

**REPORT
 HIGHLIGHTS**
 PERFORMANCE AUDIT

Subject

The Legislature established the Board of Homeopathic Medical Examiners (Board) in 1980. Before 1980, either the Arizona Medical Board (AMB) or the Board of Osteopathic Examiners (Osteopathic Board) regulated doctors practicing homeopathy. A homeopathic doctor may practice in any of eight areas specified in statute.

Our Conclusion

The Legislature should consider whether there is a need to continue the Board. If the Board is continued, the Legislature and the Board should address three regulatory issues that may limit public protection, and the Board should investigate and adjudicate complaints in a timely manner and improve its licensing process.



2007

**Legislature should
 consider best
 regulation method**

Homeopathy originated in the late 1700s in Germany. Originally it referred to a system of medicine that treats symptoms in accordance with the principle that a substance that produces symptoms in a healthy person will cure those symptoms in a sick person.

Under Arizona statutes, homeopathy is a much broader practice and includes acupuncture, chelation therapy, homeopathy, minor surgery, neuromuscular integration, nutrition, orthomolecular therapy, and pharmaceutical medicine. To be a licensed homeopathic physician in Arizona, a person must have an active allopathic (MD) or osteopathic (DO) license in good standing, but they are not required to maintain their MD or DO license after obtaining a homeopathic license. As of May 2007, the Board had 104 licensed homeopathic physicians.

Reasons to retain Board—Several reasons exist for maintaining the board:

- **Maintain public access to nontraditional medical care.** Currently, patients can see a homeopathic physician to receive several different therapies. Without the Board, patients may have to see several different practitioners to obtain those same therapies. Homeopathic patients who spoke at a board meeting expressed concerns that eliminating the Board would reduce their access to healthcare of their choice.
- **The AMB and Osteopathic Board do not embrace some therapies.** Although not restricted from practicing any of the therapies that the Board regulates, the use of chelation therapy is more strictly limited by the AMB and is not embraced by the Osteopathic Board.



- **Some homeopathic physicians have discontinued their MD or DO licenses.** Forty-nine of the 104 homeopathic physicians the Board licensed do not have active Arizona MD or DO licenses and would be left without a license to practice.
- **Homeopathic medical assistants registered by Board.** If the Board were not continued, homeopathic medical assistants would no longer be registered.

If the Board were not continued, the Legislature would need to address the issue of homeopathic physicians left without a license to practice as well as the issue of registering homeopathic medical assistants. Options to address unlicensed homeopathic physicians include requiring them to obtain either an allopathic or osteopathic license to continue to practice or allowing them to be grandfathered in to the respective board that previously licensed them. Options to address the registration of homeopathic medical assistants include permitting homeopathic medical assistants to continue as such without requiring the training required by rule for allopathic and osteopathic medical assistants, authorizing the AMB or Osteopathic Board to set up a similar registration system for homeopathic medical assistants, or requiring homeopathic medical assistants to qualify under the existing AMB or Osteopathic Board rules.

Reasons to discontinue Board—Although the Board was created to address perceived intolerance for nontraditional care in the medical community, a separate board may no longer be needed. Nontraditional medicine is now much more widely accepted and practiced than in 1981:

- By 2002, 36 percent of adults reported using some form of nontraditional medicine, excluding prayer, in the preceding 12 months.
- Ninety-eight of 126 medical schools in the U.S. offered nontraditional medicine as a topic in at least one required course during the 2002-2003 academic year.
- Many homeopathic therapies are available from other types of providers. Naturopathic physicians are authorized to practice the same or similar therapies as homeopathic physicians. In addition, the Chiropractic Board certifies licensees to practice acupuncture. Further, dietitians practice nutrition.

Further, establishing a separate board is not a common approach to regulating physicians who practice nontraditional medicine:

- Only three states—Arizona, Nevada, and Connecticut—have a separate homeopathic board. These states license a total of 156 homeopaths.
- At least 14 states have amended their allopathic and osteopathic statutes to facilitate the practice of nontraditional medicine.
- Arizona statutes do not restrict MDs and DOs from practicing homeopathic therapies.

If the Board is continued, it and the Legislature should address three regulatory issues—First, the Board appears to allow conduct that the AMB and the Osteopathic Board do not. In one case, the AMB revoked a physician's license for convictions for mail fraud and false claims. Eight years later, the Board licensed the physician, providing him a way to work in Arizona without having to go before the AMB to request that his license be reinstated. In another instance, the Osteopathic Board revoked a physician's license when he refused to take a competency exam as part of a complaint investigation. However, the Homeopathic Board placed the physician on probation, permitting the doctor to continue to practice. Concern arises because the statutes for homeopathic physicians allow them to do many of the things that allopathic and osteopathic physicians do. For example, they can perform minor surgery as well as prescribe pharmaceutical medicine, including controlled substances.

Second, the Board should ensure patients are adequately informed before they receive nontraditional treatments. Because homeopathic physicians are or once were also allopathic or osteopathic physicians, the public may not know whether the treatment is traditional or nontraditional. The Board does not require that licensees obtain written, informed consent before proceeding with nontraditional treatment.

Third, the Board should address its name. The broad Arizona statutory definition of homeopathy includes therapies that are not traditionally part of homeopathy.

Recommendations

The Legislature should consider:

- Whether or not to continue the Board. If the Board is not continued, the Legislature would need to determine how to address the issue of those homeopathic physicians left without a license to practice and the issue of registering homeopathic medical assistants.

If continued, the Board should:

- Work with the AMB and the Osteopathic Board to ensure consistency in board actions.
- Obtain authority to require licensees to obtain written, informed consent for nontraditional treatment.
- Consider a more appropriate name for the Board and suggest it to the Legislature.

Board needs to improve complaint handling

The Board investigates and adjudicates complaints involving homeopathic physicians who may be medically incompetent, mentally or physically unable to engage safely in the practice of medicine, or guilty of unprofessional conduct. Because homeopathic physicians must initially

have an MD or DO license, homeopathic physicians who retain their Arizona MD or DO license are subject to the jurisdiction of those boards as well as the Board of Homeopathic Medical Examiners.

Arizona regulatory boards should resolve complaints in 180 days or less. However, more than one-third of the Board's complaints received between fiscal years 2004 and 2006 were open longer than 180 days. Ten of the closed complaints auditors reviewed were open between 183 and 673 days. Further, as of November 2006, 6 complaints that had been open from 197 to 627 days remained open.

Board Complaint Data

Between 2004 and 2006, the Board:

- Received 41 complaints.
- Dismissed 25 complaints.
- Issued 5 letters of concern.
- Gave jurisdiction to another board in 5 complaints.

The second cause of delays is that the Board holds investigative interviews during board meetings rather than assigning a board member, or a designee, to interview the licensee. Because the Board meets only every other month, the process is delayed. As a result, seven of the eight cases involving investigational interviews approached or exceeded the 180-day goal. In addition, acting as both

investigator and adjudicator may give the appearance that the Board is biased.

Some of these complaints involved a physician's ability to safely practice medicine. For example, in July 2004, the Florida Medical Board suspended an osteopathic physician's license because he "...was unable to practice osteopathic medicine with reasonable skill and safety to patients due to his mental disorder." This physician also had a homeopathic license issued in Arizona. The Board renewed his license in February 2005, but also opened a complaint to address the Florida suspension. However, this complaint remained open as of July 2007, more than 2 years later.

A third cause of delays is that the Board has not established time frames for the complaint process and does not track complaint statuses. In one case, a complaint received in July 2005 was not processed for about a year because it was not noticed that the physician had not responded to the Board's letter.

Causes of delays in resolving complaints—The first cause of delays is that the Board waits to see if the AMB or the Osteopathic Board agrees that the Board has primary jurisdiction, even when it has good reason to believe it has primary jurisdiction.

All allegations not addressed—The Board does not always consider all the allegations in a complaint. For example, in one case, there were two allegations—misdiagnosis and violating an AMB order. The Board dismissed the allegation regarding violating the AMB's order, and then dismissed the complaint without addressing the allegation regarding misdiagnosis.

Recommendations

The Board should:

- Immediately begin investigations when it has reason to believe it has primary jurisdiction.
- Designate a board member or a designee to conduct investigational interviews.
- Develop time frames for key steps in the complaint process.
- Better track the status of complaints.
- Address all allegations in a complaint.

Licensure does not ensure competency in therapy use

If the Board is continued, it and the Legislature should take steps to ensure that a licensee is qualified to practice those therapies that the licensee practices. Specifically, the homeopathic license enables physicians to practice therapies in which the licensee may not have an education. Although the Board implemented a rule in 2005 requiring minimum training hours or certificates for

each therapy an applicant wished to practice, the Board should obtain clear statutory authority to limit a physician's practice to just those therapies in which the physician is educated.

The Board's written and oral exams also do not ensure licensees have sufficient knowledge to practice all the therapies. The written exam tests

only on homeopathy and has not been validated to ensure that it accurately assesses a physician's ability to practice homeopathy. The Board does not have the financial resources to validate the exam.

The oral exam involves a case study, but it also does not require the applicant to discuss all applicable therapies. In two instances, the applicants stated that they did not have enough education to discuss the application of some

therapies. However, once licensed, these licensees would not be restricted from practicing any of the eight therapies. In addition, the oral exam is not confidential. The oral exam occurs at a public board meeting, making all case studies and the answers to them public information.

Finally, unlike other Arizona health regulatory boards, the Board lacks continuing education requirements.

Recommendations

The Legislature should consider:

- Amending A.R.S. §32-2912 to permit the Board to limit a physician's practice to the therapies a licensee is educated in.
- Amending the Board's statutes to require continuing education for its licensees.

The Board should:

- Take steps to ensure that its written and oral exams are adequate.
- Seek a statutory change to classify the oral exam as a confidential record so it can be conducted in executive session.
- Continue to develop continuing education requirements for its licensees.

TO OBTAIN MORE INFORMATION

A copy of the full report can be obtained by calling
(602) 553-0333



or by visiting our Web site at:
www.azauditor.gov

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Other pertinent information on licensing practices

In October 2005, several newspaper articles were published raising concerns about the Board's licensing of felons. Under the Board's statutes, if an applicant for a license has engaged in conduct that would be grounds for disciplinary action, the Board may consider whether the applicant has corrected the conduct. If it is satisfied that a correction has occurred, the Board may license the applicant.

Between fiscal years 2004 and 2006, the Board received 23 applications for

licensure. Two applicants had felony convictions, and seven applicants had other disciplinary issues. The Board licensed both of the felons and three of those with other disciplinary issues.

The AMB's and Osteopathic Board's statutes are similar to the Homeopathic Board's. The AMB stated that it did not license any felons during fiscal years 2004 through 2006. The Osteopathic Board could not provide specific information on whether it licensed any felons during the same time period.