March 2019, the Board published a notice of its proposed rulemaking in the Arizona Administrative Register and included a statement detailing the impact to the public, the name of Board staff who could be contacted about the proposed rules, and the location where the public could provide input.²⁹

However, the Board did not consistently comply with provisions of the State's open meeting law that we reviewed and could take steps to improve its provision of information to the public. Specifically, the Board:

- **Did not consistently comply with all open meeting law requirements**—Although the Board complied with some open meeting law requirements, such as posting meeting notices and agendas on its website at least 24 hours prior to meetings, it did not make meeting minutes or recordings available within 3 working days for 2 of the 4 meetings we observed, as required by statute.^{30,31}

Additionally, statute requires the Board to make and maintain a digital recording of all open meetings for 3 years and requires the Board to post the digital recording, or a notice of the availability of the digital recording, to the Board's website within 5 working days of the meeting.³² However, the Board did not comply with these requirements for some of the meetings we reviewed. Specifically, the Board did not post a meeting recording, or a notice of its availability, within 5 business days for 1 of the 4 meetings we observed in calendar year 2021.³³ The Board also did not make a digital recording as required by statute for 1 of 4 meetings from calendar year 2019 for which we requested digital recordings.³⁴

- **Did not answer or respond to our anonymous phone calls or provide some required information on its website**—As discussed in Finding 2 (see pages 8 through 10), the Board did not answer the phone for any of the 8 anonymous phone calls we made using personal phone numbers. Additionally, although we left voicemail messages requesting a call back to the personal phone numbers for 5 of the 8 phone calls, the

²⁸ In conducting this assessment, we relied, in part, upon Board-reported information.

²⁹ According to the Board's Notice of Final Rulemaking published in the Arizona Administrative Register, no public comments were received.

³⁰ A.R.S. §38-431.01(D).

³¹ We reviewed the Board's compliance with open meeting law requirements by reviewing past meeting documentation available on the Board's website and observing 4 Board meetings held between May 2021 and November 2021 (see Appendix A, for more information).

³² A.R.S. §32-3222.

³³ The Board did not post any meeting recordings, or notices of their availability, to its website for all 17 Board meetings held in calendar years 2019 and 2020. The Board began posting meeting recordings to its website in February 2021.

³⁴ For the 1 meeting for which a digital recording was not made, the executive director reported that the Board called a special meeting to address a request made by a licensee, pursuant to rule, for an extension of time or waiver for completing the required number of continuing education hours for license renewal due to the licensee's terminal illness. The Board's executive director reported that the Board decided not to record the meeting because of the personal nature of the discussion regarding the licensee's terminal illness.

Board did not return our calls. Therefore, we were unable to request public information about licensees over the phone, such as current license status and disciplinary histories. Additionally, the Board did not provide some required public information on its website, such as nondisciplinary orders. We recommended that the Board comply with all statutory requirements for providing public information, post disciplinary actions to its website consistent with other health profession regulatory boards, and develop and implement internal policies and procedures to ensure staff comply with public information requirements.

Recommendations

The Board should:

8. Comply with all open meeting law requirements, including:
 - a. Ensuring meeting minutes, or digital recordings, are available upon request within 3 working days of Board meetings, and that digital recordings, or a notice of the availability of digital recordings, are posted to the website within 5 working days of Board meetings.
 - b. Ensuring a digital recording is made of all open meetings and maintained for 3 years.
9. Develop and implement internal policies and procedures to ensure staff comply with all open meeting law requirements.

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

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

The Board has statutory authority to investigate and adjudicate complaints within its jurisdiction and has various disciplinary and nondisciplinary options available to address statute or rule violations (see textbox). Based on our review of a sample of 11 of the 22 complaints received by the Board in calendar year 2020, the Board resolved these complaints within the Board's 120-day time frame for resolving complaints (see Appendix A, page a-1, for more information about our sample selection).^{35,36} However, the Board:

- **Did not ensure that licensees provided a written response to the notice of a complaint within 20 days for some complaints we reviewed**—Statute indicates that the Board shall require a licensee to provide a written response to a complaint within 20 days after the licensee receives notification that a complaint has been received by the Board.³⁷ This requirement helps ensure that all the necessary information is made available during a complaint investigation and that

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

Disciplinary actions:

- Censure
- Civil penalty (not to exceed \$5,000 for each violation)
- Probation
- Suspension of license
- Revocation of license
- Refusal to issue or renew a license

Nondisciplinary actions:

- Letter of concern
- Completion of continuing education hours

Source: Auditor General staff analysis of A.R.S. §§32-1743 and 32-1744.

³⁵ Our sample included 5 of 17 randomly selected complaints dismissed by the Board, 1 judgmentally selected dismissed complaint, and all 5 complaints resulting in a nondisciplinary letter of concern received by the Board in calendar year 2020 (see Appendix A, page a-1, for more information). The Board did not receive any complaints in calendar year 2020 for which it imposed disciplinary action. The complaints we reviewed included various allegations, such as improper billing and failure to see patients in a timely manner.

³⁶ The Board established a goal within its strategic plan to investigate and adjudicate complaints within 120 days.

³⁷ A.R.S. §32-1744(C).

complaints are resolved in a timely manner. For 4 of the 11 complaints we reviewed, the licensee exceeded the 20-day time frame by 10, 27, 33, and 42 days, respectively.³⁸ Although it had not previously done so, the Board reported that it started tracking licensee responses in its complaint log in January 2021, to ensure they are provided in a timely manner.

- **Did not always document whether complainants were notified of the complaint resolution**—Statute requires the Board to inform the complainant of the complaint findings and resolutions and to provide them with a copy of any final Board decision.³⁹ Although the Board reported that it notified complainants of the complaint resolution, the Board was not able to provide documentation for 5 of the 11 complaints we reviewed demonstrating that it had done so.

Additionally, the Board had not developed any internal policies and procedures for complaint handling, which likely contributed to the concerns we identified. As of October 2021, the Board had drafted some policies and procedures that cover some aspects of complaint handling, such as notifying the licensee that a complaint has been opened, and reported that it planned to develop and implement comprehensive policies and procedures for handling complaints during 2022.

Recommendations

10. The Board should continue to develop and implement internal policies and procedures for handling complaints, including internal policies and procedures for:
 - a. Tracking licensee responses to complaints to ensure that licensees provide a response to the notification of a complaint within 20 days, and, if needed, sending a reminder notification to licensees.
 - b. Documenting complaint investigation activities and notifying complainants regarding the resolution of their complaint.

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

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

According to A.R.S. §41-192, the Attorney General serves as the Board's legal advisor and provides legal services as the Board requires. Additionally, statute requires the Board to refer verified complaints of unlicensed practice to the Attorney General or county attorney for prosecution.⁴⁰

Sunset factor 8: The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

The Board did not identify any deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

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

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

³⁸ Two of the licensees requested, and were granted, extensions of 12 and 15 calendar days, respectively, by the Board's executive director. However, the licensee granted a 15-day extension exceeded the extended deadline by an additional 18 days.

³⁹ A.R.S. §32-1744.

⁴⁰ A.R.S. §32-3227.

Sunset factor 10: The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.

Terminating the Board would affect public health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board's purpose and responsibility are to protect the public by regulating and ensuring the highest standards of care in the optometry profession, which include:

- Licensing individuals to help ensure they are qualified to practice optometry.
- Receiving and investigating complaints against licensees alleging unprofessional conduct or of practice without regard for the safety and welfare of the public.
- Taking action against a licensee when complaint allegations have been substantiated. For example, in December 2019, the Board found that a licensee violated Board statutes and rules by failing to provide prescriptions upon request by a contact lens provider, failing to provide a written response to a notice of investigation, failing to produce timely and complete patient health records during a Board investigation, and failing to respond to Board requests for interviews during the investigation. As a result, the Board issued a 2-year probation order requiring the licensee's patient records to be subject to monthly audits. Additionally, the probation order required the licensee to complete 6 credit hours of continuing education in ethics for healthcare professionals and 6 hours in recordkeeping and documentation.
- Providing information to the public about licensees, including license status and disciplinary history.

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

We compared Arizona's level of regulation to 4 other states—California, Nevada, New Mexico, and Rhode Island—and found that the level of regulation the Board exercises is generally similar to these states.⁴¹ For example:

- **Education**—Arizona and all 4 states require applicants to have graduated from an accredited school of optometry.
- **Fingerprints required**—Arizona and California require applicants to submit fingerprints for a criminal history records check. Nevada, New Mexico, and Rhode Island reported that they do not require a criminal history records check prior to licensure.
- **Examination**—Arizona and all 4 states require applicants to submit passing NBEO exam scores for licensure by examination. However, unlike Arizona, Nevada, New Mexico, and Rhode Island reported NBEO exam scores remain valid for an indefinite amount of time, whereas Arizona requires NBEO exam scores be provided within 10 years of taking the exam. We did not identify any requirements for California establishing an expiration date for NBEO exam scores.

Additionally—similar to Arizona—California, Nevada, and New Mexico require licensing applicants to pass a jurisprudence exam.

- **Continuing education**—Arizona and all 4 states require applicants renewing their license to provide documentation of completed continuing education; however, the number of required continuing education hours varies by state. For example, California and Nevada require up to 50 hours of continuing education every 2 years, whereas Arizona requires 32 hours of continuing education hours every 2 years. New Mexico and Rhode Island, respectively, require 22 and 20 hours of continuing education annually.

⁴¹ We judgmentally selected these states based on identifiable similarities and differences after performing a review of other state optometry board websites.

Sunset factor 12: The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Board reported that it occasionally uses a State contract for court reporting services for formal complaint hearings.

Two states we contacted—New Mexico and Rhode Island—reported they did not use private contractors. Additionally, Nevada reported it will occasionally use private contractors to pose as patients during complaint investigations.

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



SUMMARY OF RECOMMENDATIONS

Auditor General makes 10 recommendations to the Board

The Board should:

1. Revise its internal conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements, including:
 - a. Requiring all employees and Board members to complete a conflict-of-interest disclosure form upon hire/appointment and reminding them at least annually to update their form when their circumstances change, including attesting that no conflicts exist, if applicable, consistent with State requirements and recommended practices.
 - b. Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest, as required by statute.
 - c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection, as required by statute.
 - d. Establishing a process to review and remediate disclosed employee conflicts, consistent with recommended practices (see Finding 1, pages 4 through 7, for more information).
2. Provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and Board members on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities (see Finding 1, pages 4 through 7, for more information).
3. Comply with all statutory requirements for providing public information, including:
 - a. Providing public records and information to the public; ensuring that its staff answer phone calls and timely return voicemail messages; and determining whether its staff need to respond to any prior voicemail messages.
 - b. Posting nondisciplinary actions and orders required by statute, such as nondisciplinary orders for continuing education hours, to the Board's website, and maintaining these records on its website for not more than 5 years (see Finding 2, pages 8 through 10, for more information).
4. Develop and implement written internal policies and procedures to help ensure staff comply with public information requirements that include:
 - a. Providing complete and accurate public records and information to the public in a timely manner, during business hours and over the phone, including establishing required time frames for returning phone calls requesting public records and information and processes for reviewing public requests for information to ensure Board staff respond to all requests.
 - b. Ensuring required disciplinary and nondisciplinary actions and orders are posted to the Board's website as allowed and required by statute and are maintained for not more than 5 years.
 - c. Requiring the Board's executive director to review Board staff's compliance with the policies and procedures, including time frames for doing so (see Finding 2, pages 8 through 10, for more information).

5. Post records of disciplinary actions to its website, such as copies of Board orders or agreements, consistent with other health profession regulatory boards, and maintaining these records on its website for not more than 5 years (see Finding 2, pages 8 through 10, for more information).
6. Ensure that applicants meet all statute and rule requirements for initial and renewal licensure, including:
 - a. Submitting a government-issued photograph to help verify lawful presence.
 - b. Working with its Assistant Attorney General to determine whether and when it can make rule changes to modify its CPR requirements. These rule changes should ensure that the Board can assess license applicant compliance with and enforce all CPR requirements as specified in rule (see Sunset Factor 2, pages 11 through 13, for more information).
7. Develop and implement internal policies and procedures for periodically reviewing the appropriateness of its fees that direct it to analyze the costs of its regulatory processes, compare these costs to the associated fees, determine the appropriate licensing fees, and then revise its fees as needed (see Sunset Factor 2, pages 11 through 13, for more information).
8. Comply with all open meeting law requirements, including:
 - a. Ensuring meeting minutes, or digital recordings, are available upon request within 3 working days of Board meetings, and that digital recordings, or a notice of the availability of digital recordings, are posted to the website within 5 working days of Board meetings.
 - b. Ensuring a digital recording is made of all open meetings and maintained for 3 years (see Sunset Factor 5, pages 14 through 15, for more information).
9. Develop and implement internal policies and procedures to ensure staff comply with all open meeting law requirements (see Sunset Factor 5, pages 14 through 15, for more information).
10. Continue to develop and implement internal policies and procedures for handling complaints, including internal policies and procedures for:
 - a. Tracking licensee responses to complaints to ensure that licensees provide a response to the notification of a complaint within 20 days, and, if needed, sending a reminder notification to licensees.
 - b. Documenting complaint investigation activities and notifying complainants regarding the resolution of their complaint (see Sunset Factor 6, pages 15 through 16, for more information).



Scope and methodology

The Arizona Auditor General has conducted a performance audit and sunset review of the Board pursuant to a December 17, 2020, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq.

We used various methods to address the audit's objectives. These methods included reviewing the Board's statutes, rules, and policies and procedures; interviewing Board staff; and reviewing information from the Board's website. In addition, we used the following specific methods to meet the audit objectives:

- To assess the Board's compliance with State conflict-of-interest requirements and alignment with recommended practices, we reviewed statute and State requirements, recommended practices, and the Board's conflict-of-interest disclosure form, policy, and practices.⁴²
- To assess whether the Board provided accurate information to the public consistent with statutory requirements, we placed 8 anonymous phone calls to the Board using personal phone numbers in August 2021. We also reviewed the disciplinary information on the Board's website to assess whether the information provided was accurate and consistent with statutory requirements and reviewed the websites for 3 other health profession regulatory boards.
- To determine whether the Board issued initial licenses to qualified applicants in accordance with statute and rule requirements and in a timely manner, we reviewed a stratified random sample of applications for licenses received by the Board in calendar year 2020, including 15 of 48 licensure by examination applications and 5 of 17 licensure by endorsement applications. To determine whether the Board renewed licenses according to its statutes and rules, including requirements for continuing education, we reviewed a random sample 15 of 648 renewal applications received by the Board in calendar year 2020.
- To assess the Board's complaint-resolution process, including the timeliness of complaint resolution, we reviewed a total of 11 of 22 complaints received by the Board in calendar year 2020, including a random sample of 5 of 17 closed through dismissal complaints, 1 judgmentally selected dismissed complaint, and all 5 complaints closed by letter of concern.
- To obtain information for the Introduction, we reviewed Board-provided information regarding Board member vacancies and the number of active licensees as of February 2022. We also reviewed the Board's fiscal year 2022 appropriations report. In addition, we compiled and analyzed unaudited financial information from the AFIS *Accounting Event Transaction File* for fiscal years 2019 through 2021, and the State of Arizona *Annual Financial Report* for fiscal years 2019 and 2020.
- To obtain additional information for the Sunset Factors, we reviewed the Arizona Administrative Register regarding the Board's rulemaking finalized in March 2019 and assessed the Board's compliance with various

⁴² Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2021). *Recommendation of the council on OECD guidelines for managing conflicts of interest in the public service*. Paris, France. Retrieved 11/18/2021 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 11/18/2021 from <https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining-Preventing-Identifying-Addressing.pdf>; and Controller and Auditor General of New Zealand. (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 11/18/2021 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

provisions of the State's open meeting law for 4 Board meetings held from May 2021 through November 2021. In addition, to determine whether the Board appropriately established fees, we interviewed the Board's Executive Director, reviewed the Board's statutes and rules, and reviewed the Boards' revenues, expenditures, and fund balances for fiscal years 2019 through fiscal year 2021. We also reviewed fee-setting standards and guidance developed by government and professional organizations.⁴³ Finally, we judgmentally selected and contacted 4 states—California, Nevada, New Mexico and Rhode Island—and reviewed their regulation of the optometry profession and use of private contractors.

Our work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with Board statutes and rules and, where applicable, testing its compliance with these policies and procedures. Our internal control work included reviewing the following components of internal controls: control environment, control activities, and monitoring. We reported our conclusions on internal control deficiencies in Findings 1 and 2, and in our responses to the statutory sunset factors.

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

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

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

⁴³ We reviewed the following fee-setting best practices: Arizona State Agency Fee Commission. (2012). *Arizona State Agency Fee Commission report*. Phoenix, AZ; U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC. Retrieved 2/17/2022 from <https://www.gao.gov/assets/gao-08-386sp.pdf>; Michel, R.G. (2004). *Cost analysis and activity-based costing for government*. Chicago, IL: Government Finance Officers Association; and Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS. Retrieved 2/17/2022 from <https://www.peer.ms.gov/reports/rpt442.pdf>.



AUDITOR GENERAL'S COMMENTS ON BOARD RESPONSE

We appreciate the Board's response, including its agreement with most of the audit findings and its plan to implement, or implement in a different manner, all the recommendations. However, the Board's response includes some statements that necessitate the following clarifications:

1. The Board states that it disagrees with some parts of our finding regarding its adherence to State conflict-of-interest requirements and better aligning its conflict-of-interest policies and procedures with recommended practices (see Finding 1, pages 4 through 7) but indicated it will implement our recommendations. Specifically:

a. In the Board's response to Recommendation 1a, it states the following (see Board's response, page 2):

"The Human Resources Division of the Arizona Dept. of Administration sets forth the policy for Conflicts of Interest for Employees. As such, a response to this inquiry was made on November 18, 2021: "Thank you for your inquiry regarding conflict of interest notice requirements. Employees are required to complete the Disclosure Statement upon hire with the State and any time there is a change. The Disclosure Statement is part of the New Hire packet, so it is likely you completed the form when you first began your employment with the State. There is no statute or policy that requires employees to complete the Disclosure Statement annually. We are aware that the Office of the Auditor General's recent audits of State agencies include a review of how well agencies are complying with State conflict of interest requirements. In several audits, the Auditor General's report identified that conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually; however, this is a recommendation, not a requirement. While there seems to be inherent disagreement between the Governing Agency (ADOA) and the Auditor General office, the Board will implement the Auditor General recommendation as it is not burdensome to the Agency."

Contrary to the Board's response, we did not recommend that Board members and employees complete a conflict-of-interest disclosure form annually, nor do our findings and recommendations represent a disagreement with State policy. As discussed in Finding 1 (see pages 4 through 7), the Board had not required its employees to complete a conflict-of-interest disclosure form upon hire, as required by ADOA policy. Additionally, as of January 2022, neither of the Board's 2 employees had completed a conflict-of-interest disclosure form. We recommended that the Board follow ADOA policy and also remind employees and Board members at least annually about the importance of updating their form when their circumstances change, consistent with recommended practices. We will review the Board's compliance with ADOA policy and alignment with recommended practices during our initial followup.

b. In the Board's response to Recommendation 1b, it states the following (see Board's response, page 2):

"Pursuant to the State Procurement requirements, policies and laws of the State, the Board (staff and Members) does not go into financial interests in contracts, sales, purchases, and services that would be in conflict with any party serving on the Board. However, as the Auditor General feels it more prudent a practice, the Board will implement the Auditor General recommendation as it is not burdensome to the Agency."

First, following State laws is not a recommended practice, it is a requirement. Second, the Board's response focuses only on conflicts of interest related to procurement actions and does not address the concerns we noted in Finding 1 (see pages 4 through 7). Specifically, State laws require all employees and Board members to disclose substantial financial or decision-making interests, and

then refrain from participating in matters related to the disclosed interests. To help ensure compliance with these requirements and regardless of whether the employee has a procurement role, ADOA's State Personnel System employee handbook and conflict-of-interest disclosure form require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. We will review the Board's compliance with these requirements during our initial followup.

2. The Board agreed with our finding that it did not consistently comply with all open meeting law requirements and indicated it would implement the associated recommendations (see Sunset Factor 5, page 14). However, its response to Recommendation 8a states the following (see Board's response, pages 5 and 6):

"The law is currently 3 days. The Board will post whatever is required under the current statutes to comply with all open meeting laws."

The Board's response is incomplete and misleading. Recommendation 8a addresses 2 separate statutory requirements: (1) meeting minutes, or digital recordings should be available upon request within 3 working days of Board meetings, and (2) digital recordings, or a notice of the availability of digital recordings, should be posted to the Board's website within 5 working days of Board meetings. We will review the Board's compliance with both statutory requirements during our initial followup.

3. The Board agreed with our finding that it did not always document whether complainants were notified of the complaint resolution and indicated it would implement the associated recommendation (see Sunset Factor 6, pages 15 through 16). However, the Board's response to Recommendation 10b states the following (see Board's response, page 6):

"The Board has a process for complaint investigation and notification in statute as outlined in A.R.S. 32-1744(B). All complainants are notified in writing of the final disposition of their complaint."

Although State law includes requirements for complaint investigations and notification, State law does not outline how Board staff should ensure these requirements are met and how complaint investigation activities are documented, including notifications. For this reason, we recommended the Board continue to develop and implement internal policies and procedures to better ensure that Board staff adhere to State law. Additionally, although the Board reported that it notified complainants of the complaint resolution as required by statute, it was unable to provide documentation demonstrating that it had always done so (see Sunset Factor 6, page 16). We will review the Board's process and documentation for complaint investigations and notifications during our initial followup.

BOARD RESPONSE

<p>Douglas A. Ducey Governor</p> <p>Kelly Moffat, O.D. President</p> <p>Stephanie Mastores, O.D. Vice President</p>	<p style="text-align: center;"> <i>Arizona State Board of Optometry</i> 1740 West Adams St., Suite 3003 Phoenix, AZ 85007</p>	<p style="text-align: right;">Margaret Whelan Executive Director</p>
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April 19, 2022

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

Re: 2022 Arizona State Board of Optometry; Sunset Review Audit

Dear Ms. Perry,

I am pleased to submit, on behalf of the Arizona State Board of Optometry, the attached response to the audit findings.

As a note, the Board values the audit team for their utmost professionalism and integrity in reviewing the Board's performance. The findings are thorough, thoughtful, and relevant.

The audit recommendations are valuable and will be implemented.

Sincerely,



Margaret Whelan
Executive Director

Finding 1: Board did not comply with some State conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

Recommendation 1: Revise its internal conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements, including:

Recommendation 1a: Requiring all employees and Board members to complete a conflict-of-interest disclosure form upon hire/appointment and reminding them at least annually to update their form when their circumstances change, including attesting that no conflicts exist, if applicable, consistent with State requirements and recommended practices.

Board response: The finding of the Auditor General is not agreed to, but the recommendation will be implemented.

Response explanation: The Human Resources Division of the Arizona Dept. of Administration sets forth the policy for Conflicts of Interest for Employees. As such, a response to this inquiry was made on November 18, 2021: "Thank you for your inquiry regarding conflict of interest notice requirements. Employees are required to complete the Disclosure Statement upon hire with the State and any time there is a change. The Disclosure Statement is part of the New Hire packet, so it is likely you completed the form when you first began your employment with the State. There is no statute or policy that requires employees to complete the Disclosure Statement annually. We are aware that the Office of the Auditor General's recent audits of State agencies include a review of how well agencies are complying with State conflict of interest requirements. In several audits, the Auditor General's report identified that conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually; however, this is a recommendation, not a requirement. While there seems to be inherent disagreement between the Governing Agency (ADOA) and the Auditor General office, the Board will implement the Auditor General recommendation as it is not burdensome to the Agency.

Recommendation 1b: Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest, as required by statute.

Board response: The finding of the Auditor General is not agreed to, but the recommendation will be implemented.

Response explanation: Pursuant to the State Procurement requirements, policies and laws of the State, the Board (staff and Members) does not go into financial interests in contracts, sales, purchases, and services that would be in conflict with any party serving on the Board. However, as the Auditor General feels it more prudent a practice, the Board will implement the Auditor General recommendation as it is not burdensome to the Agency.

Recommendation 1c: Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection, as required by statute.

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

Response explanation: The Board created a dedicated file in November 2021 and will continue to utilize the file for all Conflict of Interest disclosures by Board members or staff.

Recommendation 1d: Establishing a process to review and remediate disclosed employee conflicts, consistent with recommended practices.

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

Response explanation: The Board, in conjunction with the Governing Agency (ADOA) will create a policy to address disclosed employee conflicts.

Recommendation 2: Provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and Board members on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities.

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

Response explanation: While the Board already provides training as the Office of the Attorney General provides annual training on Conflict of Interest as part of the 13 hours of Board member training required for all Boards, the Board will consider outside vendors such as CLEAR or FARB, etc. to address the COI training.

Finding 2: Board did not answer or respond to any of our anonymous phone calls or provide some required information on its website, restricting access to information public needs to make informed decisions about eye care

Recommendation 3: Comply with all statutory requirements for providing public information, including:

Recommendation 3a: Providing public records and information to the public; ensuring that its staff answer phone calls and timely return voicemail messages; and determining whether its staff need to respond to any prior voicemail messages.

Board response: The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.

Response explanation: The current policy of the Board is to answer all phone calls when the phone rings or to return a voicemail the same day unless received at the end of the day, then early the next day. All e-mails are required to be responded to within the same day or early next day if received at or after 5 p.m. The Board has a call log it utilizes but will review ways to implement a stronger tracking system for phone calls and e-mails.

Recommendation 3b: Posting nondisciplinary actions and orders required by statute, such as nondisciplinary orders for continuing education hours, to the Board's website, and maintaining these records on its website for not more than 5 years.

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

Response explanation: The Board will post whatever is required under the current law for both disciplinary and non-disciplinary actions.

Recommendation 4: Develop and implement written internal policies and procedures to help ensure staff comply with public information requirements that include:

Recommendation 4a: Providing complete and accurate public records and information to the public in a timely manner, during business hours and over the phone, including establishing required time frames for returning phone calls requesting public records and information and processes for reviewing public requests for information to ensure Board staff respond to all requests.

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

Response explanation: The Board currently responds to each and every public information request and has a policy that may need to be updated. The Board will continually update the policy based on the recommendation

Recommendation 4b: Ensuring required disciplinary and nondisciplinary actions and orders are posted to the Board's website as allowed and required by statute and are maintained for not more than 5 years.

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

Response explanation: The Board will post whatever is required under the current law for both disciplinary and non-disciplinary actions.

Recommendation 4c: Requiring the Board's executive director to review Board staff's compliance with the policies and procedures, including time frames for doing so.

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

Response explanation: I will manage staff to the best of my ability to ensure that policies and procedures are being followed. I will work with HR on this issue should problems arise from staff non-compliance.

Recommendation 5: Post records of disciplinary actions to its website, such as copies of Board orders or agreements, consistent with other health profession regulatory boards, and maintaining these records on its website for not more than 5 years.

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

Response explanation: The Board will post whatever is required under the current law for both disciplinary and non-disciplinary actions

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

Recommendation 6: Ensure that applicants meet all statute and rule requirements for initial and renewal licensure, including:

Recommendation 6a: Submitting a government-issued photograph to help verify lawful presence.

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

Response explanation: On October 17, 2021, the Citizenship Verification Form was updated and the change requiring a photo ID as proof of citizenship pursuant to Federal law was implemented.

Recommendation 6b: Working with its Assistant Attorney General to determine whether and when it can make rule changes to modify its CPR requirements. These rule changes should ensure that the Board can assess license applicant compliance with and enforce all CPR requirements as specified in rule.

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

Response explanation: Rule may need to be amended in order for Board to be able to more that substantially comply with the rule. Currently written, it ostensibly does not allow for an expiration date to be written as “two years from issue date” causing dissention of the rule from the Auditor General.

Recommendation 7: Develop and implement internal policies and procedures for periodically reviewing the appropriateness of its fees that direct it to analyze the costs of its regulatory processes, compare these costs to the associated fees, determine the appropriate licensing fees, and then revise its fees as needed.

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

Response explanation: The Board will work with OSPB to develop and implement a method to review the direct and indirect costs for its regulatory processes. Once this method is established, policies and procedures will be developed and implemented as necessary.

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

Recommendation 8: Comply with all open meeting law requirements, including:

Recommendation 8a: Ensuring meeting minutes, or digital recordings, are available upon request within 3 working days of Board meetings, and that digital recordings, or a notice of the availability of digital recordings, are posted to the website within 5 working days of Board meetings.

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

Response explanation: The law is currently 3 days. The Board will post whatever is required under the current statutes to comply with all open meeting laws.

Recommendation 8b: Ensuring a digital recording is made of all open meetings and maintained for 3 years.

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

Response explanation: The Board will post whatever is required under the current statutes to comply with all open meeting laws.

Recommendation 9: Develop and implement internal policies and procedures to ensure staff comply with all open meeting law requirements.

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

Response explanation: Internal policies and procedures are outlined in the Attorney General Handbook and are used as policy by staff to comply with all open meeting law requirements.

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

Recommendation 10: Continue to develop and implement internal policies and procedures for handling complaints, including internal policies and procedures for:

Recommendation 10a: Tracking licensee responses to complaints to ensure that licensees provide a response to the notification of a complaint within 20 days, and, if needed, sending a reminder notification to licensees.

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

Response explanation: Already implemented by adding a column on Complaint Log of "Date Response Received" to track when licensee has responded. Also added a task in Salesforce to alert staff when 20 day time frame to respond is approaching.

Recommendation 10b: Documenting complaint investigation activities and notifying complainants regarding the resolution of their complaint.

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

Response explanation: The Board has a process for complaint investigation and notification in statute as outlined in A.R.S. 32-1744(B). All complainants are notified in writing of the final disposition of their complaint.

