

The September 2022 Arizona State Board of Dental Examiners performance audit and sunset review found that the Board may not have taken enforcement action consistent with the nature and severity of some complaints' substantiated violations and did not resolve complaints in a timely manner, potentially affecting public health and safety; and has not complied with conflict-of-interest requirements. We made 32 recommendations to the Board and 1 recommendation to the Legislature, and the Board's and Legislature's statuses in implementing the recommendations are as follows:

### Status of 32 Board recommendations

Implemented	3
In process	20
Not yet applicable	1
<b>Not implemented</b>	<b>8</b>

### Status of 1 legislative recommendation

<b>Not implemented</b>	<b>1</b>
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As indicated throughout this follow-up report, the Board is in the process of implementing most of our recommendations, including developing policies and procedures in most areas we reviewed—complaint handling, conflict-of-interest, licensing, fee-setting, and public information. However, some of the Board's policies and procedures in these areas do not fully address all our recommendations. We will conduct an 18-month followup with the Board on the status of the recommendations that have not yet been implemented.

## Finding 1: Board has not considered nature and severity of some complaints' substantiated violations or licensees' history when taking enforcement action, potentially jeopardizing public health and welfare

1. The Board should work with its legal counsel to develop and implement policies and procedures for determining and taking enforcement actions that address the nature and severity of the substantiated violations, including:

a. Establishing when to use nondisciplinary versus disciplinary actions.

**Implementation in process**—In March 2023, the Board developed and began implementing a policy that includes guidelines for adjudicating complaints. The policy outlines when the Board should use nondisciplinary versus disciplinary enforcement actions, including possible factors to consider when determining whether a complaint rises to the level of discipline, such as the degree to which a treatment provided by a licensee was deficient and the number of times the conduct was repeated. We will assess the Board's implementation of its policy during our 18-month followup.

b. Implementing a graduated and equitable system of sanctions structured so that the discipline rendered is sufficient to achieve the desired results of ensuring that public health and welfare are protected.

**Implementation in process**—As previously discussed in Recommendation 1a, in March 2023, the Board developed and began implementing a policy that includes guidelines for adjudicating complaints. The policy outlines factors the Board can consider when deciding whether a complaint rises to the level of discipline

and outlines the various disciplinary enforcement actions available to the Board. However, the policy lacks guidance to explain how the Board should use these factors to determine the appropriate level of discipline. We will further assess the development and implementation of the policy during our 18-month followup.

- c. Documenting its consideration of mitigating and/or aggravating factors when determining enforcement actions, including licensee disciplinary and nondisciplinary histories.

**Not implemented**—As previously discussed in Recommendation 1a, in March 2023, the Board developed and began implementing a policy that includes guidelines for the Board on adjudicating complaints. Although the policy outlines various factors the Board should consider when deciding whether a complaint rises to the level of discipline, it does not outline a process for documenting the Board’s consideration of mitigating and/or aggravating factors, such as licensee disciplinary and nondisciplinary histories, when determining enforcement actions.

- 2. The Board should, consistent with its statutory authority and written procedures, review and consider a licensee’s history when determining enforcement action.

**Implementation in process**—As previously discussed in Recommendation 1a, in March 2023, the Board developed and began implementing a policy that includes guidelines for adjudicating complaints. The policy states that Board members may consider prior history when determining disciplinary action after finding evidence of statutory and/or rule violations, consistent with its statutory authority and written procedures. Additionally, the policy includes parameters for considering the Board’s prior actions, such as the relevancy of the conduct that resulted in prior action in relation to the current case and previous actions it has taken, to determine whether sanctions should be elevated. We will assess the Board’s implementation of its policy during our 18-month followup.

- 3. The Board should adhere to its statutory authority when resolving complaints, such as by refraining from dismissing complaints without prejudice.

**Implemented at 6 months**—Our review of the Board’s resolution explanations for all 168 complaints it resolved between October 1, 2022 and April 7, 2023, found that the Board adhered to its statutory authority for resolving complaints for all 168 complaints, including refraining from dismissing complaints without prejudice.

## **Finding 2: Board has not resolved some complaints in a timely manner, which may affect patient safety**

- 4. The Board should investigate and resolve complaints within 180 days.

**Implementation in process**—Our review of the Board’s complaint log as of April 2023 found that all 6 complaints it received and resolved between October 1, 2022 and April 7, 2023, were resolved within 180 days. Additionally, as of April 7, 2023, 133 of the Board’s 321 open complaints, or approximately 41 percent, had been open for 180 or more days. In comparison, during the audit, we found that, as of May 2022, 218 of the Board’s 348 open complaints, or approximately 63 percent, had exceeded the 180-day time frame. We will further assess the Board’s efforts to resolve complaints within 180 days during our 18-month followup.

- 5. The Board should assess the impact of its current number of contracted investigators on its complaint-resolution timeliness and take action as needed to ensure it has a sufficient number of investigators to resolve complaints within 180 days.

**Not implemented**—Although the Board requested and received increased monies for an additional staff member to help provide support for its compliance unit, the Board did not provide any documentation to indicate that it assessed the impact of its current number of contracted investigators on its complaint-resolution timeliness to ensure it had a sufficient number of investigators to resolve complaints within 180 days.

6. The Board should continue to develop and implement written policies and procedures for processing complaints, including:
- a. Time frames for completing all key steps in its complaint-handling process, including opening the complaint, assigning the complaint for investigation, completing the investigative report, placing the complaint on the Board's meeting agenda for its review, and time frames for the Board to review and resolve the complaint.  
**Implementation in process**—In April 2023, the Board revised its policies and procedures to establish time frames for various steps in its complaint-handling process, including opening a complaint, assigning a complaint for investigation, and completing an investigative report. However, the Board has not established time frames for placing complaints on a Board meeting agenda for review or for the Board to review and resolve complaints. We will further assess the Board's development and implementation of its policies and procedures during our 18-month followup.
  - b. Criteria for prioritizing complaints based on the nature of the alleged violations and the extent to which these alleged violations endanger the public's health and safety.  
**Implementation in process**—The Board developed a draft policy for prioritizing complaints involving deaths or incidents requiring emergency medical response during the administration of or recovery from general anesthesia or sedation by a treating dentist. However, the Board reported that as of March 2023 it was still exploring additional changes to the policy. Additionally, the Board's draft policy does not include requirements or guidance for prioritizing other complaints not involving deaths and incidents requiring emergency medical response. We will further assess the Board's development and implementation of its policies and procedures during our 18-month followup.
7. The Board should develop and implement a process for tracking and monitoring the complaint process, including the timeliness of opening, investigating, and resolving complaints; and taking action to address delays in complaint processing.  
**Implementation in process**—The Board has taken some steps to develop and implement a process for tracking and monitoring its complaint process. Specifically, the Board developed a spreadsheet that tracks the overall time frame from when complaints are opened to the date of final board action for closed complaints. Additionally, for open complaints, the Board tracks the date the complaint was opened to the earliest possible date it could be closed based on the next Board meeting. Further, our review of the meeting agendas for Board meetings held between March 2023 through June 2023 and its Investigative Committee meetings held between March 2023 and May 2023 found that these Board and Investigative Committee meetings included an agenda item to review the complaint log. We will further assess the Board's development and implementation of its tracking and monitoring process during our 18-month followup.
8. The Board should develop and implement a process that requires the Executive Director to regularly report to the Board on the timeliness of closed complaints and the status of open complaints to provide information the Board needs to monitor, review, and discuss the timeliness of complaint handling.  
**Implementation in process**—In March 2023, the Board established a process to review and discuss the status of open complains during Board meetings as part of the Executive Director's report agenda item. As part of this process, the Board receives a list of all open complaints, including the date each complaint was received and how long each complaint has been open. However, the information provided to the Board did not include the investigation status for most open complaints and contained no information on the timeliness of closed complaints, thereby not providing the Board all information it needs to monitor, review, and address complaint-handling timeliness issues. We will further assess the Board's development and implementation of this process during our 18-month followup.

9. The Board should ensure its database can be used to monitor complaint timeliness, by:
  - a. Developing and implementing policies and procedures to help ensure consistent and accurate information is entered into its database.
 

**Not implemented**—Although the Board indicated in its response to the audit that it planned to implement a new database, develop policies and procedures, and provide training to staff to help ensure consistent and accurate information is entered into its database, the Board reported that its implementation of the new database has been delayed because the vendor responsible for implementing the database has not met its deliverables. As a result, the Board reported it is reviewing options for developing and implementing its database.
  - b. Developing and implementing guidance for compiling and using the reports in its database system to track complaints.
 

**Not implemented**—See explanation for Recommendation 9a.
  - c. Developing and providing training for staff responsible for using the database.
 

**Not implemented**—See explanation for Recommendation 9a.

**Finding 3: Board did not comply with some State- and Board-specific conflict-of-interest requirements, increasing risk that employees, public officers, and contract investigators had not disclosed substantial interests that might influence or could affect their official conduct**

10. The Board should develop and implement conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:
  - a. Ensuring all employees and Board members complete a conflict-of-interest disclosure form upon hire/appointment, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their form when their circumstances change, consistent with State requirements and recommended practices.
 

**Implementation in process**—In January 2023, the Board developed conflict-of-interest policies and procedures that align with some State conflict-of-interest requirements and recommended practices. Specifically, the Board’s policy requires Board members and staff to complete a conflict-of-interest disclosure form upon hire or appointment and annually or whenever circumstances change. The Board’s policy also requires its staff to complete a conflict-of-interest disclosure that meets State requirements and recommended practices, including attesting that no conflicts exist, if applicable. We found that all 11 Board staff had completed the new conflict of interest disclosure forms in calendar year 2023. However, the Board’s conflict-of-interest disclosure form for Board members does not comply with some State requirements and recommended practices. Specifically, the disclosure form does not require Board members to disclose whether they or a relative have any substantial interest in any contract, sale, purchase, or service or any decision-making interests and does not require an affirmative no attesting that no conflicts exist. We will further assess the Board’s implementation of its conflict-of-interest policies and procedures, including its conflict-of-interest disclosure form for Board members, during our 18-month followup.
  - b. Requiring Board members to fully disclose the nature of their interests when making a conflict-of-interest disclosure and documenting these disclosures in the Board’s meeting minutes.
 

**Implementation in process**—In January 2023, the Board developed a conflict-of-interest policy that requires Board members to declare conflicts of interest in its public meetings and to fully disclose the nature of their interests by completing and signing a recusal form. The policy requires Board members to complete the recusal form for each agenda item for which they are declaring a conflict of interest and to indicate whether they plan to recuse themselves from participation on those items. However, contrary to the Board’s policy, for 2 of 12 disclosure forms we reviewed from Board meetings held between January 2023 to April

2023, the Board member signed the forms 49 and 58 days after the meeting. We will further assess the Board's implementation of its conflict-of-interest policies and procedures during our 18-month followup.

- c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

**Implemented at 6 months**—The Board's conflict-of-interest policy developed in January 2023 requires all employee and Board member annual disclosures and Board member recusal forms to be stored in an electronic special file available for public inspection. Our review of the electronic file found that it contained all 12 Board member recusal forms for the 12 instances in which Board members declared a conflict at 4 Board meetings held from January 2023 to April 2023.

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

**Implementation in process**—The Board's conflict-of-interest policy it developed in January 2023 and began implementing includes a process for reviewing and remediating disclosed employee conflicts, consistent with recommended practices. We will further assess the Board's implementation of its conflict-of-interest policy during our 18-month followup.

- 11. The Board should continue the efforts it initiated during the audit to ensure all complaint investigators complete a conflict-of-interest disclosure form prior to being assigned a case for review, as required by the Board's compliance manual.

**Implementation In process**—According to the Board's complaint-handling procedures, Board staff should assign a complaint investigation to an investigator only after receiving a signed conflict-of-interest disclosure form affirming that the investigator does not have any conflicts related to the investigation. Our review of 15 investigator conflict-of-interest disclosure forms completed between October 1, 2022 and April 7, 2023, found that 1 of 15 forms did not affirm that the investigator did not have a conflict with the investigation. We will further assess the Board's compliance with its complaint-handling procedures during our 18-month followup.

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

- 12. The Board should develop and implement written policies and procedures for reviewing and approving license, permit, and business entity registration applications, including:

- a. Ensuring applicants meet licensing requirements for submitting CPR certification as specified in rule.

**Implementation in process**—The Board developed and began implementing policies and procedures in April 2023 to ensure applicants meet initial licensing requirements for license, permit, and business entity registration applications. The policies and procedures include processes for ensuring applicants meet licensing requirements for submitting CPR certification as required by rule, such as providing guidance on the entities allowed to provide a CPR certification. We will assess the Board's implementation of these policies and procedures during our 18-month followup.

- b. Requiring Board staff to confirm the validity of fingerprint clearance cards at initial licensure.

**Implementation in process**—In January 2023, the Board developed and began implementing policies and procedures requiring its staff to confirm the validity of fingerprint clearance cards for initial licensure by reviewing the Arizona Department of Public Safety's website and storing the fingerprint clearance card within the applicant's electronic, administrative file. Further, as discussed in the explanation for Recommendation 12a, the Board developed and began implementing additional policies and procedures in April 2023 to ensure applicants meet its initial licensing requirements, and these policies and procedures further require staff to obtain and confirm the validity of the fingerprint clearance card. We will assess the Board's implementation of these policies and procedures during our 18-month followup.

13. The Board should develop and implement written policies and procedures for annually conducting continuing education audits, as required by rule.

**Not implemented**—Although the Board reported in its response to the audit that it would implement this recommendation in a different manner by using its new database to complete an audit of all continuing education requirements, as previously discussed (see explanation for Recommendation 9a), the Board reported that its implementation of the new database has been delayed and that it is reviewing options for developing and implementing its database. Additionally, the Board has not developed policies and procedures for annual continuing education audits.

14. The Board should improve the use of its database for licensing and complaint handling by:

- a. Developing and implementing policies and procedures to help ensure the consistent and accurate entry of licensing and complaint information into its database, including performing risk-based supervisory review of data entry.

**Not implemented**—See explanation for Recommendation 9a.

- b. Working with its contractor to develop and provide training to all staff who use the database, ensuring staff are trained upon hire, and/or as changes to the system are made, to fully implement database features, such as generating and using data reports.

**Not implemented**—See explanation for Recommendation 9a.

15. The Board should develop and implement written policies and procedures for protecting complainants who request anonymity, including procedures for:

- Ensuring information provided to licensees does not include information identifying complainants wishing to remain anonymous.
- Conducting a secondary review of information that is sent to licensees to help ensure that information regarding complainants who wish to remain anonymous is not provided to licensees.

**Implementation in process**—In April 2023, the Board developed and began implementing procedures for processing complaints when a complainant requests anonymity. The procedures require Board staff to consult with the Board’s Chief Compliance Officer and/or the Assistant Attorney General to determine the feasibility of investigating the complaint while allowing the complainant to remain anonymous and to obtain guidance on how to redact complaint files provided to the licensee. However, the procedures do not indicate whether a secondary review should be completed after Board staff redact the complaint files to ensure that information regarding complainants who wish to remain anonymous is not provided to licensees. We will further assess the Board’s development of these procedures during our 18-month followup.

16. The Board should work with its legal counsel to determine its authority to periodically review the appropriateness of each individual fee it assesses, in addition to its renewal fees, and develop and implement written policies and procedures for analyzing the costs of its regulatory processes, comparing these costs to the associated fees, determining the appropriate licensing fees, and then revising its fees as applicable.

**Implementation in process**—In March 2023, the Board developed and began implementing a policy for assessing its initial and renewal licensing, certification, and permit fees. The policy includes procedures for analyzing the costs of its regulatory processes and comparing these costs to the associated fees to determine whether the fees are appropriate. According to the policy, the Board will annually review all its license fees, which will be in conjunction with a triennial review of its renewal fees. Additionally, the policy includes procedures for revising its fees, if necessary. We will assess the implementation of the policy during our 18-month followup.

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

17. The Board should continue with the rulemaking process to adopt rules for dental therapists, including establishing application fees, and continuing education and licensing requirements as required by A.R.S. §§32-1276.01, 32-1276.02, and 32-1276.07.

**Implemented at 6 months**

18. The Board should seek an exemption from the rulemaking moratorium and, contingent on receiving an exemption, adopt rules as required by A.R.S. §32-1299.23(A)(B).

**Implementation in process**—The Board submitted a Notice of Proposed Rulemaking to the Secretary of State in June 2023 and held oral proceedings in August 2023 related to the rules required by A.R.S. §32-1299.23(A)(B). As of September 1, 2023, it had not yet finalized the rules.

19. The Board should comply with statutory requirements for adopting rules as specified in A.R.S. §§32-1213(M) and 32-1295(C), including taking action to seek exemptions from the rulemaking moratorium where necessary. If the Board does not comply with a statutory requirement for adopting a rule as specified in statute, it should obtain legislation that eliminates the statutory requirement to adopt the rule.

**Implementation in process**—During the 2023 legislative session, the Board sought to obtain legislation to repeal the statutory requirements to adopt the rules as specified in A.R.S. §§32-1213(M) and 32-1295(C) but was unsuccessful in getting legislation passed. The Board reported it will again seek legislation to repeal these statutes during the 2024 legislative session.

## 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.

20. The Board should comply with all statutory requirements for providing public information, including ensuring all required nondisciplinary and disciplinary information is accurately reported and included on the Board's website and is posted for not more than 5 years.

**Implementation in process**—In April 2023, the Board revised its complaint procedures to include a process for removing nondisciplinary and disciplinary information from the Board's website, and we found that the Board removed information that we identified during the audit that had been on its website for longer than 5 years. However, the Board's revised procedures do not outline a process for ensuring nondisciplinary and disciplinary information is accurately reported and included on the Board's website. Additionally, during our audit, we found that the Board had included incorrect or outdated information on its website for 7 licensees, and as of September 7, 2023, the Board's website still reflected inaccurate information for 2 of these licensees. We will further assess the Board's implementation of its complaint procedures during our 18-month followup.

## 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 Board to timely investigate and resolve complaints within its jurisdiction.

21. The Board should develop and implement a process to track and ensure that its staff and investigators comply with statute and its complaint-handling procedures, including:
- Contacting complainants and licensees for investigation interviews.
  - Notifying licensees of Board meetings where the complaint will be discussed.
  - Notifying complainants of complaint outcomes.

**Implementation in process**—During the audit, the Board revised its policy to include a review process for Board staff to review the investigation report for compliance with complaint-handling procedures, such as contacting

licensees and complainants for investigation interviews. Additionally, the Board reported it uses a tracking sheet to help ensure that all required notifications are sent. We will further assess the Department's implementation of its review process during our 18-month followup.

## **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.**

- 22.** The Legislature should consider revising Board statutes to require licensees to maintain a valid fingerprint clearance card and submit them at renewal.

**Not implemented**—The Legislature did not introduce legislation in 2023 to revise Board statutes to require licensees to maintain a valid fingerprint clearance card and submit them at renewal.

- 23.** If the Legislature revises Board statutes to require licensees to maintain a valid fingerprint clearance card and submit them at renewal, the Board should confirm the validity of fingerprint clearance cards at the time of license renewal.

**Not yet applicable**—See explanation for Recommendation 22.