

Arizona State Board of Dental Examiners

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

Performance Audit and
Sunset Review

September 2022
Report 22-110

A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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September 29, 2022

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Ryan Edmonson, Executive Director
Arizona State Board of Dental Examiners

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona State Board of Dental Examiners*. 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 Board agrees with all but 1 of the findings and plans to implement or implement in a different manner all but 1 of 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

cc: Arizona State Board of Dental Examiners members

Arizona State Board of Dental Examiners (Board)

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

Audit purpose

To determine whether the Board investigated and resolved complaints in a timely manner and imposed disciplinary actions consistent with the nature and severity of complaints and past disciplinary and nondisciplinary history; complied with State conflict-of-interest requirements; issued and renewed licenses in accordance with statute and rule; and to provide responses to the statutory sunset factors.

Key findings

The Board:

- Was established in 1935 to protect the public's health and safety by regulating dentistry practices in Arizona.
- May not have taken enforcement action that was consistent with the nature and severity of the complaints' substantiated violations, and/or any prior disciplinary and nondisciplinary action the licensee received for at least 3 of 19 complaints we reviewed, potentially jeopardizing public health and welfare.
- Lacks written procedures for determining enforcement action and deviated from procedures for reviewing a licensee's history prior to determining enforcement action.
- Did not resolve 32 of 35 complaints we reviewed within 180 days, which may affect patient safety.
- Attributed untimely complaint resolution to a lack of investigators and had not established some written policies, procedures, and time frames for processing complaints.
- 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.
- Generally issued the initial licenses we reviewed in a timely manner but did not ensure that applicants met all licensure requirements.

Key recommendations

The Board should:

- Work with its legal counsel to develop and implement policies and procedures for determining and taking enforcement actions and consistent with statute and its written procedures, review and consider licensee's history when determining enforcement action.
- 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.
- Continue to develop and implement written policies and procedures for processing complaints, including time frames for completing all key complaint-handling steps.
- Develop and implement conflict-of-interest policies and procedures.
- Develop and implement written policies and procedures for reviewing and approving license, permit, and business entity registration applications.



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Board overview

The Arizona State Board of Dental Examiners (Board) regulates the dental profession by issuing and renewing licenses, permits, certificates, and registrations; investigating and resolving complaints; and providing information to the public about license, certificate, registration, and permit holders. Statute requires the Board to consist of 11 Governor-appointed members that serve no more than 2 consecutive 4-year terms. As of May 2022, all 11 Board member positions were filled. In fiscal year 2022, the Board was appropriated 11 full-time equivalent staff positions. The Board does not receive any State General Fund appropriations. Rather, the Board's revenues consist primarily of licensing, certification, permit, and registration fees.

Active licenses, certificates, registrations, and permits as of May 2022 ¹	Estimated number of open complaints as of May 2022 ²
18,386	348

Audit results summary

Key regulatory areas reviewed		
Initial licenses —Process initial license applications within required time frame and ensure applicants meet all license qualifications.	Generally issued timely ✓	Ensured qualifications were met ✗
Initial permits —Process initial permit applications within required time frame and ensure applicants meet all permit qualifications.	Generally issued timely ✓	Ensured qualifications were met ✓
Complaint handling —Investigate complaints it receives and take action to address violations.	Resolved complaints in a timely manner ✗	Considered nature and severity of substantiated violations and past history when determining enforcement action ✗
Public Information —Provide specific complaint and licensee holder information to the public upon request.	Provided accurate information via phone ✓	Provided accurate information on website for required duration ✗
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 for all fees ✗	All fees 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 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 recordings available within 3 working days ✓

¹ Some individuals may hold more than 1 license, certification/certificate, registration, or permit. For example, a licensed dentist may also hold 1 or more permits.

² Board records included an additional 6 complaints that are not reflected in the total because the Board lacked the necessary documentation to determine if these complaints were open or had been resolved.



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

Mission and responsibilities

The Board was established in 1935 to protect the health, safety, and welfare of the public by licensing and regulating dentistry practices in Arizona. The Board regulates multiple types of licensees and certificate and registration holders, including dentists, dental hygienists, denturists, and business entities (see textbox). Additionally, the Board issues permits to licensed dentists for the administration of anesthesia and sedation. The Board's mission is "to provide professional, courteous service and information to the dental profession and the general public through the examination, licensure and the complaint adjudication and enforcement processes; to protect the oral health, safety and welfare of Arizona citizens through a fair and impartial system." Its responsibilities include:

- Issuing and renewing licenses, permits, certificates, and registrations to qualified applicants.³ The Board also issues volunteer health services registrations to allow health professionals licensed in another state to provide services at a free medical clinic in Arizona for up to 14 days per calendar year; permits for the use of mobile dental facilities or portable dental units; certificates to licensed dental hygienists to administer local anesthesia and nitrous oxide analgesia; and registrations to licensed dentists to dispense controlled substances and prescription-only drugs and devices (See Sunset Factor 2, pages 21 through 25, for more information on licensing requirements). As shown in Table 1 (see page 3), the Board had 18,386 active licenses, certifications/certificates, registrations, and permits as of May 2022.

³ A.R.S. §32-1207.

Key terms

Dentist—Medical professional, licensed by the Board, engaged in the general practice of dentistry and all specialties, such as periodontics and orthodontia.

Dental hygienist—Professional, licensed by the Board, engaged in the practice of dental hygiene.

Dental consultant—Medical professional, licensed by the Board, engaged in supervising or conducting utilization reviews, claims, or case management activities on behalf of insurance entities, and prohibited from providing direct patient care.

Denturist—Professional, certified by the Board, engaged in the practice of making dentures.

Dental therapist—Professional, licensed by the Board, engaged in dental therapy duties, including educational, clinical, and therapeutic dental therapy procedures.¹

Business entity—Business organization, registered by the Board, providing dental services with ownership that includes persons not licensed by the Board.

¹ Laws 2018, Ch. 296, established the dental therapist license; however, as of May 2022, the Board has not issued any dental therapist licenses. See Sunset Factor 4, pages 26 through 27, for information about the Board not developing associated rules for this license.

Source: Auditor General staff review of Arizona Revised Statutes (A.R.S.) §§32-1201 and 32-1234, and U.S. Bureau of Labor Statistics. (2022). *Occupational outlook handbook: Dentists*. Washington, DC: U.S. Department of Labor. Retrieved 7/5/22 from <https://www.bls.gov/ooh/healthcare/dentists.htm#tab-2>.

- Investigating and adjudicating complaints against licensees, certificate holders, and registration holders. According to the Board, it received 348 complaints in fiscal year 2021 (see Findings 1 and 2, pages 6 through 15, and Sunset Factor 6, pages 28 through 29, for more information on our findings related to the Board's processes for handling complaints).
- Providing information to the public, including licensees' disciplinary and nondisciplinary histories.

Table 1
Number of active licenses, certifications/certificates, registrations, and permits as of May 2022

(Unaudited)

License, certificate, registration, or permit type	Number of active licenses, certificates, registrations, and permits ¹
Licenses	
Dentist	5,176
Dental hygienist	4,930
Dental consultant	17
Total licenses	10,123
Certifications/certificates	
Denturist certification	7
Local anesthesia and/or nitrous oxide certificates ²	5,265
Dental assistant radiology certification	850
Total certifications/certificates	6,122
Registrations	
Business entity	436
Volunteer health services	942
Dispensing prescription drugs and devices	60
Total registrations	1,438
Permits	
General anesthesia and deep sedation permit ³	166
Parenteral sedation permit ⁴	124
Oral sedation permit ⁵	336
Permit to employ or work with a physician anesthesiologist or certified registered nurse anesthetist	67
Mobile dental facility permit	10
Total permits	703

¹ Some individuals may hold more than 1 license, certification/certificate, registration, or permit. For example, a licensed dentist may have a general anesthesia and deep sedation permit and a mobile dental facility permit.

² Licensed hygienists may possess more than 1 local anesthesia and/or nitrous oxide certificate because the Board issues a certificate for each location worked if requested by the licensee. For example, 1 licensed hygienist we reviewed had been issued 7 local anesthesia certificates, 6 nitrous oxide certificates, and 1 combined local anesthesia and nitrous oxide certificate for the various locations the licensee worked.

³ Per Arizona Administrative Code (AAC) R4-11-101, general anesthesia is a drug-induced loss of consciousness during which the patient cannot be aroused, often requiring assistance in maintaining a patent airway to breathe; and different from general anesthesia, deep sedation is a drug-induced depression of consciousness during which a patient cannot be easily aroused, should be able to breathe on their own, but may require assistance to maintain a patent airway.

⁴ Per AAC R4-11-101, parenteral sedation is a minimally depressed level of consciousness allowing a patient to retain the ability to maintain an airway independently and continuously.

⁵ Per AAC R4-11-101, oral sedation is minimal or moderate sedation administered orally or through a combination of oral and inhalation.

Source: Auditor General staff review of Board rules, analysis of Board reports, and Board staff-provided information as of May 2022.

Organization and staffing

As required by A.R.S. §32-1203, the Board consists of 11 Governor-appointed members, including 6 licensed dentists, 2 licensed dental hygienists, 2 public members, and 1 business entity member. Board members serve no more than 2 consecutive 4-year terms, and as of May 2022, all 11 Board member positions were filled.⁴ The Board was appropriated 11 full-time equivalent (FTE) staff positions for fiscal year 2022. The Board reported that as of July 2022, all 11 FTE positions were filled and included an executive director, deputy director, executive assistant, 3 compliance staff, and 5 licensing staff. Additionally, as of May 2022, the Board was contracting with 5 complaint investigators. See Finding 2, pages 11 through 15, for information about available staffing to conduct timely complaint investigations, and Sunset Factor 12, page 31, for additional information about the Board's use of private contractors.

According to the Board's website, it has 2 active committees that help fulfill or support its mission (see textbox). Meetings of these 2 committees are open to the public.

Committees

Investigative Committee—Informally established in January 2022, the committee is composed of 11 licensees who are responsible for reviewing complaint investigative reports and recommending nondisciplinary and disciplinary action to the Board.¹ Additionally, after the Board sought legislative approval to do so, effective September 24, 2022, the committee is established in statute and may terminate complaints that are without merit, as authorized by Laws 2022, Ch. 135, §8.

Anesthesia and Sedation Committee—According to the Board, this committee's purpose is to review and discuss anesthesia and sedation permitting requirements and standard of care and to make recommendations to the Board related to the Board's rules and regulations regarding the use of anesthesia and sedation.

¹ Prior to January 2022, the Board used an internal investigative review committee composed of Board staff and its chief investigator to make recommendations to the Board regarding complaint dispositions.

Source: Auditor General staff review of Laws 2022, Ch. 135, §§2, 7 and 8, information from the Board's website, and Board staff-provided information.

Budget

The Board does not receive any State General Fund Appropriations. Instead, the Board's revenues consist of licensing, certification, permit, and registration fees. Statute requires the Board to remit all administrative penalties, certain civil penalties, and 10 percent of all fees, fines, and other revenues received to the State General Fund and to deposit the remaining 90 percent of these revenues into the Dental Board Fund.⁵ As shown in Table 2, page 5, in fiscal years 2020 through 2022, most of the Board's expenditures or estimated expenditures were for personnel costs, professional services such as legal and investigation services, and other operating expenses, such as such as rent, software support and maintenance, and financial services. Between fiscal years 2020 and 2021, the Board's fiscal year ending fund balance decreased from about \$4.4 to \$3.8 million. Based on the Board's fiscal year 2022 estimated revenues and expenditures, its fiscal year 2022 ending fund balance is an estimated \$2.9 million, or about 1.7 times its annual expenditures for the fiscal year.

⁴ As of May 2022, 1 Board member's term had expired on January 1, 2022, but this member was continuing to serve while awaiting the Governor's review for reappointment.

⁵ A.R.S. §§32-1212 and 32-1213(l).

Table 2
Schedule of revenues, expenditures, and changes in fund balances
Fiscal years 2020 through 2022
(Unaudited)

	2020 (Actual)	2021 (Actual)	2022 (Estimated)
Revenues			
Licensing and fees	\$376,346	\$525,099	\$668,592
Charges for goods and services			
Examination fees	101,700	62,700	146,475
Publications and reproductions	8,646	7,114	37,032
Other ¹	7,785	8,285	7,390
Fines, forfeits, and penalties	28,900	11,300	27,809
Other ²	3,374	5,222	16,731
Total gross revenues	526,751	619,720	904,029
Remittances to the State General Fund ³	(55,638)	(62,532)	(92,074)
Total net revenues	471,113	557,188	811,955
Expenditures and transfers			
Payroll and related benefits	793,918	806,966	1,001,710
Professional and outside services ⁴	135,741	193,312	239,072
Travel	5,868	676	432
Other operating ⁵	258,888	190,781	305,866
Furniture, equipment, and software	48,879	19,049	81,410
Transfers to other agencies ⁶	3,093	7,393	45,744
Total expenditures	1,246,387	1,218,177	1,674,234
Excess of revenues over (under) expenditures	(775,274)	(660,989)	(862,279)
Fund balance, beginning of year	5,195,998	4,420,724	3,759,735
Fund balance, end of year	\$4,420,724	\$3,759,735	\$2,897,456

- ¹ Other charges for goods and services consist of fees for various other services such as providing a license verification for licensure in another state.
- ² Other revenues primarily consist of credit card convenience fees and public record request copying fees.
- ³ The Board is required to remit to the State General Fund all administrative penalties, certain civil penalties, and 10 percent of all fees, fines, and other revenues in accordance with A.R.S. §§32-1212 and 32-1213(I).
- ⁴ Professional and outside services expenditures primarily consist of legal and investigation services.
- ⁵ Other operating expenditures consisted of various expenditures such as rent, software support and maintenance, postage and delivery, financial services, supplies, and digital imaging services.
- ⁶ Transfers to other agencies primarily consist of transfers to the Office of Administrative Hearings for hearing costs; however, fiscal year 2021 also includes approximately \$1,727 transferred to the Arizona Department of Administration for an interagency agreement to make improvements to the Board's office space.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* and the State of Arizona *Annual Financial Report* for fiscal years 2020 and 2021; and Board- and Department of Administration-provided fiscal year 2022 estimates.



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

Board investigates and adjudicates complaints against licensees

The Board is responsible for investigating and adjudicating complaints against licensees and registered business entities. Specifically, statute authorizes the Board to investigate complaints for various reasons, including determining whether the alleged conduct constitutes unprofessional conduct such as committing gross malpractice, committing any conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or the public or failing or refusing to maintain adequate patient records; dental incompetence; and unethical conduct.⁶ Statute also authorizes the Board to take various disciplinary and nondisciplinary actions after it substantiates that a violation(s) has occurred to address substantiated violations of statute and rule, such as suspending or revoking a license and levying administrative penalties (see textbox).

The National State Auditors Association (NSAA) has identified best practices for carrying out a State regulatory program, including enforcing compliance with all requirements and standards.⁷ Regulatory agencies should develop systematic, fair, and progressively stringent enforcement processes to ensure that public health and welfare are protected. According to NSAA best practices, regulatory agencies should develop enforcement processes that include the following:

- Establishing a graduated and equitable system of sanctions, such as letters of noncompliance, fines, license suspension, and license revocation, to address any legal or regulatory requirements. The sanctions should be set sufficiently high to help achieve the desired results (compel the person or entity to comply or stop operating).
- Specifying and considering the number or severity of violations that should trigger each level of sanction.

Disciplinary and nondisciplinary actions Board may take

Disciplinary actions:

- License revocation
- License suspension
- Decree of censure
- Probation
- Administrative penalty, not to exceed \$2,000 for each statutory or rule violation
- Restitution of fees to the aggrieved party
- Restricted scope of practice
- Peer review and professional education
- Community service

Nondisciplinary actions:

- Letter of concern
- Continuing education

Source: A.R.S. §§32-1263.01 and 32-1263.02.

⁶ A.R.S. §§32-1207, 32-1263, and 32-1263.02.

⁷ National State Auditors Association. (2004). *Carrying out a state regulatory program: A National State Auditors Association best practices document*. Lexington, KY. Retrieved 2/8/2022 from https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Carrying_Out_a_State_Regulatory_Program.pdf.

- Requiring the regulatory agency to take appropriate, consistent, and timely enforcement actions that address the violations cited against the regulated people/entities.

Public health and welfare may be at risk when Board does not consider the nature and severity of complaints' substantiated violations and/or review licensees' history when taking enforcement action

Our review of a sample of 35 of 267 complaints the Board recorded as closed in calendar year 2021 found that 16 complaints were either terminated by the Executive Director, dismissed by the Board, closed after determining the Board lacked jurisdiction to adjudicate the complaint, or referred to the Office of Administrative Hearings (OAH) for a formal review.^{8,9} For the remaining 19 complaints, the Board took disciplinary or nondisciplinary action, such as issuing letters of concern; ordering continuing education; entering into consent agreements requiring continuing education, penalties, and/or permit surrender; and revoking licenses.¹⁰

However, we found that the Board may not have taken enforcement action that was consistent with the nature and severity of the complaints' substantiated violations, and/or any prior disciplinary and nondisciplinary action the licensee received for at least 3 of 19 complaints.¹¹ Specifically:

- One complaint alleged that a patient's death resulted from a licensee's negligence. According to the investigative report, the licensee did not meet the standard of care and violated Board rules by directing a dental assistant to mix and administer anesthesia drugs; administering 10 times the planned dosage of anesthesia drugs; failing to intervene and stabilize the patient's vitals during the procedure, including administering CPR when indicated; and not maintaining complete sedation records, including the recording of a time-based record of care and postoperative vital signs. Additionally, the licensee did not report the incident to the Board within 10 days, as required by rule.¹² The Board only became aware of the incident after the patient's family submitted a complaint nearly 4 months after the incident.

The Board offered, and the licensee agreed to, a disciplinary consent agreement that cited multiple statutory and rule violations. These included violations of A.R.S. §32-1201.01(14)—committing any conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or the public, A.R.S. §32-1201.01(19)—willfully or intentionally causing or permitting supervised personnel...to commit illegal acts or perform an act or operation that is not permitted, and AAC R4-11-1305, which requires the treating dentist and permit holder to report adverse occurrences to the Board within 10 days after the occurrence. The consent agreement required the licensee to take a total of 40 hours of continuing education and voluntarily surrender his anesthesia and sedation permit with a 12-month suspension before being able to apply for any type of anesthesia and sedation permit. However, nothing in Board records demonstrates

⁸ The Board dismissed 2 complaints without prejudice despite not having statutory authority to resolve complaints in this manner (see pages 9 and 10 for more information). Additionally, 1 complaint was reported in the Board's complaint log as closed; however, as of June 2022, it had not been fully resolved and was pending an administrative hearing with OAH.

⁹ We reviewed 35 complaints, consisting of a stratified random sample of 27 and a judgmental sample of 8 complaints, from the 267 complaints recorded on the Board's log of complaints closed in calendar year 2021. Although the Board's complaint log showed that it closed 267 complaints in calendar year 2021, this number may be inaccurate because the Board did not sufficiently track this information (see Finding 2, page 14, for more information about inaccurate information we identified in the Board's complaint log). The 35 complaints included complaints terminated by the Board's Executive Director; complaints dismissed by the Board; complaints that resulted in both disciplinary and nondisciplinary action, and complaints that were not in the Board's jurisdiction. See Appendix A, page a-1, for more information about the sample design, including some data limitations we faced in determining the total number of complaints closed in calendar year 2021.

¹⁰ The Board took disciplinary action for 10 of 19 complaints and nondisciplinary action for the remaining 9 complaints.

¹¹ Per A.R.S. §32-1263.02(O), in determining the appropriate disciplinary action, the Board may consider any previous disciplinary and nondisciplinary action against the licensee.

¹² AAC R4-11-1305 states that if a death or incident requiring emergency medical response occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

that the Board reviewed and considered the number or severity of the violations committed by the licensee, nor did Board records indicate that the Board assessed and evaluated a graduated and equitable system of sanctions in determining that the discipline rendered was sufficient to achieve the desired results of ensuring that public health and welfare are protected.

- Another complaint we reviewed alleged a licensee performed inadequate crown and bridge work resulting in a failed procedure because of a missed diagnosis and an untreated decayed tooth. According to the investigative report, the licensee deviated from the standard of care by not performing and documenting a thorough examination, not developing a treatment plan based on the examination findings and relying on a decayed tooth to attach the dental bridge, causing it to fail. The Board's internal investigative review committee recommended a disciplinary consent agreement with 6 hours of continuing education and restitution to be paid to the complainant's insurer.

The Board offered a disciplinary consent agreement with the review committee's proposed action, citing 2 statutory violations: A.R.S. §32-1201.01(14)—committing any conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or the public and A.R.S. §32-1201.01(24)—failing or refusing to maintain adequate patient records. Although the licensee accepted the disciplinary consent agreement, the complainant's insurer did not accept the restitution payment because the amount ordered by the Board did not match the insurance company's records, including amounts paid on behalf of that patient.¹³ Additionally, this licensee had been the subject of a 2012 complaint and consent agreement involving crown and bridge work. However, nothing in Board records indicates that the Board considered previous disciplinary and nondisciplinary action, nor do Board records indicate that the Board assessed and evaluated a graduated and equitable system of sanctions in determining that the discipline rendered was sufficient to achieve the desired results of ensuring that public health and welfare are protected.

- A final complaint alleged that a licensee committed multiple violations of Board statutes and rules, including providing treatment to patients without documenting the extent of the procedures provided. According to the investigative report, several allegations were substantiated wherein the licensee either committed gross negligence or failed to meet the standard of care and was not maintaining adequate records. The licensee's inadequate records included untimely documenting and/or missing documentation of patient history, treatment planning discussion, and informed consent.¹⁴ The Board determined that the licensee's actions constituted unprofessional conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or the public and for inadequate recordkeeping according to statute.¹⁵

The Board offered, and the licensee agreed to a disciplinary consent agreement citing 4 statutory violations, such as A.R.S. §32-1201.01(14)—committing any conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or the public and A.R.S. §32-1201.01(24)—failing or refusing to maintain adequate patient records. The consent agreement required the licensee to complete a total of 10 hours of continuing education in the areas of recordkeeping and risk management.¹⁶ However, the Board did not consider the licensee's disciplinary and nondisciplinary history before offering the consent agreement and therefore may not have taken the action necessary to address the licensee's continued noncompliance with statute and rule. Specifically, the Board offered, and the licensee agreed to, 5 separate disciplinary consent agreements over an 11-year period for a total of 29 hours of continuing education,

¹³ The Board's records do not identify how the restitution payment amount was determined, such as the specific services that were paid by the insurance company and eligible for reimbursement. As a result, the Board cannot determine if the amount sent to the insurance company was accurate. As of January 2022, Board staff had asked the licensee's office manager to work with the complainant's insurance company to determine the proper amount of restitution owed to the insurer.

¹⁴ The investigator also found that some records had been updated between 1 and 22 months after initial treatment, noting these updates were recorded 3 days before the licensee responded to the Board's complaint.

¹⁵ The final disciplinary consent agreement cited A.R.S. §§32-1201.01(14) and 32-1201.01(24).

¹⁶ According to the Arizona Dental Association website, courses in risk management include training to reduce and prevent risks that could lead to malpractice claims, including approaches to avoid common hazards, such as incomplete dental records. Per the American Dental Association, accurately documenting patient information in the dental record is essential for protecting the patient and licensee.

resulting from substantiated violations involving record keeping and/or risk management failures (see Table 3). Further, nothing in Board records indicates that the Board assessed and evaluated a graduated and equitable system of sanctions in determining that the discipline rendered was sufficient to achieve the desired results of ensuring that public health and welfare are protected.

As these examples illustrate, the Board’s enforcement actions may not adequately protect the public and/or deter licensees from actions that can pose harm to the health, safety, and welfare of the public. As previously discussed, regulatory agencies should develop systematic, fair, and progressively stringent enforcement processes to ensure the public is protected and take appropriate, consistent, and timely enforcement actions that address the cited violations. However, by not considering prior disciplinary and nondisciplinary history or assessing complaints’ substantiated violations against a graduated and equitable system of sanctions when it imposes discipline, the Board may be putting public health and welfare at risk. In fact, our review found that the Board did not request disciplinary and nondisciplinary history for any of the 19 complaints where the Board took enforcement actions, such as the 10 complaints where the Board took disciplinary action and statute specifically allows the Board to consider past disciplinary and nondisciplinary action taken by the Board to determine its enforcement action.¹⁷ By not considering the licensee’s disciplinary history, the Board is not able to ensure its decisions are graduated, equitable, and specifically address repeat statutory and rule violations, including acts that deviate from the standard of care.

We reported a similar finding in our 2014 Performance Audit and Sunset Review of the Board.¹⁸ Specifically, this 2014 performance audit and sunset review found that the Board may not have considered the nature and severity of substantiated violations when taking enforcement action. We recommended that the Board develop and implement guidance to help direct its enforcement efforts. This guidance should include minimum and maximum sanctions for each type of violation, when to consider using nondisciplinary and disciplinary actions, and how it will consider mitigating and aggravating factors in its determination of discipline, including its consideration of any prior discipline imposed to address previously substantiated complaints. Although the Board had implemented this recommendation at the time of our 30-month followup to the 2014 performance audit and sunset review, it did not sustain these changes.¹⁹

Finally, for the 16 complaints where the Board did not take disciplinary or nondisciplinary action, it resolved 2 complaints by dismissing them without prejudice.²⁰ According to the Board, by dismissing these complaints without prejudice, it intended that these complaints would again be reviewed by the Board should the individuals reapply for licensure in Arizona. However, although statute authorizes the Board to dismiss

Table 3
Board offered 5 separate consent agreements to the same licensee over an 11-year period requiring a total of 29 continuing education hours¹

Year	Continuing education hours by topic	
	Recordkeeping	Risk management
2010		4
2010	2	4
2013	3	
2015	6	
2021	6	4
Total	17	12

¹ Although A.R.S. §32-3214(B) requires State agencies to post final disciplinary and nondisciplinary actions on their websites for not more than 5 years, it does not apply this time frame to an agency’s consideration of prior disciplinary and nondisciplinary action when determining enforcement action. Additionally, A.R.S. §32-1263.02(O) allows the Board to consider any previous disciplinary and nondisciplinary action against the licensee in determining the appropriate disciplinary action.

Source: Auditor General staff review of Board records.

¹⁷ A.R.S. §32-1263.02(O).

¹⁸ Arizona Auditor General report 14-103 *Arizona State Board of Dental Examiners*.

¹⁹ Arizona Auditor General report 14-103 *30-month Follow-up Report*.

²⁰ The Board discussed both complaints in its January 29, 2021, meeting and voted to dismiss both complaints without prejudice.

complaints if the investigation finds that the information provided to the Board is insufficient to merit discipline, it does not authorize the Board to dismiss complaints without prejudice.²¹

Board lacks written procedures for determining enforcement action and deviated from procedures for reviewing a licensee's history prior to enforcement action

The Board has written procedures that provide some guidance to Board staff, investigators, and Board members for receiving, investigating, and adjudicating complaints, such as guidance for requesting a licensee's history when assessing potential enforcement action to address repeated substantiated violations.²² However, our review found that:

- The Board's written procedures do not provide any guidance for determining the enforcement action necessary to address violations of statute and rule, such as when to use nondisciplinary versus disciplinary action, and documenting its consideration of mitigating or aggravating factors when determining its enforcement action. Although the Board had a substantive policy statement on its website that provided some guidance for determining enforcement action, Board staff indicated that these documents are from a prior Board administration and are not currently used. Establishing guidance for determining enforcement action will help the Board implement a systematic, fair, and progressively stringent enforcement process, while still having the ability to review and adjudicate complaints based on their merits, to help ensure that public health and welfare are protected.
- The Board's written procedure for reviewing a licensee's history prior to determining its enforcement action had not been followed.

Recommendations

The Board should:

1. 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 substantiated violations, including:
 - a. Establishing when to use nondisciplinary versus disciplinary actions.
 - 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.
 - c. Documenting its consideration of mitigating and/or aggravating factors when determining enforcement actions, including licensee disciplinary and nondisciplinary histories.
2. Consistent with its statutory authority and written procedures, review and consider a licensee's history when determining enforcement action.
3. Adhere to its statutory authority when resolving complaints, such as by refraining from dismissing complaints without prejudice.

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

²¹ A.R.S. §32-1263.02.

²² The Board's written procedures direct its members to consider prior discipline history and include guidance for requesting disciplinary history when conducting a formal interview of the licensee.

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

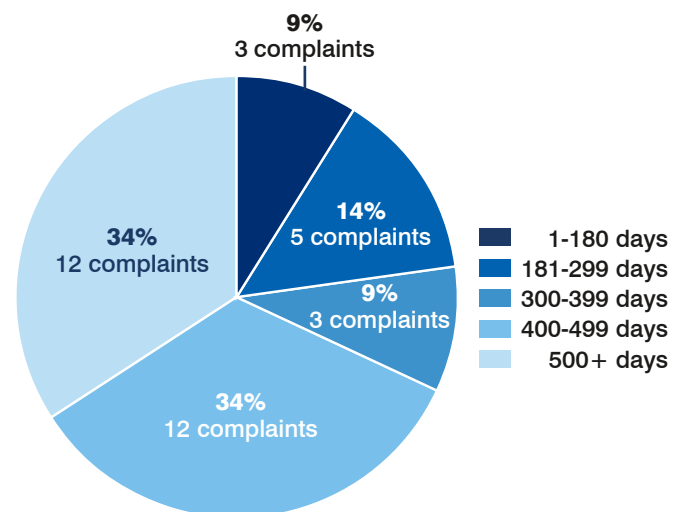
Board is responsible for investigating and resolving complaints against licensees and certificate holders

Statute authorizes the Board to investigate and resolve complaints alleging violations of statute or rule by licensees and certificate and registration holders.²³ Although the Board has not established time frames for investigating and resolving the complaints it receives, we have determined that Arizona health regulatory boards should investigate and resolve complaints within 180 days of receiving them.

Board did not resolve 32 of 35 complaints we reviewed within 180 days

Our review of 35 of approximately 267 complaints the Board closed in calendar year 2021, as recorded on the Board's complaint log, found that it did not resolve 32 of these complaints, or 91 percent, within 180 days (see Figure 1).²⁴ For these 32 complaints, the Board took between 183 and 669 calendar days to investigate and resolve or refer the complaint to OAH for a formal hearing.²⁵ As reported in Finding 1 (see textbox on page 6), statute authorizes the Board to take various disciplinary and nondisciplinary actions to address substantiated violations of statute and rule. Our review of the 32 complaints that took over 180 days to resolve included both

Figure 1
Board resolved 3 of 35 complaints closed in 2021 within 180 days but took more than 180 days to resolve or refer to OAH the other 32 complaints



Source: Auditor General staff analysis of Board documentation for a sample of 35 complaints the Board reported as closed in calendar year 2021.

²³ A.R.S. §32-1263.02.

²⁴ We reviewed a stratified random sample of 27 complaints and a judgmental sample of 8 complaints for a total of 35 complaints from the 267 complaints recorded on the Board's log of complaints closed in calendar year 2021. Although the Board's complaint log showed that it closed 267 complaints in calendar year 2021, this number may be inaccurate because the Board did not sufficiently track this information (see page 14 for additional information about errors in the Board's complaint log and Appendix A, page a-1, for more information about the sample design).

²⁵ 1 of 32 complaints we reviewed that exceeded the 180-day time frame was reported in the Board's complaint log as closed; however, we found that it had not been fully resolved and was pending an administrative hearing with OAH. As of June 2022, the complaint has remained unresolved for an estimated 791 days and had not been scheduled for a hearing.

disciplinary and nondisciplinary actions, dismissals, and complaints terminated by the Executive Director.²⁶ Specifically, the Board took

- Between 270 and 597 days to resolve 9 complaints that resulted in nondisciplinary action. These complaints included allegations such as inadequate diagnoses, crown and bridge procedures, and endodontic services. Five of the complaints resulted in nondisciplinary Board orders or consent agreements directing the licensees to complete continuing education, and 4 resulted in letters of concern for recordkeeping.
- Between 183 and 669 days to resolve 8 complaints that resulted in disciplinary action. These complaints included a variety of allegations, such as inadequate endodontic services and crown and bridge procedures, providing dental services while under the influence of illegal substances, patient abandonment, and failing or refusing to maintain adequate patient records. The Board entered into consent agreements and/or issued orders for disciplinary action, such as continuing education, restitution, surrendering a sedation permit for a minimum of 1 year, revoking licenses, and the voluntary surrender of a license.
- Between 394 and 638 days to resolve 8 complaints terminated by the Executive Director and between 191 and 603 days to resolve 4 complaints dismissed by the Board. These complaints included allegations such as billing irregularities, inadequate crown and bridge procedures, and failure to release records. For another 2 complaints, the Board lacked jurisdiction and administratively closed the complaints in 326 and 462 days, and 1 complaint was referred to OAH and as of June 2022 had been unresolved for an estimated 791 days (see footnote 25, page 11, for additional information about this complaint).

Further, our review of Board reports found that as of May 2022, it had an estimated 348 open complaints, of which 218 had exceeded the 180-day time frame for resolving complaints.²⁷ These 218 complaints had been open for an average of 422 days or between a total of 183 and 1,289 days.

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

Untimely complaint resolution may negatively impact patient safety when delays allow licensees and certificate and registration holders alleged to have violated Board statutes and rules to continue to practice while under investigation even though they may be unfit to do so. For example, 1 untimely complaint alleged that the licensee deviated from the standard of care while performing a root canal. Although the Board disciplined the licensee by entering into a disciplinary consent agreement for continuing education in endodontics and risk management, it took the Board 519 days to resolve the complaint. Another untimely complaint alleged that the licensee had performed inadequate crown and bridge work resulting in a failed procedure because of a missed diagnosis and untreated decayed tooth. Although the Board disciplined the licensee by entering into a disciplinary consent agreement for continuing education and restitution to the complainant's insurer, it took the Board 522 days to resolve the complaint. In both cases, during the investigation process, the licensees held an active license and were permitted to continue practicing and thus may have continued to provide dental procedures that fell below the standard of care.

²⁶ Laws 2022, Ch. 135, §8, modified A.R.S. §32-1263.03 so that the Executive Director will no longer have the authority to terminate a complaint. Instead, effective September 24, 2022, this will be the responsibility of the Board's Investigative Committee.

²⁷ The Board's report included another 6 complaints that were referred to OAH for a formal hearing and are not reflected in the total open complaints because the Board lacked the necessary documentation to determine if these complaints had been resolved.

Board attributed untimely complaint resolution to lack of investigators and had not established some written policies, procedures, and time frames for processing complaints or sustained previous process improvements

- **Board attributed untimely complaint-handling and resolution to increase in complaints received and lack of contracted investigators**—According to Board records, it received an average of 356 complaints in calendar years 2019 through 2021, which represents an approximate 32 percent increase in the number of complaints received as compared to the average of 269 complaints it received in calendar years 2012 through 2018. Despite the increase in the number of complaints received, the Board did not have any contract investigators for approximately 6 months because its lone contract investigator retired on December 19, 2019, and the Board did not contract with a new investigator until June 1, 2020. The Board then added a second contract investigator in December 2020. The Board also contracts with licensed consultants to help investigate complaints, and Board staff reported solely relying on these licensed consultants to investigate complaints during the 6 months it did not have a contract investigator.²⁸

In its fiscal years 2021 and 2022 budget submissions, the Board requested an increase in its appropriations to hire or contract with more investigators and received an additional \$271,400 for fiscal year 2022 to contract with investigators. As of May 2022, the Board had contracted with a total of 5 investigators. The Board reported that it expects the increase in investigators will improve the Board's efficiency in resolving complaints.

- **Board had not established some written policies and procedures, including time frames for timely processing and monitoring the complaints it receives**—According to recommended practices, regulatory agencies, such as the Board, should establish guidelines for how quickly complaints should be handled, depending on the type and severity of the alleged violations, and should track and oversee complaints so that all are addressed according to established time frames.²⁹ However, the Board:
 - Had not established time frames for completing some key steps in the complaint-investigation process, including how long it should take to open complaints after receipt and assign the complaint to an investigator.³⁰ Our review of the 35 complaints found that 30 were assigned to an investigator.³¹ For the 30 complaints assigned, 22 took between 57 and 467 days to be assigned to an investigator. For the other 8 complaints, we were unable to identify the time it took for the Board to assign the case to an investigator because the Board did not document the assignment dates.³² However, in August 2022, the Board updated its procedures to include time frames for opening complaints and assigning them to a complaint investigator.
 - Has not established written procedures for prioritizing complaints based on the nature of the alleged violation and the extent to which these alleged violations may endanger public health and safety. For example, as previously discussed in Finding 1, pages 7 through 8, 1 complaint alleged that a patient's

²⁸ Consultants are licensees paid per case primarily to investigate and provide consultation to investigators/Board staff related to cases involving their area of practice, such as endodontia, orthodontia, periodontia, oral surgery, and pediatric dentistry.

²⁹ National State Auditors Association. (2004). *Carrying out a state regulatory program: A National State Auditors Association best practices document*. Lexington, KY. Retrieved 2/8/22 from https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Carrying_Out_a_State_Regulatory_Program.pdf.

³⁰ According to the Board's desk manual, when the Board opens a complaint, it contacts the licensee notifying them that a complaint has been received. It also requests a written response from the licensee and issues a subpoena for patient records, which must be provided to the Board within 35 days. After receiving the licensee response and records, the complaint is assigned to an investigator. However, some complaints, such as self-reported incidents, may not be assigned to an investigator.

³¹ Five complaints we reviewed were not assigned to an investigator due to the nature of the complaint. For example, the Board did not assign an investigator to complaints alleging substance abuse and instead ordered the licensees to submit to drug screening.

³² Although the Board's policies and procedures do not have time frames for assigning complaints to investigators, the policies and procedures require staff to send a notification letter to the investigator upon complaint assignment.

death resulted from a licensee's negligence after the patient received 10 times the planned dosage of anesthesia drugs. Lacking a process to prioritize complaints it receives for investigation and Board review, it took 185 days for Board staff to provide this complaint to the Board for its initial review. Although some Board members discussed continuing the complaint investigation to gather additional information, it decided against this course of action because too much time had passed since receiving the complaint. Instead, the Board resolved the complaint by offering a consent agreement for continuing education and a 1-year suspension of the anesthesia and sedation permit. Although Board staff reported establishing a process to prioritize complaints for review and investigation, it has not documented this process in policy and procedure.

- Has not established requirements for tracking and monitoring complaint processing, including establishing a mechanism to track the completion of key steps in the investigation process, ensuring that the Board records key information on complaint investigation in a timely manner, and identifying responsibilities for Board staff and the Board to actively monitor the progress of complaint investigations and address reasons for delays.
- **Board has not sustained previous process improvements for monitoring complaint handling**—In our 2014 performance audit and sunset review of the Board, we found that although the Board resolved 17 of 20 complaints we reviewed in a timely manner, it should better use its database to monitor complaint timeliness.³³ We recommended that the Board develop and implement policies and procedures to help ensure the consistent and accurate entry of complaint information into its database and work with its contractor to generate a comprehensive report to monitor and track its complaints through the complaint process. Based on our 30-month followup to the 2014 performance audit and sunset review of the Board, it had fully implemented this recommendation 12 months after the initial report was issued.³⁴ However, the Board reported that it no longer uses the database to monitor the complaint-handling process because of staff turnover and current staff have not been trained on its use upon hire. Further, it does not have written guidance for the consistent and accurate entry of complaint information or for using the database. As discussed in Sunset Factor 2, page 24, the Board is receiving a new electronic licensing system that it estimates will be implemented in December 2022 and reports will help it administer its various responsibilities, including complaint handling.

Although the Board developed and uses a spreadsheet to log complaints, we found that some information in the spreadsheet was inaccurate. For example, complaints were logged with incorrect outcomes, such as complaints terminated by the Executive Director labeled as dismissed by the Board and a complaint resulting in disciplinary action listed as having received nondisciplinary action.³⁵ Other examples included a complaint listed as closed despite the case waiting to be heard by the OAH and complaints with incorrect closure dates.

Recommendations

The Board should:

4. Investigate and resolve complaints within 180 days.
5. 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.

³³ Arizona Auditor General report 14-103 *Arizona State Board of Dental Examiners*.

³⁴ Arizona Auditor General report 14-103 *30-Month Follow-up Report*.

³⁵ During our review period, the Board's Executive Director, with the concurrence of the Board's investigative staff, could terminate complaints that were determined to be without merit. However, effective September 24, 2022, Laws 2022, Ch. 135, transferred this authority to the Board's Investigative Committee.

6. 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.
 - 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.
7. 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.
8. 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.
9. 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.
 - b. Developing and implementing guidance for compiling and using the reports in its database system to track complaints.
 - c. Developing and providing training for staff responsible for using the database.

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



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

Statute addresses conflicts of interest for public agency employees and public officers, and contract investigators are subject to Board-specific requirements

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.^{36,37}

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’s (ADOA) State Personnel System Employee Handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” In addition, A.R.S. §38-509 requires public agencies to maintain a special file

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 5/15/2022 from <https://www.azag.gov/outreach/publications/agency-handbook>.

³⁶ See A.R.S. §§38-502 and 38-503(A) and (B).

³⁷ 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.

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. Finally, according to the Board's written compliance procedures, prior to assigning a complaint to a contract investigator, the investigator shall complete and return within 5 days a Board prepared conflict-of-disclosure form.

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.³⁸ 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.³⁹ Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually. Recommended practices also indicate that the form include a field for the individual to provide an "affirmative no," if applicable.⁴⁰ 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- and Board-specific 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- and Board-specific 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:

- **Did not ensure all employees completed a disclosure form upon hire or when circumstances changed, as required by ADOA**—Specifically, 6 of 11 employees had not completed a conflict-of-interest disclosure form prior to the audit. Further, although 5 of 11 employees had completed conflict-of-interest disclosure forms prior to the audit, the Board had not retained copies of these forms, and we needed to request them from ADOA. Additionally, at least 1 of these 5 employees did not complete a new conflict-of-interest disclosure form when they transferred to the Board from another State agency.⁴¹ Because each State agency has distinct responsibilities, functions, and areas of regulation or involvement, completing a new disclosure form specific to the employee's new role is important to help ensure any potential or actual conflicts are disclosed and mitigated.
- **Used a disclosure form that did not address all statutorily required disclosures**—The ADOA disclosure form that Board employees completed during new employee onboarding prior to June 2020 required employees to disclose any substantial business interests; however, it did not require disclosure of substantial interest in Board decisions, as required by statute.⁴² In June 2020, ADOA updated its conflict-

³⁸ 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*.

³⁹ Recommended practices we reviewed included: Organization for Economic Cooperation and Development. (2022). *Recommendation of the Council on OECD guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 8/22/2022 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative. (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 3/14/2022 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 3/14/2022 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

⁴⁰ As previously discussed, the ADOA disclosure form includes a field for the individual to provide an "affirmative no."

⁴¹ For 4 of 5 conflict-of-interest forms completed, the form did not identify the agency for which the employee had completed the form or completion date; as such, it is unknown if these 4 forms were completed for employment with the Board or another agency.

⁴² A.R.S. §38-503.

of-interest disclosure form to include decision-making disclosures and to require an affirmative statement indicating whether or not a conflict exists. As of April 2022, 5 of 11 employees had not submitted an updated ADOA disclosure form.

- **Did not disclose all Board member interests in its official public records**—Our review of Board meeting minutes for all 10 meetings held between January 2021 and December 2021 identified 8 meetings in which Board members declared conflicts of interest and refrained from voting upon or participating in applicable discussions but failed to fully disclose or describe the nature of the interest as required by statute, such as within the official minutes or through a signed document as required by the Board’s procedures.⁴³ For example, although Board staff reported that members complete a disclosure form to fully disclose interests declared in its meetings, our further review of 5 interests verbally declared by 4 members in 3 Board meetings found that only 1 member had completed a disclosure form describing the nature of the interest.⁴⁴
- **Lacked a special disclosure file as required by statute**—The Board did not have a special disclosure file to store disclosures of substantial interest for public inspection, as required by statute.⁴⁵
- **Did not require investigators to complete a disclosure form before investigating complaints**—Our review of 35 complaint files found that none of them had a completed conflict-of-interest disclosure form signed by the investigator, as required by Board procedures.⁴⁶ During the audit, Board staff reported it had begun requiring its investigators to complete a disclosure form before investigating complaints and provided 27 completed disclosure forms for complaints assigned for investigation between June 27, 2022 and July 7, 2022.

Finally, although not required by statute or the ADOA, the Board had not fully aligned its conflict-of-interest process with recommended practices, as follows:

- Did not annually remind its employees to complete a disclosure form when their circumstances change. Similarly, it did not require Board 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.
- Had not developed and implemented a remediation process for conflicts disclosed by Board employees.

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

The Board’s noncompliance with State- and Board-specific conflict-of-interest requirements and not fully aligning its conflict-of-interest process with recommended practices increased the risk that employees, Board members, and contract investigators would not disclose substantial interests that 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 not annually reminding them to update their form as their circumstances changed, the Board could not ensure that all employees and Board

⁴³ A.R.S. §§38-502(3) and 38-503.

⁴⁴ We reviewed Board member interests declared in 3 different Board meetings—1 declared interest from its April 2, 2021, meeting; 1 declared interest from its May 7, 2021, meeting; and 3 declared interests from its December 3, 2021, meeting.

⁴⁵ A.R.S. §38-509.

⁴⁶ We reviewed a stratified random sample of 27 complaints and a judgmental sample of 8 complaints, for a total of 35 complaints from the 267 complaints recorded on the Board’s log of complaints closed in calendar year 2021. Although the Board’s complaint log showed that it closed 267 complaints in calendar year 2021, this number may be inaccurate because the Board did not sufficiently track this information (see Finding 2, page 14, for more information about inaccurate information we identified in the Board’s complaint log). Also, see Appendix A, page a-1, for more information about the sample design.

members disclosed both financial and decision-making substantial interests and refrained from participating in any manner related to these interests, as required by statute.⁴⁷ Additionally, by not ensuring investigators completed a conflict-of-interest disclosure form prior to assigning a complaint for investigation, the Board could not ensure complaint investigations were free from conflicts of interest. Consequently, the Board might have been unaware of potential conflicts and the need to take action to mitigate those conflicts.

Finally, because the Board did not store completed forms disclosing substantial interests in a special file or have a listing of employees who completed disclosure forms, it lacked a method to track which and how many employees/Board members disclosed an interest and make this information available in response to public requests, as required by statute.

Board lacked comprehensive conflict-of-interest policies and oversight of its procedures

Several factors contributed to the problems noted previously. Specifically, the Board:

- Indicated that it believed that ADOA handled conflict-of-interest disclosures for State employees and that it was not the Board's responsibility to do so.
- Attributed the failure of investigators not completing a disclosure form prior to investigating a complaint to an oversight.
- Had not developed internal conflict-of-interest policies and procedures requiring employees or its members to complete a conflict-of-interest disclosure form upon hire/appointment or for annually reminding employees and members to complete a disclosure form if their circumstances change; requiring Board members to fully disclose the nature of their interest when disclosing a conflict of interest during a Board meeting and documenting the specific disclosures in the Board's meeting minutes; requiring all disclosures of substantial interests to be stored in a special file for public inspection; or establishing a process for remediating conflicts of interest disclosed by its employees.

Recommendations

The Board should:

10. 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.
 - 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.
 - c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.
 - d. Establishing a process to review and remediate disclosed employee conflicts, consistent with recommended practices.

⁴⁷ A.R.S. §38-503.

11. 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.

Board response: As outlined in its [response](#), the Board agrees with all but 1 of the findings and will implement all but 1 of 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 1935, and its mission is “to provide professional, courteous service and information to the dental profession and the general public through the examination, licensure and the complaint adjudication and enforcement processes and to protect the oral health, safety and welfare of Arizona citizens through a fair and impartial system.” The Board’s responsibilities include licensing qualified dental professionals such as dentists and dental hygienists; issuing permits and certificates for the use of sedation and/or anesthesia or other analgesics; registering business entities; investigating and adjudicating complaints against licensees, permittees, certificate holders, and registered business entities; and providing information to the public.

We did not identify any states that met the Board’s objectives and purpose through private enterprise. According to the U.S. Bureau of Labor Statistics, the American Dental Association, and the American Dental Hygienists Association, all 50 states require dentists and dental hygienists to be licensed by a state regulatory entity.⁴⁸ Additionally, we reviewed the regulation of dentists and dental hygienists in 4 states—Iowa, Minnesota, Texas, and Idaho—and found that none used private enterprises to regulate dentists and dental hygienists.

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

The Board generally met its statutory objective and purpose for 1 area we reviewed. Specifically, the Board’s administrative rules require it to approve or deny initial and renewal applications for dentist and dental hygienist licenses and business entity registrations within 114 days and anesthesia and sedation permits within 144 days.⁴⁹ Our review of a stratified random sample of 70 initial and renewal dentist and dental hygienist applications and random sample of 5 business entity registrations approved by the Board in calendar year 2021 found that all but 1 initial license application had been issued within the required time frame.⁵⁰ For this application, the application-received date could not be determined because the date recorded in the Board’s database system did not agree to the date on the application (see pages 23 through 25 for more information about inaccurate and improper information in the Board’s database). Additionally, the Board issued 7 of 8 anesthesia and sedation permits that

⁴⁸ American Dental Association. (n.d.) *State dental boards*. Retrieved 4/24/2022 from <https://www.ada.org/resources/licensure/state-dental-boards>; American Dental Hygienists Association. (n.d.) *Licensure*. Retrieved 4/25/2022 from <https://www.adha.org/licensure>; and U.S. Bureau of Labor Statistics. (2022). *Occupational outlook handbook: Dentists*. Washington, DC: U.S. Department of Labor. Retrieved 4/25/22 from <https://www.bls.gov/ooh/healthcare/dentists.htm#tab-4>.

⁴⁹ AAC R4-11-303 and R4-11-305.

⁵⁰ We reviewed a stratified random sample of 50 of 608 initial license applications, 20 of 3,336 license renewal applications, and a random sample of 5 of 59 business entity registration applications for licenses and registrations the Board issued in 2021. For the stratified sample, we considered the various application types when selecting the sample (see Appendix A, pages a-1 through a-2, for more information about how we selected this sample). Although the Board’s database reports showed the number of applications by type for licenses and registrations issued in calendar year 2021, the number and/or classification type may be inaccurate because the Board’s database included incorrect and/or improperly entered information (see pages 23 through 25 for additional information about errors in the Board’s database).

we reviewed within the 144-day time frame.^{51,52} For the 1 permit that exceeded this time frame, according to Board staff, the delay in processing this permit was the result of a clerical error.






However, we identified areas where the Board could better meet its statutory objective and purpose and/or improve its efficiency. Specifically, the Board:

- **Did not ensure that applicants met all licensure requirements for some license applications we reviewed**—Although the licensing applications we reviewed met several licensure requirements, such as ensuring initial applicants provided transcripts and passing examination scores and that renewal applicants signed an affidavit affirming completion of continuing education hours, the Board did not verify some initial and renewal licensure requirements (see Table 4). Specifically, the Board:

- **Did not ensure that all CPR requirements were met for all initial license applications we reviewed**—Rule requires initial dentist and dental hygienist license applicants to submit an unexpired healthcare provider-level CPR certificate from the American Red Cross, the American Heart Association, or other certifying agencies that follow the American Red Cross or American Heart Association’s CPR training and certification procedures, standards, and techniques.⁵³ Although all 50 dentist and dental hygienist applications we reviewed included an unexpired CPR card, Board staff reported it did not determine if the applicant’s CPR card met the Board’s rule requirements. Our review found that 11 of 50 did not meet the CPR card requirements specified in rule. Specifically, 2 of 25 dentist applications and 9 of 25 dental hygienist applications included CPR cards that were not provider level or were not issued by a certifying agency that followed the American Heart Association or American Red Cross CPR training and certification procedures, standards, and techniques.

The Board had not established policies or procedures for ensuring applicants meet CPR card requirements. Additionally, Board staff reported that they were unaware of the requirement in rule for CPR certification to be at the healthcare provider level for initial licenses and that they had not determined what a provider-level CPR certificate includes or established a process for determining whether other certifying agencies follow American Heart Association or American Red Cross CPR training and certification procedures, standards, and techniques.

Table 4
Board verified some but not all key licensure requirements for licenses we reviewed

	Requirements	
	Dentist	Dental hygienist
 Education	All 25 verified	All 25 verified
 Examination	All 25 verified	All 25 verified
 CPR	0 of 25 verified	0 of 25 verified
 Fingerprint Clearance Card Verification	0 of 25 verified	0 of 25 verified
 Out of state license verification	16 of 18 verified	13 of 14 verified

Source: Auditor General staff review of 50 initial license applications—25 dentist and 25 dental hygienist applications—approved by the Board in calendar year 2021.

⁵¹ We reviewed a judgmental sample of 3 of 18 general anesthesia and deep sedation permits and 5 of 15 permits to employ or work with a physician anesthesiologist or certified registered nurse anesthetist issued during calendar year 2022 as of April 27, 2022 (see Appendix A, pages a-1 through a-2, for more information related to how we selected this sample).

⁵² The Board issued all 8 permits in accordance with statutory and rule qualification requirements we reviewed.

⁵³ AAC R4-11-301(A)(6). Although rule does not define “provider level CPR certificate,” both the American Red Cross and American Heart Association websites offer specific courses designed for healthcare professionals, which differ from other courses offered to individuals with little to no medical training.

- **Did not verify the validity of fingerprint clearance cards for all dentist and dental hygienist license applicants we reviewed, nor do they have the statutory authority to require a valid fingerprint clearance card at renewal**—The Board reported that it determines whether a fingerprint clearance card is valid by reviewing the expiration date on the applicant’s card. However, according to the Department of Public Safety (DPS) website, fingerprint clearance card validity can only be confirmed by checking the DPS website or contacting DPS directly to obtain the status of the card (see textbox). Confirming the validity of the fingerprint clearance card is important because DPS may suspend/revoke the card if a cardholder is arrested/convicted of a precluding offense. Although we reviewed the DPS website and determined all 50 dentist and dental hygienist applicants held a valid fingerprint clearance card at the time of our review, the Board had not established policies or procedures for confirming the validity of applicants’ fingerprint clearance cards prior to approving a license application. As a result, the Board did not ensure that it was issuing licenses to only qualified applicants, as required by statute.⁵⁴

Fingerprint clearance card—A card that DPS issues indicating that the cardholder is not awaiting trial for or has not been convicted of committing only certain precluding criminal offenses, such as sexual assault, forgery, and concealed weapon violations. DPS issues this card based on its review of an applicant’s criminal history record information. The card is valid for 6 years; however, if a cardholder is arrested for a precluding offense during this time period, DPS is authorized to suspend the card. DPS is also required to notify the cardholder and the entity if the cardholder is employed or licensed by an entity that is statutorily authorized to receive notification that the card is suspended pending the outcome of the arrest.

Source: Auditor General staff review of A.R.S. §§41-1758.01, 41-1758.03, 41-1758.04, and 41-1758.07 and the DPS fingerprint clearance card page on its website at <https://www.azdps.gov/services/public/fingerprint>.

Further, Board statutes do not require licensees to maintain a valid fingerprint clearance card after the initial licensure process. Absent this authority, the Board relies on licensees to self-disclose whether they have been arrested for, charged with, or convicted of a felony or misdemeanor that may affect patient safety.⁵⁵ Conversely, fingerprint clearance cards rely on information from law enforcement agencies, which provides better assurance that an applicant has not been arrested for or convicted of a criminal offense that would preclude their ability to have their license renewed. As previously reported, DPS provides a mechanism for checking the validity of fingerprint clearance cards (see Sunset Factor 9, pages 29 through 30, for more information).

- **Did not conduct continuing education audits to ensure that licensees met requirements**—Effective September 2022, rule requires dentists and dental hygienists to triennially complete 63 and 45 hours, respectively, of continuing education prior to renewing their license, and the Board’s renewal application requires licensees to attest to having completed the required continuing education hours for their license type.⁵⁶ Rule also requires the Board to annually conduct continuing education audits, either randomly or when information is obtained indicating a licensee may be out of compliance.⁵⁷ However, the Board reported it has not conducted these audits since 2019. As of March 2022, Board staff reported having explored options for performing these audits but had not finalized a plan or deadline for doing so.
- **Did not use its database to effectively and accurately record, monitor, and report information related to key functions such as licensing and complaint investigations**—The Board uses a database for processing its various license, certificate, registration, and permit applications; maintaining and generating public information related to its licensees; and documenting and reporting some complaint

⁵⁴ A.R.S. §§32-1232(B), 32-1284(A), and 32-1297.01(A).

⁵⁵ A.R.S. §32-3208(A).

⁵⁶ AAC R4-11-1203 and R4-11-1204.

⁵⁷ AAC R4-11-1202(G).

information such as final disciplinary outcomes and orders. However, we identified the following concerns regarding the Board's use of its database:

- **Inconsistently entered information into its database**—Board staff manually enter information into the Board's database. However, we identified examples of incorrect and/or improperly entered information within the database. For example, we identified instances where the date entered in the database did not match the date on the hardcopy documents, including differences for the date 2 applications were received and the date a license was issued. We also found an instance where the permit holder's information was improperly entered into the database, with the business name listed as an individual's first name. Incorrectly and/or improperly entering information into the database could impact the Board's ability to accurately retrieve, report, and monitor this information.
- **Lacks training and written guidance for using the database**—As discussed in Finding 2, pages 11 through 15, the Board lacks training and written guidance for using its database, and as a result, staff do not know how to generate some database reports, including reports that would help the Board oversee and monitor its complaint-investigation process. Additionally, although the Board's Executive Director reported that the Board had not denied any license applications since he began working for the Board in 2019, Board staff could not generate a report from its database to verify this information.

The Legislature appropriated the Board \$52,300 in fiscal year 2023 for an electronic licensing system. According to the Governor's fiscal year 2023 budget, ADOA, in partnership with the Governor's Office, identified a vendor to implement an electronic licensing system for several State boards and commissions, including the Board. According to Board staff, the new licensing system is expected to be implemented in December 2022 and will help the Board administer its various responsibilities, including licensing, complaint handling, and continuing education audits; and enhance its ability to track, monitor, and report on these various responsibilities. However, in continuing to use its existing database, and once it transitions to the new licensing system, documented policies, procedures, and training will be important for the effective use of the systems and accuracy of the data within.

- **Did not adequately protect complainant information, contrary to statute**—Our review of a sample of 35 Board complaints closed during calendar year 2021 found that 4 were filed anonymously or by complainants that requested anonymity. However, Board staff disclosed information identifying 1 complainant who had requested to remain anonymous as authorized by Board statutes.⁵⁸ In this incident, the complainant's name and email address were not fully redacted and remained visible to the licensee when they received their copy of the complaint alongside their notice of investigation.
- **Has not evaluated the appropriateness of all its fees**—Several Board statutes authorize or establish fees or fee maximum amounts that the Board may charge for its various licenses, certificates, registrations, and permits. Additionally, statutes require the Board to assess its license or certificate renewal fees for dentists, dental therapists, dental hygienists, and denturists every 3 years.⁵⁹ Although the Board reviewed its dentist and dental hygienist renewal fees in April 2021 and has established policies and procedures for performing a cost analysis to support the basis for its license and certificate renewal fees at least once every 3 years, it has not previously reviewed its dental therapist and denturist license and certificate renewal fees or evaluated the appropriateness of the other fees it charges, such as initial application fees.⁶⁰ Statute does not specifically direct the Board to review other fees, such as its initial application fees, and it has not done so. However, statute does not expressly prohibit the Board from reviewing all of its fees and government fee-setting standards and guidance state that user fees should be based on the cost

⁵⁸ A.R.S. §32-1263.02(B).

⁵⁹ A.R.S. §§32-1236, 32-1276.02, 32-1287, and 32-1297.06.

⁶⁰ As of May 2022, the Board had not issued or renewed any dental therapy licenses, and there were only 7 certified denturists.

of providing a service and reviewed periodically to ensure they are based on costs.⁶¹ By not evaluating the appropriateness of all its fees to help ensure they are commensurate with the costs of its regulatory activities, the Board may be collecting more or less revenue than it needs to operate.⁶²

Recommendations

The Board should:

12. 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.
 - b. Requiring Board staff to confirm the validity of fingerprint clearance cards at initial licensure.
13. Develop and implement written policies and procedures for annually conducting continuing education audits, as required by rule.
14. 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.
 - 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.
15. 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.
16. 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.

Board response: As outlined in its [response](#), the Board agrees with the findings and will implement or implement in a different manner 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 through its responsibilities for issuing licenses, certificates, and permits to qualified individuals, registering business entities, and investigating and adjudicating complaints against licensees and permit, certificate, and registration holders throughout the State.

However, we found that the Board had not complied with some State- and Board-specific conflict-of-interest requirements and had not fully aligned its conflict-of-interest process with recommended practices, such as

⁶¹ We reviewed fee-setting recommended practices 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).

⁶² At the end of fiscal year 2022, the Board will have an estimated fund balance of \$2.9 million, or 1.7 times its estimated total expenses.

ensuring all employees and Board members to complete a conflict-of-interest disclosure upon hire/appointment with the Board, reminding all employees and Board members to update their disclosure form at least annually when their circumstances change and maintaining a special file for substantial interest disclosures. We recommended that the Board develop and implement policies and procedures to help ensure it complies with State conflict-of-interest requirements and aligns with recommended practices (see Finding 3, pages 16 through 20).

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

Our review of Board statutes and rules found that the Board had adopted rules for most of the statutes when required to do so. However, the Board has not developed some rules required by statute. Specifically:

- Various statutes require the Board to adopt rules for dental therapists, including:
 - A.R.S. §32-1276.01(A)(B), which requires the Board to promulgate rules establishing dental therapist application fees and ensuring applicants meet licensure requirements for dental therapists.
 - A.R.S. §32-1276.02(B)(F), which requires the Board to promulgate rules establishing continuing education extension requests for dental therapists. Additionally, the Board must promulgate rules for reduced renewal fees for dental therapists who are over the age of 65 and fully retired or dental therapists who have permanent disabilities who may contribute their services to recognized charitable institutions and still retain that classification for triennial registration purposes.
 - A.R.S. §32-1276.07(A)(B), which requires the Board to promulgate rules establishing requirements for licensure by credential for dental therapists regarding practice hours and continuing education, and rules establishing licensing by credential fees for dental therapists.

According to the Board, in September 2019, it received prior approval for an exemption from the Governor's rulemaking moratorium to initiate a rulemaking for the regulation of dental therapists from the Governor's Office.⁶³ As of March 2022, the Board had received final approval from the Governor's Office to continue with the rulemaking to develop rules regulating the practice of dental therapy, and as of June 2022, had initiated the rulemaking process by publishing a Notice of Proposed Rulemaking.

- A.R.S. §32-1299.23(A)(B) requires the Board to promulgate rules establishing annual registration fees and late fees for mobile dental unit permits, and penalties for when a dental unit permit holder fails to notify the Board of a change in address within 10 days. Board staff explained that its rules do not expressly address a licensing fee, late fee, or penalty for mobile dental units and, thus, could be updated to be clearer.
- A.R.S. §§32-1213(M) and 32-1295(C) require the Board to promulgate rules for receiving the assistance and advice of registered business entities in all matters relating to the regulation of business entities and the advice of previously certified denturists in all matters relating to the discipline and certifying of denturists. Although the Board does not have any rules that specifically address receiving assistance and advice from registered business entities and denturists, Board staff reported that they believe that by complying with the statutory rulemaking requirements when promulgating and reviewing its rules, it is providing a method for the Board to receive the assistance and advice of business entities and denturists and therefore, no further rules are necessary to facilitate such engagement. Although this may allow for the receipt of some advice related to the regulation of business entities and denturists during the rulemaking process, it does not establish a process for receiving the advice of business entities and denturists in all matters, such as those not addressed through the rulemaking process.

⁶³ 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.

Recommendations

The Board should:

17. 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.
18. 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).
19. 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.

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

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 of its actions and expected impacts. Specifically, the Board:

- **Involved the public in adopting rules**—The Board informed the public of its recent rulemakings and their expected impacts and provided opportunities for public input as part of the rules it finalized in March 2022. Specifically, the Board published notices of its proposed rulemakings in the Arizona Administrative Register and included a statement detailing these proposed rules' impact on the public. Additionally, the Board provided contact information in the notices for Board staff who would receive public input about the proposed rulemaking.⁶⁴
- **Complied with open meeting law requirements we reviewed for 5 meetings it held between December 2021 and April 2022**—For example, as required by open meeting law, the Board posted meeting notices and agendas on its website at least 24 hours in advance for the 5 meetings we reviewed.⁶⁵ The Board also uploaded an audio recording of each meeting to its website within 3 business days following the meetings. Finally, the meeting notices and written minutes we reviewed complied with the provisions of open meeting law we tested, such as providing the date, time, and location of the meeting in the notices and written minutes.
- **Provided sufficient public information in response to anonymous phone calls we made**—Statute requires the Board to provide public information related to any licensee or certificate holder, such as current license status and disciplinary histories, when contacted directly, such as contacting the Board by phone.⁶⁶ We placed a total of 6 anonymous phone calls to the Board using personal phone numbers during business hours over the course of 2 weeks in May 2022 to request information related to 4 judgmentally selected licensees with varying disciplinary or complaint histories to test the Board's compliance with statutory requirements. We found that the Board appropriately provided or withheld information requested for all 4 licensees selected for our review.

⁶⁴ According to the Board's *Notice of Final Rulemaking* published in the Arizona Administrative Register, no public comments were received.

⁶⁵ We also assessed the Board's compliance with posting meeting notices at the specified physical location for 4 of the 5 meetings and found that all 4 were posted.

⁶⁶ A.R.S. §32-1207(A)(3).

However, we identified an area where the Board could improve its processes to ensure it provides appropriate information to the public. Specifically, statute requires the Board to publish certain public information pertaining to licensee disciplinary histories, such as final nondisciplinary and disciplinary actions, on its website for no longer than 5 years.⁶⁷ Our review of a sample of 35 complaints found that the Board had taken nondisciplinary or disciplinary action to address 19 of these complaints. For the 19 licensees associated with these complaints, the Board included incorrect or outdated information on its website for 7 of them. For example, the Board incorrectly listed 1 licensee on its website as having entered into a consent agreement, although it actually ordered the licensee to pay a penalty of over \$6,000. Additionally, the order on the Board's website does not clearly identify the action taken as disciplinary or nondisciplinary. Another licensee, who received a nondisciplinary order for continuing education, was listed on the Board's website as having received a disciplinary action, despite the final order indicating the action was nondisciplinary. Additionally, 1 licensee included in our review had a disciplinary action available on the Board's website from 1993, nearly 25 years beyond the statutory 5-year time frame.

Recommendations

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.

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 Board 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 substantiated violations.⁶⁸ However, as discussed in Finding 1, pages 6 through 10, our review of a sample of 35 of 267 complaints the Board reported as closed in calendar year 2021 found that for at least 3 of 19 complaints where the Board took disciplinary or nondisciplinary action, it may not have taken enforcement action that was consistent with the nature and severity of the complaints' substantiated violations and did not consider past disciplinary and nondisciplinary history when taking enforcement action.⁶⁹ Additionally, as discussed in Finding 2, pages 11 through 15, we found that the Board did not resolve 32 of 35 complaints in a timely manner. We recommended that the Board 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 and continue to develop and implement time frames for completing key steps in its complaint-handling process.

Lastly, our review of the 35 complaints found that the Board has not ensured it conducts required steps in its complaint-handling process. Specifically:

⁶⁷ Per A.R.S. §32-1263.01(D), effective January 1, 2018, all final nondisciplinary actions and orders, not including letters of concern or advisory letters, issued after January 1, 2018, and all disciplinary actions issued by the Board, shall be posted to the Board's website. Additionally, per A.R.S. §32-3214(B), effective September 29, 2021, these final nondisciplinary and disciplinary actions shall be available on the website for not more than 5 years. Further, letters of concern and advisory letters may not be made available on the website but shall be made available to the public upon request.

⁶⁸ In addition to investigating complaints submitted by members of the public, the Board may also initiate investigations based on malpractice settlement reports or self-reports submitted by licensees informing the Board of any death or incident requiring emergency medical response, occurring during the administration of or recovery from anesthesia or sedation. As such, we refer to all investigations as "complaints" regardless of whether the investigation included an external complainant or was initiated by the Board. Our review of 35 complaints included 2 complaints that were the result of a malpractice settlement report and 1 complaint involving an anesthesia and sedation self-report (see next footnote).

⁶⁹ We reviewed 35 complaints—a stratified random sample of 27 and a judgmental sample of 8—from the 267 complaints the Board closed in calendar year 2021 as recorded on the Board's log of complaints. Although the Board's complaint log showed that it closed 267 complaints in calendar year 2021, this number may be inaccurate because the Board did not sufficiently track this information (see Finding 2, page 14, for more information about inaccurate information we identified in the Board's complaint log and Appendix A, page a-1, for more information about the sample design).

- Board complaint-handling procedures require its investigators to contact complainants and licensees to conduct or provide the opportunity for investigative interviews. However, we found 14 instances where investigators did not contact the complainant and/or the licensee for an interview.
- Statute and the Board's complaint-handling procedures require the Board to notify licensees of the Board meeting where the complaint will be reviewed and to notify complainants of the complaint's outcome.⁷⁰ However, we identified 5 and 10 instances, respectively, where the Board lacked documentation demonstrating it notified licensees of a Board meeting or complainants of the complaint's outcome.

Recommendations

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.

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.

The Attorney General serves as the Board's legal advisor and provides legal services as the Board requires according to A.R.S. §§32-1266 and 41-192(A)(1). In addition, the Board's enabling statutes authorize the Board to employ other or additional counsel on its behalf. As of June 2022, the Board had not hired other or additional counsel in the past 3 years. Further, the Attorney General and county attorneys have the authority to prosecute cases that the Board investigates.

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

The Board reported that it has addressed deficiencies in its enabling statutes by seeking statutory changes to better manage the license renewal process. Specifically, the Board sought statutory changes in 2021 and 2022 to revise A.R.S. §§32-1236, 32-1276.02, 32-1287, and 32-1297.06 to amend the expiration dates for all licensees from June 30 every third year to the licensees' birth month every third year. This change will distribute its license renewal workload more evenly over the 3-year renewal period.

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 identified 1 statutory change that will enable the Board to better protect the public health, safety, and welfare. As reported in Sunset Factor 2 (see pages 21 through 25), Board statutes do not require licensees to maintain a valid fingerprint clearance card after the initial licensure process. Absent this authority, the Board relies on licensees to self-disclose whether they have been arrested for, charged with, or convicted of a felony or misdemeanor that may affect patient safety as opposed to receiving notifications from DPS if the licensee's fingerprint clearance card is suspended, revoked, or has a driving restriction placed on it.⁷¹ Requiring licensees

⁷⁰ Per A.R.S. §32-3206, the Board shall notify the licensee at least 10 business days prior to a Board meeting where the Board will review the complaint. Additionally, per A.R.S. §32-1263.02(I), copies of the Board's orders shall be provided to both the complainant and licensee, and Board complaint-handling procedures require all complainants to be notified of all complaint outcomes.

⁷¹ DPS is statutorily required to notify sponsoring agencies if a licensee's fingerprint clearance card is suspended, revoked, or has a driving restriction placed on it. A sponsoring agency is the agency requiring the individual to obtain the fingerprint clearance card and that is listed on the fingerprint clearance card application.

to maintain a valid fingerprint clearance card after initial licensure would allow the Board to continue to receive notifications from DPS rather than relying on self-reported information. Specifically, fingerprint clearance cards expire after 6 years, and without a requirement for the continued maintenance of a fingerprint clearance card, the Board may not continue to stay informed and receive DPS notifications regarding the status of licensees' fingerprint clearance cards.

Additionally, as reported in Sunset Factor 4, see pages 26 through 27, the Board has not complied with A.R.S. §§32-1213(M) and 32-1295(C), which require it to adopt rules for receiving the assistance and advice of registered business entities in all matters relating to the regulation of business entities and the advice of previously certified denturists in all matters relating to the discipline and certifying of denturists. Although it has not adopted these rules, the Board indicated it believes that by complying with the statutory rulemaking requirements when promulgating and reviewing its rules, it is providing a method for the Board to receive the assistance and advice of business entities and denturists and therefore, no further rules are necessary to facilitate such engagement. We recommend that the Board 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.

Recommendations

22. The Legislature should consider revising 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.

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

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

Terminating the Board would affect the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board is responsible for ensuring that dental professionals including dentists, dental hygienists, and denturists are qualified to provide dental care; receiving and investigating complaints against licensees alleging incompetence or unprofessional conduct; and taking action against licensees when allegations have been substantiated. The Board also provides information to the public about licensees, permittees, certificate holders, and registered business entities, including disciplinary history. These functions help protect the public from potential harm.

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—Idaho, Iowa, Minnesota, and Texas—and found that the level of regulation the Board exercises is generally similar to these states.⁷² Specifically:

- **License types**—Although there is some variation in the types of licenses offered per state, similar to Arizona, all 4 states issue dentist and dental hygienist licenses.
- **Fingerprints required**—Arizona requires all applicants for licensure to obtain a fingerprint clearance card, whereas Iowa, Minnesota, and Texas require applicants to submit fingerprints for the purpose of conducting

⁷²We judgmentally selected these states based on identifiable similarities and differences after performing a review of other state board websites.

a criminal history background check to qualify for licensure. However, Idaho limits this requirement to applicants applying for licensure by credential.⁷³

- **Examinations**—Arizona and all 4 states require examinations for licensure but have varying requirements based on the license type. Similar to Arizona, all 4 states we reviewed require dentist and dental hygienist applicants to complete at least 1 clinical examination and 1 national examination to be eligible for licensure.
- **Education**—Arizona and all 4 states require dentist and dental hygienist applicants to have graduated from an accredited dental school before licensure.
- **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. For example, Minnesota requires 50 hours of continuing education for dentists and 25 hours of continuing education for hygienists every 2 years, whereas Arizona requires 63 hours of continuing education for dentists and 45 hours of continuing education for hygienists every 3 years. Idaho and Iowa require 30 hours of continuing education every 2 years for both dentists and hygienists while Texas requires 24 hours of continuing education every 2 years for all licensees.
- **Anesthesia/sedation regulation**—Arizona and all 4 states regulate the use of anesthesia or sedation in dentistry.

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

The Board uses private contractors to perform investigations into alleged violations of Board statutes and rules as reported in Finding 2 (see pages 11 through 15). Specifically, the Board contracts with complaint investigators and consultants, all of whom are licensees, to investigate complaints and consult on complaint investigations. Additionally, the Board reported it contracts with some of its licensees to evaluate whether licensees applying for an anesthesia and sedation permit can safely provide anesthesia and sedation services and that their facilities contain the necessary equipment to do so.

We contacted 4 other states—Idaho, Iowa, Minnesota, and Texas—to obtain information regarding their dental boards' use of private contractors. Idaho, Iowa, and Minnesota reported using contractors for various aspects of their complaint-investigation procedures. For example, Idaho reported using contractors to assist with record reviews, practice assessments, and court cases, while Iowa and Minnesota reported using contractors to review certain complaints. Texas reported it does not use private contractors to perform mission-critical duties.

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

⁷³ In Idaho, applicants for licensure by credential are those who hold an active license in another state and meet the minimum licensure and clinical practice requirements.



SUMMARY OF RECOMMENDATIONS

Auditor General makes 22 recommendations to the Board and 1 recommendation to the Legislature

The Board should:

1. 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.
 - 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.
 - c. Documenting its consideration of mitigating and/or aggravating factors when determining enforcement actions, including licensee disciplinary and nondisciplinary histories (see Finding 1, pages 6 through 10, for more information).
2. Consistent with its statutory authority and written procedures, review and consider a licensee's history when determining enforcement action (see Finding 1, pages 6 through 10, for more information).
3. Adhere to its statutory authority when resolving complaints, such as by refraining from dismissing complaints without prejudice (see Finding 1, pages 6 through 10, for more information).
4. Investigate and resolve complaints within 180 days (see Finding 2, pages 11 through 15, for more information).
5. 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 (see Finding 2, pages 11 through 15, for more information).
6. 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.
 - 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 (see Finding 2, pages 11 through 15, for more information).
7. 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 (see Finding 2, pages 11 through 15, for more information).
8. 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 (see Finding 2, pages 11 through 15, for more information).

9. 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.
 - b. Developing and implementing guidance for compiling and using the reports in its database system to track complaints.
 - c. Developing and providing training for staff responsible for using the database (see Finding 2, pages 11 through 15, for more information).
10. 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.
 - 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.
 - c. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.
 - d. Establishing a process to review and remediate disclosed employee conflicts, consistent with recommended practices (see Finding 3, pages 16 through 20, for more information).
11. 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 (see Finding 3, pages 16 through 20, for more information).
12. 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.
 - b. Requiring Board staff to confirm the validity of fingerprint clearance cards at initial licensure (see Sunset Factor 2, pages 21 through 25, for more information).
13. Develop and implement written policies and procedures for annually conducting continuing education audits, as required by rule (see Sunset Factor 2, pages 21 through 25, for more information).
14. 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.
 - 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 (see Sunset Factor 2, pages 21 through 25, for more information).

15. 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 (see Sunset Factor 2, pages 21 through 25, for more information).
16. 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 see Sunset Factor 2, pages 21 through 25, for more information).
17. 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 (see Sunset Factor 4, pages 26 through 27, for more information).
18. 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) (see Sunset Factor 4, pages 26 through 27, for more information).
19. 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 (see Sunset Factor 4, pages 26 through 27, for more information).
20. 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 (see Sunset Factor 5, pages 27 through 28, for more information).
21. 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 (see Sunset Factor 6, pages 28 through 29, for more information).
22. 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 (see Sunset Factor 9, pages 29 through 30, for more information).

The Legislature should:

1. Consider revising Board statutes to require licensees to maintain a valid fingerprint clearance card and submit them at renewal (see Sunset Factor 9, pages 29 through 30, 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, website, and policies and procedures, and interviewing Board staff. In addition, we used the following specific methods to meet the audit objectives:

- To evaluate the Board's complaint-resolution process, including the timeliness of complaint resolution, we reviewed 35 complaints consisting of a stratified random sample of 27 and a judgmental sample of 8 complaints from 267 complaints recorded on the Board's log of complaints closed in calendar year 2021. The 35 complaints were selected to include complaints terminated by the Board's Executive Director, complaints dismissed by the Board, complaints that resulted in both disciplinary and nondisciplinary action, and complaints that were not in the Board's jurisdiction. As discussed in Finding 2, page 14, the Board's complaint log included inaccurate information, including complaints with incorrect closure dates and at least 1 complaint that was incorrectly listed as closed in calendar year 2021 when it was still open and waiting to be heard by OAH. Although the log included these errors, we determined it was reasonably accurate for audit purposes. Our work included reviewing complaint files, including investigator reports, and Board minutes and listening to Board meeting recordings.
- To assess the Board's compliance with State conflict-of-interest requirements and alignment with recommended practices, we reviewed statute and ADOA requirements, recommended practices, the Board's conflict-of-interest disclosure form and procedure manual, and Board meeting minutes for calendar year 2021.^{74,75}
- To determine whether the Board issued and renewed dentist and dental hygienist licenses and issued business entity registrations and anesthesia and sedation permits to qualified applicants in accordance with statute and rule requirements and in a timely manner, we reviewed:
 - Various reports from the Board's database, including initial and renewal applications approved and reported as issued in calendar year 2021. However, as discussed in Sunset factor 2, pages 23 through 25, we found incorrect and/or improperly entered information within the database. Additionally, when reviewing the initial application reports by licensing application type—applications

⁷⁴ Recommended practices we reviewed included: Organization for Economic Cooperation and Development. (2022). *Recommendation of the council on OECD guidelines for managing conflicts of interest in the public service*. Paris, France. Retrieved 8/22/2022 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative. (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 3/14/2022 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 3/14/2022 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

⁷⁵ In response to conflict-of-interest noncompliance and violations investigated in the course of our work, we have recommended several practices and actions to various school districts, State agencies, and other public entities. 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. 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*.

by examination, credential, and universal recognition—we determined that prior to June 2021, some application licensing types were not clearly identified. Although the database included these errors and application classification limitations, we determined it was reasonably accurate for audit purposes. Our work included reviewing various application files and associated documents, such as transcripts, examination scores, fingerprint clearance cards, CPR certifications, and other applicable documents.

- A stratified random sample of 50—25 dentist and 25 dental hygienist—of 608 initial license applications and 20—10 dentist and 10 dental hygienist—of 3,336 license renewal applications for licenses reported as issued by the Board in calendar year 2021.⁷⁶ We considered the various application types when selecting the sample, including applications by examination, credential, and universal recognition.
- A random sample of 5 of 59 business entity registration applications reported as issued by the Board in calendar year 2021.
- A judgmental sample of 3 of 18 general anesthesia and deep sedation permits and 5 of 15 permits to employ or work with a physician anesthesiologist or certified registered nurse anesthetist issued during calendar year 2022, as of April 27, 2022.
- To assess whether the Board provided accurate information to the public consistent with statutory requirements, we placed 6 anonymous phone calls to the Board using personal phone numbers in May 2022. We also reviewed the nondisciplinary and disciplinary information on the Board's website to assess whether the information provided was accurate and consistent with statutory requirements.
- To obtain information for the Introduction, we reviewed the Board's website and Board-provided information regarding staffing levels and volunteer registrations, and used the Board's database to retrieve the number of active licenses, registrations, certificates, and permits as of May 2022. In addition, we compiled and analyzed unaudited financial information from the *AFIS Accounting Event Transaction File* and the State of Arizona *Annual Financial Report* for fiscal years 2020 and 2021 for fiscal years 2020 and 2021, and Board- and ADOA-provided estimates for fiscal year 2022.
- To obtain additional information for the Sunset Factors, we reviewed the Arizona Administrative Register regarding the Board's rulemaking finalized as of March 2022 and assessed the Board's compliance with various provisions of the State's open meeting law for 5 Board and/or committee meetings held between December 2021 through April 2022. In addition, to assess the Board's fee-setting practices, we interviewed the Board's Executive director; reviewed the Board's statutes, rules, and policies; and reviewed the Board's revenues, expenditures, and fund balances for fiscal years 2020 and 2021 and estimates for fiscal year 2022. We also reviewed fee-setting standards and guidance developed by government and professional organizations.⁷⁷ Finally, we judgmentally selected and contacted 4 states—Idaho, Iowa, Minnesota, and Texas—and reviewed their level of regulation 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. We reported our conclusions on internal control deficiencies in Findings 1, 2, and 3 and in our responses to the statutory sunset factors.

⁷⁶ As previously reported, the number of applications by type may be inaccurate because the Board's database included incorrect and/or improperly entered information.

⁷⁷ 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 3/22/2022 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; 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 3/22/2022 from <https://www.peer.ms.gov/reports/rpt442.pdf>.

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, its Executive Director, and staff for their cooperation and assistance throughout the audit.



AUDITOR GENERAL'S COMMENTS ON BOARD RESPONSE

We appreciate the Board's response, including its agreement with all but 1 of the findings and its plan to implement or implement in a different manner all but 1 of the recommendations. However, the Board has included certain statements in its response that necessitate the following clarifications:

1. In its response to Recommendation 3, the Board reported "...that staff, by direction from the previous administration, was dismissing complaints without prejudice when a licensee, under investigation, let his/her license expire."

As reported in Finding 1 (see pages 6 through 10), the Board resolved 2 complaints we reviewed by dismissing them without prejudice, an action that statute does not authorize the Board to take. Although the Board attributed this action to its staff, as reported in footnote 20 (see page 9), at its January 29, 2021, meeting, the Board discussed these 2 complaints and voted to dismiss both complaints without prejudice.

2. In its response to Recommendation 10b, the Board reported it did not agree with the finding and will not implement the recommendation, explaining that it "...believes that members are currently disclosing all conflicts of interest at every board meeting" and that "[t]he Board's current process fulfills State and Board requirements. The Board believes that it closely follows A.R.S. § 38-503(B), which reads, "*Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision*". There is no reference to the terms "fully disclose the nature" nor are those defined terms in statute, and therefore, the Board believes this finding is without merit and will not be implemented."

As discussed in Finding 3 (pages 16 through 20), in addition to A.R.S. §38-503, A.R.S. §38-502(3) defines "make known" as the "filing of a paper which is signed by a public officer...and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest." However, our review of Board meeting minutes for 8 meetings held between January 2021 and December 2021 found that 3 Board members declared conflicts of interest but did not provide any details whatsoever related to what the conflict of interest was, thereby failing to fully disclose the interest as required by statute.

3. In its response to recommendation 13, although the Board has agreed to the finding and agrees to implement this recommendation using a different method, it explained that "from the Board's understanding, the Auditor's [sic] only reviewed records in 2021. During that year, and the year prior, the Board lifted many of its restrictions and CE requirements due to the Governor's exercised executive powers through his Executive Order 2020-17 (EO), and therefore, no audits were conducted to determine the compliance of the CE requirements. In light of the EO and the Board's CE requirements, most, if not all, licensees would have failed an audit since one of the requirements limits the licensees to a minimum number of self-study courses. The EO allowed for licensees to complete as many self-study courses as desired to maintain physical distance. The EO was lifted December 2021."

However, as reported in Sunset factor 2 (see page 23), in response to our inquiries, the Board reported it has not conducted continuing education audits since 2019.

BOARD RESPONSE



Arizona State Board of Dental Examiners

“Caring for the Public’s Dental
Health and Professional Standards”

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September 27, 2022

Lindsey Perry, CPA, CFE, Arizona Auditor General
Arizona Auditor General
2910 North 44th Street, Suite, 410
Phoenix, Arizona 85018-7271

Re: Arizona State Board of Dental Examiners – Sunset Review Audit; A.R.S. § 41-3023.07

Dear Ms. Perry:

At its special board meeting on September 26, 2022, the Arizona State Board of Dental Examiners’ (“Board”) voted to approve the enclosed response to the Auditor General’s Sunset Review Audit.

The Board’s staff, as well as the Board itself, appreciated the professionalism and courtesy of the Auditor General’s staff and believes that we developed a candid and great working relationship. The Board has already begun addressing the findings by forming an ad hoc committee consisting of current board and investigation committee members and two members of the public to develop guidelines as outlined in the Audit to achieve the recommended, successful results during post-audit meetings.

The Board through its executive director, Ryan Edmonson, and other staff, look forward to meeting with the Committees of Reference in both chambers of Arizona government with positive changes already made. In addition, the Board has finally been able to make a giant leap forward with a new database that should be operational by December 2022, which will help the Board become more automated and track and provide better measuring metrics.

Respectfully,

Ryan P. Edmonson
Executive Director

Enclosure: Board’s Response(s)

Cc: Dr. Anthony Herro, Board President
Dr. Lisa Bienstock, Board Vice-president
Monette Kipke, Audit Manager

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

Recommendation 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 substantiated violations, including:

Recommendation 1a: Establishing when to use nondisciplinary versus disciplinary actions.

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

Response explanation: The Board currently references statute as a basis to determine whether there is a violation that merits non-disciplinary or disciplinary action. The Board currently receives their board materials, which also includes the Board's current statutes and rules. The Board reviews all matters on the merits of each case. Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

Recommendation 1b: 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.

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

Response explanation: Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

Recommendation 1c: Documenting its consideration of mitigating and/or aggravating factors when determining enforcement actions, including licensee disciplinary and nondisciplinary histories.

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

Response explanation: Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

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

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

Response explanation: Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

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

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

Response explanation: The Board implemented this procedure in, or around March 2022, when it was discovered that staff, by direction from the previous administration, was dismissing complaints without prejudice when a licensee, under investigation, let his/her license expire. Pursuant to A.R.S. § 32-3202, the staff is fully aware that they cannot dismiss complaints without prejudice due to the expiration of a licensee's license if there is a pending investigation. Instead of expiration that license is suspended on the date it otherwise would have expired.

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

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

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

Response explanation: The Board continually strives to investigate and resolve complaints within 180 days. However, the Board has not been able to do so due to the lack of resources, staff and support. Please note the Board's inability to receive funding to hire 11 FTEs until July 1, 2021. From 2019 – 2021, the Board only operated with 2 or 3 compliance FTEs. Since November of 2021, the Board has maintained 3 consistent FTEs in compliance and is hopeful that their appropriation request to hire additional staff is met.

Recommendation 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.

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

Response explanation: The Board believes that it has already begun implementing the recommendation by hiring more contract investigators beginning with one additional investigator in December of 2020 increasing its number of contract investigators from one to two. After the Board received its higher appropriated request beginning in July 2021, the Board sought to hire three more contract investigators, and the final contract was signed and implemented in May 2022 bringing the total contract investigators to five. The Board believes that by contracting with five contract investigators and periodically using additional specialized consultants that it will be able to meet the 180-day recommendation.

Recommendation 6: The Board should continue to develop and implement policies and procedures for processing complaints, including:

Recommendation 6a: 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.

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

Response explanation: The Board already had procedures for 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, but overlooked adding time frames to its already listed procedures. The time frames were added in July 2022.

Recommendation 6b: 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.

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

Response explanation: The Board established guidelines in or around April 2021 to include criteria for prioritizing complaints based on the nature of the alleged violations and will formalize the guideline as a policy and procedure.

Recommendation 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.

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

Response explanation: The Board is currently in the process of transitioning to a new database system, which should allow for tracking and monitoring of complaints. This transition is on track to be completed in December 2022. Whereas, the Board's current database lacks these efficiencies. In the meantime, board staff uses a Google Sheet to track and monitor the complaint process, which is reviewed regularly by members of the Board during their board meetings.

Recommendation 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.

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

Response explanation: Staff will generate reports with the new database system to regularly provide the Board reports of complaints. In the meantime, board staff uses a Google Sheet to track and monitor the complaint process, which is reviewed regularly by members of the Board during their board meetings. The Board received a copy of the complaint log in its June 2022 meeting.

Recommendation 9: The Board should ensure its database can be used to monitor complaint timeliness, by:

Recommendation 9a: Developing and implementing policies and procedures to help ensure consistent and accurate information is entered into its database.

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

Response explanation: The Board is currently in the process of transitioning to a new database system, which should allow for tracking and monitoring of complaints. Once the transition is complete, policies and procedures will be developed and training will be provided to board staff.

Recommendation 9b: Developing and implementing guidance for compiling and using the reports in its database system to track complaints.

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

Response explanation: The Board anticipates accomplishing more automation when the transition to the new database is complete. This includes the ability to generate reports and tracking complaints. Once the transition is complete, policies and procedures will be developed and training will be provided to board staff.

Recommendation 9c: Developing and providing training for staff responsible for using the database.

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

Response explanation: Once the transition to the new database system is complete, training will be provided to all board staff.

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

Recommendation 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:

Recommendation 10a: 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.

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

Response explanation: The Board established guidelines in June 2022, to check employees' possible conflicts annually, including board members, but will also formalize the guidelines with a policy and procedure.

Recommendation 10b: 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.

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

Response explanation: The Board believes that members are currently disclosing all conflicts of interest at every board meeting. In fact, this is the second action item on each board agenda after the call to order. Board members declare their conflicts of interest and recuse themselves from participating in the case(s) in which they have a conflict(s). The Board's current process fulfills State and Board requirements. The Board believes that it closely follows A.R.S. § 38-503(B), which reads, "*Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision*". There is no reference to the terms "fully disclose the nature" nor are those defined terms in statute, and therefore, the Board believes this finding is without merit and will not be implemented.

Recommendation 10c: Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

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

Response explanation: The Board will maintain a "special file" to store the board members' conflicts of interests and meeting minutes.

Recommendation 10d: 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 has implemented this recommendation in July 2022.

Recommendation 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.

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

Response explanation: The Board believes that this was already written in its procedures prior to the initiation of the audit, but staff, on several occasions did not ensure the completion of the conflicts of interests by the Board's investigators. The Board's administrative leadership has made appropriate staffing changes and has directed all compliance staff to follow the procedures to ensure the Board's investigators do not have conflicts prior to the assignment of an investigation.

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

Recommendation 12a: Ensuring applicants meet licensing requirements for submitting CPR certification as specified in rule.

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

Response explanation: The Board anticipates this requirement to be fulfilled with the new database system.

Recommendation 12b: Requiring Board staff to confirm the validity of fingerprint clearance cards at initial licensure.

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

Response explanation: The Board is looking to resolve this with the implementation of its new database. In the meantime, the Board implemented guidelines in or about September 2022, with its licensing staff, to confirm the validity of fingerprint clearance cards by accessing the Arizona DPS fingerprint website and printing the confirmation and storing it in the applicants' files.

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

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 Board anticipates this requirement to be fulfilled with the new database system which will allow staff to do a 100% CE audit. Policies and

procedures will be developed after the transition to the database is complete. Additionally, and from the Board's understanding, the Auditor's only reviewed records in 2021. During that year, and the year prior, the Board lifted many of its restrictions and CE requirements due to the Governor's exercised executive powers through his Executive Order 2020-17 (EO), and therefore, no audits were conducted to determine the compliance of the CE requirements. In light of the EO and the Board's CE requirements, most, if not all, licensees would have failed an audit since one of the requirements limits the licensees to a minimum number of self-study courses. The EO allowed for licensees to complete as many self-study courses as desired to maintain physical distance. The EO was lifted December 2021.

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

Recommendation 14a: 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.

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

Response explanation: The Board is in the process of transitioning to a different database system. If necessary, policies and procedures will be developed after the transition to the database is complete. It may be unnecessary to develop policies and procedures due to the new automation of the Board's new database, which is projected to require the licensees to submit proof for each course they completed to meet the Board's CE requirements. After the new database is available and all staff receives formal training, the Board will create policies and procedures to address the accuracy of data for entering and retrieving complaint data.

Recommendation 14b: 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.

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

Response explanation: The contract with the new database vendor requires the vendor to provide training to all staff. The training will be given orally and in print and the Board will maintain all print versions of the training received to ensure new staff will be given the same instructions.

Recommendation 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 confidential information is not provided to licensees.

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

Response explanation: The Board's intent has never been to disclose the anonymity of a complainant to anyone and will therefore implement policies and procedures to best protect the identity of complainants who wish to remain anonymous. The Board would be remiss if they didn't opine of the audit finding that board staff redacted confidential information with a black marker, but the reader could read the complainant's name through the black redaction. This proves the Board's intent, but also the unintended consequences of not having a more consistent and robust policy and procedure for ensuring confidentiality. It's also worth noting that if a complainant is also a patient that it's virtually impossible, if not altogether impossible, to conduct an investigation without revealing the patient's identity in order to subpoena the patient's records. Board staff will revise its policies and procedures related to confidential information to receive complainant permission before proceeding to subpoena records if the complainant stated, in their complaint that they wish to remain anonymous.

Recommendation 16: 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.

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

Response explanation: Pursuant to A.R.S. §§ 32-1236, 32-1276.02, 32-1287 and 32-1297.06, the Board believes that it only has statutory authority to change its renewal fees. Therefore, the Board will continue to review its renewal fees every three years. The Board will work with the Board's legal counsel to determine if it has authority, beyond the aforementioned statutes, to change its other fees without the need of a statutory revision through the legislative process or a rule change through a Notice of Proposed Rulemaking. If it's determined that the Board does have the authority, then the Board will develop policies and procedures based on that legal advice. That being said, the Board believes that its fund balance and the economy plays an important role in whether or not they change its renewal fees. Based on that, they also believe that all licensees will benefit from any reduced renewal fees, whereas not all licensees will benefit from the Board's other fees. To that end, the Board had a 100% fee waiver from January 2018 – December 2020. In April of 2021, the Board voted continue to offer its licensee population a reduced renewal fee, but not at 100%. Instead, the Board voted to reduce all licensee renewal fees by 60%. The next review will be in calendar year 2023 with an effective date of January 2024.

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

Recommendation 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.

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

Response explanation: The Board agrees to continue with the rulemaking process to adopt rules for dental therapists. The Board anticipates the rulemaking process to conclude later this calendar year or early 2023.

Recommendation 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).

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

Response explanation: Although the Board agrees with the recommendation, the Board also believes that they likely do *not* need to seek an additional exemption from the Governor's office because the Board has already been granted an exemption to amend its rules in this regard and will just add this recommendation to its current rulemaking process. However, if its determined that this recommendation is substantive and that the Board needs to seek an additional exemption to the rulemaking process, then the Board will do so. This recommendation from the Auditor General's office is appreciated.

Recommendation 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.

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

Response explanation: At its September 2, 2022 meeting, the Board voted to direct staff to repeal the rules promulgated by A.R.S. § 32-1282(B). This reference is *not* mentioned in this recommendation, but it's relevant since A.R.S. § 32-1213(M) and A.R.S. § 32-1295(C) have similar language regarding the "assistance and advice" from specific, but limited dental professions. Based on the Board's action, the Board believes that A.R.S. § 32-1213(M) and A.R.S. § 32-1295(C) along with A.R.S. § 32-1282(B) are unnecessary since the Board handles all things dental related, and therefore, adopting rules for methods to receive assistance and advice is burdensome, unachievable and the makeup of the Board is such that the entire dental community is represented. The current makeup of the Board has hygienist and a business entity members. The makeup of the Board does not include a dentist, but that's because A.R.S. 32-1203(A) sets the makeup of the Board and does not include a dentist. It's worth noting that there are only 10 active dentist certificates in the State of Arizona. Based on this, the Board will seek legislation to eliminate these statutory requirements.

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 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.

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

Response explanation: [The Board anticipates that the new database will address this recommendation through an automated process.](#)

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.

Recommendation 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.

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

Response explanation: [The Board's current process is to contact all complainants and licensees for investigation interviews. Pursuant to A.R.S. § 32-3206, all health boards, including the dental board, are required to provide notices of the Board's meetings. The Board believes it follows the law and provides proper notification of all its meetings. The Board also believes its current processes provides the complaint outcomes to all complainants with the exception of anonymous complainants, Board opened complaints, which have no complainant and the complaints opened as a result of a malpractice settlement, which is discovered by correspondence received from the National Practitioner Data Bank.](#)

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.

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

Board response: A Board response is not required since the recommendation is to the Legislature.

Recommendation 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 check the validity of fingerprint clearance cards at the time of license renewal.

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

Response explanation: [If passed, the Board will adhere to the law passed.](#)

