

State of Arizona  
Office  
of the  
Auditor General

**PERFORMANCE AUDIT**

**BOARD OF  
OSTEOPATHIC  
EXAMINERS  
IN  
MEDICINE AND  
SURGERY**

**Report to the Arizona Legislature**

**By Debra K. Davenport**

**Auditor General**

**April 2001**

**Report No. 01-06**

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DEBRA K. DAVENPORT, CPA  
AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

WILLIAM THOMSON  
DEPUTY AUDITOR GENERAL

April 23, 2001

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Ann Marie Berger, Executive Director  
Board of Osteopathic Examiners in  
Medicine and Surgery

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Osteopathic Examiners in Medicine and Surgery. This report is in response to a June 16, 1999, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §41-2951 et seq. I am also transmitting with this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board of Osteopathic Examiners in Medicine and Surgery agrees with all of the findings and recommendations.

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

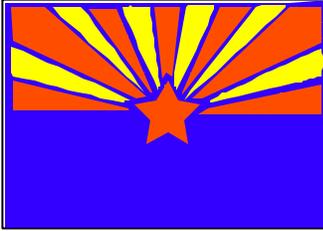
This report will be released to the public on April 24, 2001.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Davenport".

Debbie Davenport  
Auditor General

Enclosure

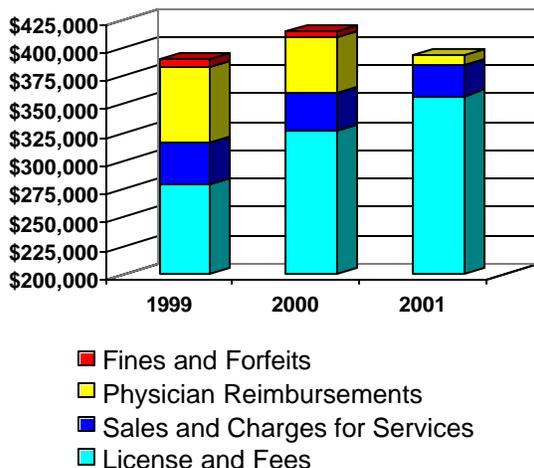


## Program Fact Sheet

# Board of Osteopathic Examiners in Medicine and Surgery

**Services:** The Board of Osteopathic Examiners in Medicine and Surgery (Board) is responsible for regulating osteopathic physicians through licensure. The Board performs the following services: **1) Assuring applicant and licensee qualifications** through its application and license renewal process; **2) Investigating and adjudicating complaints** concerning allegations of unprofessional conduct or other statutory violations; and **3) Providing consumer information to the public.**

**Revenue: \$394,200**  
(fiscal year 2001, estimated)



The Board consists of seven members who serve five-year terms:

✍ Five members who are osteopathic physicians, who have engaged in the practice of medicine for at least five years in Arizona and have licenses in good standing.

✍ Two public members.

**Facilities:** The Board does not own any facilities. The Board's office is located at 9525 East Doubletree Ranch Road in Scottsdale, Arizona. Board meetings are held at this location.

**Equipment:** The Board owns only standard office equipment.

**Personnel:** Currently, the Board is authorized 8 full-time staff. However, recent fiscal problems have reduced filled positions to 5.5 full-time staff.

### Agency Mission:

*"To protect the public health and safety of both citizens and visitors to the state of Arizona through the efficient and effective regulation of the practitioners and practice of osteopathic medicine and surgery in the state."*

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**Program Goals (Fiscal Years 2001-2003):**

1. To issue and renew licenses promptly to those applicants determined to be eligible based on their accurate and complete application and demonstration of the required standards of education, knowledge, and competency while ensuring that the health, welfare, and safety of the public is protected.
2. To timely investigate and adjudicate complaints to protect the public from incompetent, unprofessional, and/or unethical conduct.
3. To provide information and verifications on licensees, upon request, in a timely and accurate manner.

**Adequacy of Performance Measures:**

Although the Board's three goals are aligned with its mission, auditors identified some problems with the Board's performance measures:

~~✍~~In general, the Board lacks some recommended measures including outcome measures and customer satisfaction. For example, the Board does not have a performance measure to report the percentage of applicants or license holders reporting very good or excellent service. However, the Board does have a survey that obtains such feedback that generally includes favorable comments.

~~✍~~Time frames for complaint resolutions are underreported because the Board uses the date it opens a complaint as the beginning date rather than the date it receives the complaint.

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## SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Osteopathic Examiners in Medicine and Surgery (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

The Board is responsible for regulating osteopathic physicians. Osteopathic physicians receive similar training to allopathic physicians (M.D.'s), as well as training in the musculoskeletal system and manipulation, and are qualified for unlimited medical practice in all 50 states. The Board's duties include issuing and renewing licenses, conducting investigations and hearings concerning unprofessional conduct, disciplining violators, and providing consumer information to the public. Currently the Board licenses approximately 1,700 osteopathic physicians and receives approximately 200 complaints a year.

### **The Board Should Take Disciplinary Action When Physicians Violate Statutes** (See pages 9 through 16)

The Board has not taken disciplinary action in several instances when physicians violated its unprofessional conduct statutes. One of the Board's main responsibilities in protecting the public is investigating and adjudicating complaints. According to the Board's statutes, it should impose some form of discipline when its investigations show that a physician is guilty of unprofessional conduct. In addition to helping protect the public, imposing discipline allows the Board to set the standard for appropriate behavior and can ensure that physicians receive remedial education. However, in 18 instances in fiscal years 1998-2000, the Board issued nondisciplinary Letters of Concern to physicians rather than taking disciplinary action, although all 18 showed evidence of statutory violations. One Letter of Concern was issued for a complaint against a physician, who admitted he had not adequately evaluated and followed up on a patient who died of toxic shock. The Board issued another Letter of Concern to a

physician for a violation which had resulted in discipline by two other states and the voluntary surrender of his license in a third state. Auditors also identified four instances in which complaints were dismissed entirely despite evidence of statutory violations.

To better adjudicate complaints, the Board needs to take action in two main areas:

- ✓ **Improve investigations**—The Board does not address some complaint allegations, and its investigators do not clearly indicate whether those allegations they investigate are substantiated. Similarly, a medical consultant who reviews complaints does not provide a clear opinion as to whether the named physician met the standard of care. Finally, contrary to its policy, the Board does not interview all complainants.
- ✓ **Strengthen adjudication procedures**—The current process lacks thoroughness and consistency. For example, before it makes its decision, the Board does not review each allegation to determine whether or not a statute was violated. The Board also lacks guidelines for considering the severity of the violation or mitigating factors. Finally, the Board had not been routinely reviewing the history of disciplinary actions and letters of concern against a named physician until audit work was completed.

### **The Board Can Improve Complaint Processing (See pages 17 through 22)**

Besides strengthening its disciplinary actions, the Board also needs to improve the way it processes complaints. First, the Board is no longer complying with a statutory requirement to open a complaint when it is notified of a malpractice settlement or judgment. Instead, the Board only maintains a list of these complaints. To fulfill the Board's responsibility to protect the public and comply with statutory requirements, these cases should be opened and investigated. In addition, the Board needs to act on complaints on a more timely basis, particularly those complaints involving malpractice. Fourteen of the Board's open malpractice complaint investigations auditors reviewed are at a standstill, even though the Board has all the necessary docu-

ments to complete its investigation. Ten of the 14 complaints have been open more than 600 days. To make progress on this backlog, the Board needs to prioritize open malpractice complaints. Resolution time frames for non-malpractice complaints are better, but can also be improved. To improve time frames for all complaints, the Board needs to meet those deadlines it has already established in its complaint investigation policies; establish deadlines for investigation processes that do not already have them, including medical consultants' reviews; and set priorities and associated deadlines for all complaints according to the severity of the complaint.

**Poor Complaint Recordkeeping  
Negatively Impacts Complaint  
Process and Public Information  
(See pages 23 through 28)**

The Board needs to improve its complaint recordkeeping to better manage the complaint process and provide the public with accurate information. Its complaint database is inaccurate and incomplete. The Board also maintains a separate complaint log that is redundant and has limited usefulness as a complaint-tracking tool. The Board also lacks controls over open complaint files to ensure they are not misplaced.

The Legislature may wish to revise the language of a recent change to the Board's statutes calling for the deletion of records involving complaints that are dismissed or resolved through Letters of Concern. This language is more sweeping than recent statutory changes affecting the records of complaints against M.D.'s. Further, five other comparable health regulatory boards have no statutory time limits on the information they provide. Deleting records will result in the Board losing access to physicians' histories and investigation evidence.

**Other Pertinent Information  
(See pages 29 through 33)**

This report includes information regarding the Board's recent financial crisis. In late June 2000, the Board discovered that it had insufficient monies to fund its operations and would not receive

further revenues for several months when calendar year licenses are renewed. As a result, the Board was forced to reduce staff and budgeted expenditures. This problem resulted from the Board's overly optimistic revenue projections; overspending revenues for the last three fiscal years; inappropriately accounting for reimbursements; and a general lack of internal financial controls. To continue operating, the Board received a \$125,000 loan from the Governor's emergency funds. The loan's terms require the Board to reduce its fiscal year 2001 expenditures from the budgeted amount; require an increase in revenues; and mandate additional oversight.

**Sunset Factors**  
**(See pages 35 through 42)**

As part of the Sunset Review process, this audit makes the following recommendations:

- ✓ Board members should receive additional training on the need to recuse themselves in instances where there is bias or the potential for bias;
- ✓ The Board should maintain Board meeting minutes in compliance with Open Meeting Law; and
- ✓ The Board should work with the Governor's Regulatory Review Council to develop needed administrative rules.

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# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Osteopathic Examiners in Medicine and Surgery (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

## Board Responsibilities

Laws 1949, Chapter 121 established what is now the Arizona Board of Osteopathic Examiners in Medicine and Surgery, which is responsible for regulating osteopathic physicians through licensure. Osteopathic physicians are one of the two types of physicians who are qualified for unlimited medical practice in all 50 states.<sup>1</sup>

The Board's mission is:

*To protect the public health and safety of both citizens and visitors to the state of Arizona through the efficient and effective regulation of the practitioners and practice of osteopathic medicine and surgery in the state.*

The Board accomplishes this mission by performing a variety of functions including:

- Ensuring that persons practicing osteopathic medicine possess the required qualifications by issuing and renewing licenses;
- Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- Disciplining violators; and
- Providing consumer information to the public.

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<sup>1</sup> The other type is allopathic physicians, or M.D.'s.

Currently, the Board licenses approximately 1,700 osteopathic physicians and receives approximately 200 complaints each year.

### **Statutory Licensure Requirements**

The Board's statutes (A.R.S. §§32-1821 through 32-1831) and rules contain the following general education, experience, and examination requirements for licensure as an osteopathic physician:

- Graduating from an approved school of osteopathic medicine. These are schools or colleges that award a degree in osteopathic medicine with an American Osteopathic Association approved or accredited course of study. One of these schools is located in Arizona.
- Completing an approved internship, residency, or equivalent experience;
- Passing an approved examination or possession of an unrestricted license from another state, district, or territory with similar standards; and
- Passing the Board's Arizona jurisprudence exam, which tests an applicant's knowledge of the Board's statutes, with a score of 75 percent or higher.

### **Complaint Resolution**

The Board investigates and adjudicates complaints involving potential unprofessional conduct by osteopathic physicians as authorized by statute. A.R.S. §32-1854 provides 53 specific actions that constitute unprofessional conduct for osteopathic physicians. When Board staff receive a complaint alleging that a physician violated this statute, they open an investigation. An investigation includes obtaining a response to the complaint and pertinent medical records from the accused physician; subpoenaing any other relevant records; and in most cases, a medical consultant review of the case. After the investigation is completed, the Board reviews the complaint and adjudicates it. At this time, the

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*Investigating and adjudicating complaints is a major Board responsibility.*

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complainant(s) and named physician have the opportunity to address the Board. The Board votes to resolve each complaint using one of its statutory nondisciplinary or disciplinary options. The Board's nondisciplinary options are:

- Dismissing the complaint; or
- Issuing a Letter of Concern.

If the Board votes to impose discipline, its options are:

- Issuing a Decree of Censure<sup>1</sup>;
- Imposing a term of probation, which can include educational requirements;
- Imposing civil penalties; and
- Suspending or revoking the physician's license.

## **Organization and Staffing**

The Board consists of seven governor-appointed members, who serve five-year terms. Five of the members must be osteopathic physicians licensed in good standing, who have practiced osteopathic medicine in the State for at least five years preceding appointment. The remaining two board members are public members who do not have any connection to medical schools or practitioners.

Currently, the Board is authorized 8 full-time equivalent (FTE) positions, but recent financial problems have reduced staff levels to 5.5 FTEs (see Other Pertinent Information, pages 29 through 34). Currently, Board staff includes an executive director; a deputy director, who is responsible for complaint investigations; a

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*Board has recently reduced staffing levels.*

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<sup>1</sup> A Decree of Censure is a formal written reprimand the Board may issue to a physician for violating Board statutes and constitutes an official action against the physician's license.

part-time medical consultant; a licensing manager; an administrative secretary; and a receptionist. Staff's responsibilities include:

- Collecting application, renewal, and other fees;
- Issuing licenses after reviewing application files;
- Investigating allegations of unprofessional conduct and medical incompetence; and
- Providing information to the public.

### **Budget**

The Legislature establishes an expenditure limit on monies the Board collects and deposits in the Board's fund. This fund contains revenues derived principally from the collection of licensure application and renewal fees, and reimbursements of regulatory costs. The Board deposits 90 percent of its revenues into its fund and the remaining 10 percent into the State's General Fund.

In June 2000, the Board discovered it lacked sufficient monies to fund its operations. The Board received a loan from the Governor's emergency funds to continue operating until license renewal revenues became available. The Board has reduced budgeted expenditures and plans to seek legislation to increase its fees (see Other Pertinent Information, pages 29 through 34). Table 1 (see page 5) illustrates the Board's actual and estimated revenues and expenditures for fiscal years 1999 through 2001.

### **Audit Scope and Methodology**

Audit work focused on the Board's complaint investigation and adjudication processes, recordkeeping, and fiscal management. This performance audit and Sunset review includes findings and recommendations as follows:

**Table 1**

**Board of Osteopathic Examiners in Medicine and Surgery  
Statement of Revenues, Expenditures, and Changes in Fund Balance  
Years Ended or Ending June 30, 1999, 2000, and 2001  
(Unaudited)**

	<b>1999</b>	<b>2000</b>	<b>2001<sup>1</sup></b>
	<b>(Actual)</b>	<b>(Actual)</b>	<b>(Estimated)</b>
Revenues:			
Licenses and fees	\$280,325	\$326,861	\$357,800
Sales and charges for services	35,700	33,500	27,800
Physician reimbursements <sup>2</sup>	67,304	49,098	8,600
Fines and forfeits	<u>6,450</u>	<u>5,100</u>	<u>        </u>
Total revenues	<u>389,779</u>	<u>414,559</u>	<u>394,200</u>
Expenditures:			
Personal services	241,937	326,069	258,600
Employee related	44,495	60,975	61,900
Professional and outside services	52,711	42,932	8,800
Travel, in-state	4,001	2,117	
Travel, out-of-state	13,813	8,975	
Other operating	85,510	89,774	53,700
Equipment	<u>404</u>	<u>10,744</u>	<u>        </u>
Total expenditures	<u>442,871</u>	<u>541,586</u>	<u>383,000</u>
Excess of revenues over (under) expenditures	<u>(53,092)</u>	<u>(127,027)</u>	<u>11,200</u>
Other financing sources (uses):			
Operating transfers in (out)	2,454	(100)	
Remittances to the State General Fund <sup>3</sup>	<u>(40,667)</u>	<u>(44,196)</u>	<u>(38,500)</u>
Total other financing uses	<u>(38,213)</u>	<u>(44,296)</u>	<u>(38,500)</u>
Excess of revenues under expenditures and other financing uses	(91,305)	(171,323)	(27,300)
Fund balance, beginning of year	<u>298,782</u>	<u>207,477</u>	<u>36,154</u>
Fund balance, end of year	<u>\$207,477</u>	<u>\$ 36,154</u>	<u>\$ 8,854</u>

<sup>1</sup> The Board was unable to estimate 2001 physician reimbursements and fines and forfeits because the amounts fluctuate significantly from year to year. The amount presented for physician reimbursements represents the actual amounts collected through February 14, 2001. No fines and forfeits have been collected to date. Also, in response to a projected revenue shortfall, the Governor's Office required the Board to reduce its total expenditures to \$383,000. See Other Pertinent Information on pages 29 to 33 for further information.

<sup>2</sup> The Board is authorized to collect reimbursements from physicians for such costs as monitoring physicians on probation.

<sup>3</sup> As a 90/10 agency, the Board remits all of its revenue from fines and forfeits and 10 percent of its revenue from licenses and fees, sales, and charges for services to the State General Fund.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for the years ended June 30, 1999 and 2000; *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 1999 and 2000; the Board's *Budget Request* for fiscal years 2002 and 2003, and the Board's listing of expected 2001 expenditures.

- The Board needs to impose disciplinary action when physicians violate statutes and improve its complaint investigation process (see Finding I, pages 9 through 16);
- The Board needs to properly investigate malpractice complaints and improve the timeliness of complaint resolutions (see Finding II, pages 17 through 22);
- The Board needs to improve complaint recordkeeping (see Finding III, pages 23 through 28); and
- The Board needs to adopt some administrative rules; receive training regarding hearing officer bias; and ensure compliance with Open Meeting Law requirements. (See Sunset Factors, pages 35 through 42.)

In addition, this report contains an Other Pertinent Information section that provides information regarding the Board's recent financial crisis that may impact licensees through service reductions and fee increases (see pages 29 through 33).

This audit used a variety of methods to study the issues addressed in this report. These methods included surveying Board members; interviewing the Board's Executive Director, Board staff, osteopathic medical association representatives, and the Board's Attorney General representative; attending Board meetings; and reviewing statutes, rules, Board meeting minutes, and Board policies and procedures. In addition, the following specific methods were used:

- To assess whether the Board's adjudication decisions were adequately supported and to assess the quality of investigations, auditors reviewed a random sample of 30 complaints closed in the past three fiscal years, all 28 Letters of Concern issued in the past three fiscal years, and the complaint records of the physicians who have received the most complaints, and conducted an analysis of the Board's complaint log.
- To assess the timeliness and appropriateness of the Board's non-malpractice and malpractice complaint processes, auditors reviewed 34 open malpractice complaints, and compared the Board's malpractice lawsuit tracking database with its complaint database and complaint files. Auditors reviewed the closed complaint sample previously discussed, a random

sample of 30 open complaints that were opened in the past three fiscal years, and a random sample of 34 open malpractice complaints, and compared the Board's malpractice lawsuit database with its complaint database and complaint files.

- To assess the quality of the Board's complaint recordkeeping, auditors compared 50 complaint files from the random samples of closed and open complaints previously discussed with the Board's complaint database and computerized complaint log, compared the complaint database and complaint log to determine completeness, and observed the Board's procedures for handling complaint files.
- To provide information regarding the Board's financial problems, auditors reviewed correspondence between the Board and the Governor's Office of Strategic Planning and Budgeting, an October 2000 financial review conducted by the Arizona Department of Administration General Accounting Office, and documentation of Board reimbursement charges, and analyzed revenues and expenditures for the past three fiscal years.
- To assess the timeliness of issuing licenses and the accuracy of the licensure database, auditors reviewed a random sample of 50 licensing files for physicians who renewed their licenses for 1999.
- To determine whether the Board provides consumers with accurate and complete information about licensed osteopaths, including complaint histories, auditors posing as members of the public made three calls to the Board requesting information and compared the information provided to the Board's complaint records.
- To determine whether the Board complies with state procurement regulations, auditors reviewed documentation for four service contracts.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members of the Board of Osteopathic Examiners in Medicine and Surgery, the Executive Director, and staff for their assistance throughout the audit.



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## FINDING I

# THE BOARD SHOULD TAKE DISCIPLINARY ACTION WHEN PHYSICIANS VIOLATE STATUTES

The Board needs to consistently discipline physicians when they violate its statute defining unprofessional conduct. The Board can protect the public by investigating complaints against physicians and taking appropriate action to reprimand or rehabilitate them. However, the Board is not consistent in ensuring that disciplinary action is taken when physicians violate its statutes. To enhance its ability to discipline, the Board should make a number of improvements to its investigation and adjudicatory decision-making processes.

### Discipline Has Essential Role in Public Protection

One of the Board's main responsibilities is to investigate and adjudicate instances where doctors may have violated the Board's statute governing unprofessional conduct. A.R.S. §32-1854 provides 53 actions that constitute unprofessional conduct including abuse of alcohol or drugs, committing a felony, or failing to maintain patient medical records. Most complaints the Board receives involve quality-of-care issues, such as misdiagnoses or failure to render treatment, that can result in patient harm or death. The Board's statutes clearly define the appropriate adjudicatory action the Board should take in response to complaints. Specifically, the Board should:

One of the most common potential violations cited in complaints is A.R.S. §32-1854(6), "Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard."

- Dismiss a complaint only if its investigation found the complaint without merit;

- Issue a Letter of Concern if the Board is concerned about a physician's actions, but lacks sufficient evidence to prove a statutory violation;
- Impose one of its disciplinary options, which range from a Decree of Censure to Revocation, when the Board finds a physician guilty of unprofessional conduct.

The Board can use its disciplinary options to fulfill its public protection mandate. By imposing discipline, the Board can discourage future substandard care or other violations by both the physician found guilty of unprofessional conduct as well as the profession as a whole. Further, it allows the Board to communicate the expected standard of care. In addition, imposing discipline is the only means the Board has to ensure that physicians who lack needed skills receive additional education or training.

### **Board Does Not Take Disciplinary Action When Warranted**

The Board does not take disciplinary action against physicians in all cases where it is warranted. The Board has issued nondisciplinary Letters of Concern to physicians who violated statutes. Additionally, the Board has dismissed complaints when physicians may have violated statutes.

#### ***Letters of Concern issued when disciplinary action warranted—***

The Board has issued nondisciplinary Letters of Concern when disciplinary action should have been taken. Letters of Concern should be used in instances where there is insufficient evidence of a violation of the Board's unprofessional conduct statute, but the Board wants to communicate and record its concern about the physician's actions. Auditors reviewed all 25 complaints the Board resolved with a nondisciplinary Letter of Concern during the last three

<b>Letter of Concern</b>
A.R.S. §32-1800 defines a letter of concern as "an advisory letter to notify a physician that while there is insufficient evidence to support direct action against the physician's license there is sufficient evidence for the Board to notify the physician of its concern.

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*Letters of Concern issued rather than discipline.*

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fiscal years.<sup>1</sup> Auditors found that the Board issued Letters of Concern when there was evidence of statutory violations in 18 of the 25 complaints. Consequently, discipline would have been appropriate in these instances. These complaints involved violations such as failure to diagnose life-threatening illnesses and using potentially addictive drugs prescribed for a patient. Following are two specific examples:

- The Board issued a Letter of Concern to a physician for “lack of appropriate evaluation and follow-up on a patient who was significantly ill” after investigating a malpractice settlement involving a patient’s death due to toxic shock. During the investigative hearing the Board questioned the physician’s judgment regarding his failure to follow-up with the patient or order blood tests. The physician admitted there were problems with the care he provided but informed the Board that he had changed his procedures for dealing with acutely ill patients.
- In another instance, the Board issued a Letter of Concern to a physician after the Board investigated the disciplinary action taken against him in another state where he was also licensed. The physician was disciplined in Florida for failing to diagnose a patient’s lung cancer after reviewing four different chest X-rays. Florida issued a reprimand, a \$3,750 fine, and required additional medical education. The physician also held licenses in Ohio and Pennsylvania. For this same violation, he was issued an \$800 penalty by Pennsylvania, and surrendered his Ohio license in lieu of formal proceedings.

In response to auditors’ questions, Board members acknowledged using Letters of Concern for statutory violations. One Board member noted that Letters of Concern are used “as a ‘wakeup call’ to a physician we do not expect to see before the Board again.” However, 18 of 28 physicians who received Letters of Concern in the past three years had a prior history of multiple complaints and 11 received subsequent complaints. Transcripts of investigative hearings also indicate a reluctance to take disci-

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<sup>1</sup> The Board issued 28 Letters of Concern in the past three fiscal years; however, three were inappropriately issued in conjunction with probation, which is a disciplinary action.

plinary action. For example, one Board member who agreed that a physician had violated a Board order argued against disciplining the physician by stating, “I don’t see the point in giving him a penalty.” Consequently, the Board issued a Letter of Concern.

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*Some complaints were inappropriately dismissed.*

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***Complaints dismissed when evidence of statutory violations exists***—While the Board receives many meritless complaints that it appropriately dismisses, it has dismissed some complaints despite evidence of statutory violations. Although auditors identified a small number of inappropriate dismissals, this is a significant concern because dismissing a complaint communicates to the public that the allegations against the physician were without merit. Further the Board cannot use a prior dismissed complaint to impose progressive discipline if a doctor repeats a violation. Auditor observation of Board meetings and review of 30 closed complaint files identified 4 instances in which the Board dismissed complaints despite evidence of statutory violations that would warrant disciplinary action.

### **Several Changes Would Enhance the Board’s Ability to Impose Disciplinary Action**

The Board should implement changes to improve its existing investigative and decision-making processes. Improving these processes should ensure that its investigations are complete and establish sufficient evidence of statutory violations, and therefore enhance its ability to impose discipline. Additionally, the Board should ensure consistent and appropriate decisions by implementing additional decision-making processes.

***Investigations should be improved***—The Board should strengthen its complaint investigations in a number of ways. Specifically:

- The Board’s investigative staff should address all of the complainant’s allegations. It is essential to address each allegation individually because there may be instances where only one of many allegations constitutes a violation. Auditor review of 30 closed complaint files noted 8 instances in which it was clear that the Board’s investigations addressed some, but not

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*Board investigations should address all allegations.*

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all, of the complainant's allegations. Since audit work was completed, the Board's investigative staff have revised their report to the Board so that it more clearly states the allegations and potential statutory violations. However, the report does not specifically associate a potential violation with each allegation.

- Further, Board staff should clearly communicate whether its investigation verified the complaint allegations. A review of closed complaint files noted that the Board's staff does not clearly communicate whether the investigation evidence substantiated the complainant's allegations. Instead, its staff prepare a report summarizing the complainant's concerns and the named physician's response.
- Similarly, the Board's medical consultant, who is a licensed physician, should clearly state whether her review found that the named physician did or did not meet the standard of care. According to the job description, the medical consultant is supposed to make a recommendation regarding the reasonableness and appropriateness of the medical treatment and is authorized to make decisions regarding appropriate medical practice. However, the medical consultant currently only summarizes the medical records and describes what happened to the patient, but does not state whether the physician met the standard of care.

There are at least two reasons why the medical consultant's report should state whether the standard of care was met. First, she is the State's only expert witness and represents the State's position on whether the physician met the standard of care. In the absence of such evidence, the only expert testimony before the Board, regarding the standard of care, is from the named physician. Second, the Board's professional members should not be in the position of providing the State's expert evidence regarding the standard of care. Their duty, while applying their expertise, is to determine whether the physician met the standard of care based on the evidence.

- Finally, Board investigative staff should interview all complainants. Board investigation guidelines require that complainants are interviewed. However, a review of 30 closed complaint files found that complainants were interviewed in

only 14 complaints, including some instances in which the complainant initiated contact with the Board or Board staff called complainants to ask if they still wanted to pursue the complaint. Since audit work was completed, the Board's investigative staff have developed a form to record complainant interviews.

The Board needs to take action to resolve these concerns with its investigations. In order to address similar problems, the Board of Medical Examiners (BOMEX) has implemented a procedure that identifies each specific allegation and associated statutory violation. The investigators use this to confirm the allegations with the complainant and require the accused doctor to respond to each individual allegation. Further, the BOMEX medical consultant determines whether the doctor met the standard of care for each allegation involving quality of care, and staff prepares a report for the Board indicating whether a statutory violation was or was not substantiated for each allegation.

***Board should implement additional decision-making processes***—In addition to enhancing its investigations, the Board should improve its decision-making process by implementing procedures and guidelines for producing consistent and appropriate decisions. Specifically:

- Prior to adjudicating complaints, the Board should determine if statutory violations have occurred for each allegation. After attending Board meetings and reviewing closed complaint files in which transcripts were available, auditors noted that the Board does not formally determine whether a violation occurred prior to deciding whether or not to impose discipline. Further, auditors found that the Board does not systematically address each allegation when making decisions. The Attorney General's Handbook recommendations for adjudicatory proceedings state that the purpose of an adjudicatory proceeding is to determine whether alleged acts violate statutes or rules. Consequently, the Board should first determine whether each allegation constitutes a violation, and then take appropriate adjudicative action.
- Further, the Board should develop and implement disciplinary guidelines to assist it in making consistent and appropriate decisions. Other regulatory boards have established

## ***Finding I***

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### *The Board needs disciplinary guidelines.*

disciplinary guidelines. These guideline include such things as the range of appropriate disciplinary actions for different types of violations. Further, they consider violation severity and disciplinary history as well as mitigating factors, such as absence of patient harm. The Board should establish similar disciplinary guidelines.

- Finally, the Board should consistently review a named physician's disciplinary and letter of concern history when adjudicating complaints. Currently, the Board receives a physician's history only when it requests a copy. Without reviewing a physician's disciplinary and letter of concern record the Board could fail to impose progressive discipline when physicians repeat violations. Other regulatory boards, such as the Board of Dental Examiners, always receive a named physician's complaint history to use when adjudicating complaints.

Since audit work was completed, the Board has begun to receive the disciplinary and letter of concern history of each named physician prior to adjudicating the complaints.

## **Recommendations**

1. The Board should take disciplinary action, rather than issue letters of concern or dismiss complaints, when it determines that a statutory violation has occurred.
2. Board staff should ensure complete investigations are performed by including at least the following procedures:
  - a. Identifying each allegation and potential associated statutory violation;
  - b. Requiring the named physician to address each potential violation;
  - c. Interviewing all complainants to confirm the allegations; and
  - d. Providing the Board with reports indicating whether the evidence collected verifies each allegation of statutory violation.
3. The Board's medical consultant should be required to provide an opinion on whether the named physician's actions met the standard of care for each allegation involving quality of care.
4. As part of its adjudication process and prior to taking appropriate action, the Board should determine and include documentation of whether a violation occurred for each alleged statutory violation.
5. The Board should establish and use disciplinary guidelines that include consideration of violation severity, the need to take progressive action, and mitigating factors.
6. The Board should consistently receive and review the named physician's disciplinary and letter of concern history as part of the adjudication process.

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## FINDING II

## THE BOARD CAN IMPROVE COMPLAINT PROCESSING

The Board needs to improve its complaint processing. First, the Board has not investigated all malpractice lawsuit settlements and judgments as statutorily required. In addition, the Board should immediately address extremely slow malpractice complaint investigations as well as make some general enhancements to improve timeliness for the processing of all complaints.

### **Board Investigates Malpractice and Nonmalpractice Complaints**

The Board investigates complaints from two main sources: 1) the public, who themselves and their families are generally patients; and 2) attorneys, and others who are statutorily mandated to report complaints to the Board. The majority of the complaints opened as a result of mandatory reports involve malpractice lawsuits. In malpractice lawsuits, the plaintiff's attorney must provide the Board with case documentation 30 days following a settlement or judgment. Although the Board investigates all complaints in a similar manner, nonmalpractice and malpractice complaints have significant differences. Nonmalpractice complaints generally involve recent incidents and an actively participating complainant. In contrast, for malpractice complaints the Board must rely on the evidence presented in the malpractice lawsuit as its main source of information.

### **Board Has Not Investigated Malpractice Cases with Settlements and Judgments**

The Board has not opened investigations for malpractice settlements and judgments as mandated by statute. A.R.S. §32-3203 requires all health profession regulatory boards to investigate malpractice cases when the plaintiff's attorney provides notification of a malpractice lawsuit's settlement or judgment.

This requirement helps ensure that malpractice cases are reviewed by the regulatory board, which can take action beyond the civil court to protect the public from further possible harm.

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*The Board needs to investigate all malpractice cases with settlements and judgments.*

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However, the Board is not complying with the statutory requirement to investigate malpractice cases that have settlements or judgments. Beginning in fiscal year 2000, rather than opening investigations, the Board began recording on a list the notices of the malpractice complaint settlements and judgments it received. As of August 2000, the list included at least 45 settlements and judgments for which the Board had not opened investigations. Settlements in these cases ranged from \$450 to \$3 million, and concerned issues such as failing to diagnose life-threatening illnesses and surgical errors. Further, one physician on the list had three uninvestigated malpractice settlements. The Board needs to comply with statute and protect the public by investigating all malpractice settlements and judgments. Beginning in March 2001, a physician is volunteering his services to review and prepare the medical malpractice cases for Board review.

### **Complaint-Processing Time Frames Can Be Improved**

In addition to opening malpractice complaint investigations as required, the Board should work to reduce the time it takes to resolve complaints. The Board's processing of malpractice complaints is extremely slow and fails to protect the public. The resolution time of non-malpractice complaints is better, but still could be improved. Improved management will enable the Board to resolve all complaints in a more timely manner.

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*Some malpractice complaints open more than 600 days.*

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***Malpractice complaint investigations are extremely slow***—The Board's malpractice investigations are excessively slow. Auditor review of 14 open malpractice complaints found most malpractice investigations completely stalled, even though the lawsuits had been settled and the Board had the necessary documents to complete its investigation. Ten of the 14 complaints had been open for more than 600 days. Further, the Board has not taken any action on six of these complaints for over one year. According to the Board's complaint log, the majority of these complaints have been assigned to the Board's medical consultant. The Board needs to make resolving these complaints a priority, because in-

action could lead to potentially dangerous physicians continuing to practice unchecked. For example, one physician has been named in two unresolved malpractice complaints and had a third malpractice complaint, which resulted in a Letter of Concern:

- The ***first*** malpractice complaint was opened more than five years ago, in August 1995. It was filed after a settlement agreement in the sum of \$233,000 was reached for a surgical error that resulted in complications and the need for additional surgery. Three months after the complaint was opened, the Board's medical consultant concluded that the physician had committed a breach of practice standards. In June 1996, the Board voted to determine whether the physician had any other similar incidents, but took no action regarding the findings. There was no evidence in the Board's records that any further action was taken until June 2000, when several subpoenas were sent to hospitals requesting information about the physician's history. The Board dismissed this complaint in February 2001 after the physician stated he had changed his procedures.
  
- A ***second*** malpractice complaint was opened in August 1996, two months after the Board voted to investigate the physician's record. This complaint pertained to a settlement against the physician for failing to notify a patient about a pap smear that tested positive for cancer. The patient subsequently died of the disease. Three years later, in August 1999, the Board issued a Letter of Concern to the physician about this complaint after he stated he had changed his procedures.
  
- A ***third*** malpractice complaint was opened in December 1998 after a summary judgment in the physician's favor, which also involved a patient who had not been notified about a pap smear that tested positive for cancer. The Board dismissed the complaint in December 2000.

In addition, auditors reviewed 18 malpractice complaints that were opened when the malpractice lawsuit was still pending. Some of these complaints could remain open for years until the lawsuits are resolved because the Board lacks sufficient information to complete its investigation. For example, in August 1998, the Board opened complaints against five physicians named in a

lawsuit that did not specify the nature of the alleged malpractice. In response to the complaints, all five physicians indicated they were unaware of the reason for the lawsuit. These complaints will likely remain open on these physicians' records until the lawsuit is resolved. In contrast, there may be instances where the Board believes issues involved in a pending malpractice lawsuit constitute an immediate threat to the public. In these instances, the Board should conduct an independent investigation to ensure prompt public protection.

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*The Board underreports complaint resolution time frames.*

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***Non-malpractice complaint resolution time frames exceed standard***—Although more timely than malpractice complaints, non-malpractice complaint resolution time frames are slower than the Board reports and exceed the recommended 180-day time frame. The Board reported that it resolved complaints in an average of 187 days for the past three fiscal years.<sup>1</sup> However, the Board uses the date it opens complaints to calculate its timeliness, instead of the date the Board receives the complaint. As a result, the Board underreports its complaint resolution time frames. A review of a sample of 30 closed non-malpractice complaints found that the Board took an average of 291 days to resolve complaints from the date of receipt.

***Management could make changes to improve timeliness***—Improvements are needed to ensure that all complaints are resolved in a timely manner and that the Board's small backlog of open complaints does not increase. Complaint resolution delays have resulted in a small backlog of open complaints. According to the Board's complaint log, it had approximately 223 pending complaints as of August 15, 2000, which is approximately the average number of complaints the Board receives per year. As a result, the Board's effectiveness may be impacted. For example, the Board's ability to appropriately protect the public is limited because of slow investigations and a complaint backlog which delays its action on quality-of-care complaints. Further, information to support allegations may become harder to obtain as time passes.

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<sup>1</sup> Average of fiscal years 1998, 1999, and 2000 "average number of days to resolution" as reported in the 2001-2003 Arizona *Master List of State Government Programs*.

## ***Finding II***

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Better management of the complaint process could improve timeliness. Specifically:

- The Board has not met its process deadlines. For example, the Board has set a 7-day deadline to open complaints after receipt. However, Board staff took more than 9 days to open the majority of complaints reviewed, with the slowest taking 75 days.
- In addition, the Board lacks deadlines for some complaint processes. For example, the Board has no deadline policy for subpoenaing medical records. Auditors found instances where records were subpoenaed months after complaints were opened, delaying the investigations until the records were received for review.
- Further, the Board lacks time standards for medical consultant review. The majority of the Board's complaints involve quality-of-care or malpractice issues that most likely require medical consultant review. However, the Board does not track when complaints are assigned to the medical consultant and has not developed performance standards for that position.
- Finally, the Board lacks policies and procedures to prioritize investigations based on the severity of the complaint. Other medical regulatory boards, such as the Board of Medical Examiners, prioritize complaints in an effort to ensure that the more serious complaints are resolved in a timely manner.

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*The Board needs performance standards for its medical consultant.*

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## **Recommendations**

1. The Board should ensure it fulfills its responsibility to protect the public in regard to malpractice complaints by:
  - a. Immediately opening complaint investigations on the approximately 45 malpractice settlements and judgments for which it received notice, but has not yet initiated an investigation;
  - b. Prioritizing the resolution of open malpractice complaints based on the severity of the complaints; and
  - c. Not opening malpractice investigations until it receives notice of a settlement or judgment unless the Board believes a physician involved in a pending malpractice lawsuit may be an immediate threat to the public.
2. The Board should amend its current complaint policy to add process deadlines for each step of the complaint process.
3. The Board should generate monthly management reports that track all steps in the complaint process to ensure process deadlines are met.
4. The Board should develop performance standards for medical consultant reviews, including the number of reviews to be completed and the amount of time it should take to complete the reviews.
5. The Board should develop and implement policies and procedures to prioritize all complaints based on severity.

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## FINDING III

# POOR COMPLAINT RECORDKEEPING NEGATIVELY IMPACTS COMPLAINT PROCESS AND PUBLIC INFORMATION

Accurate and complete complaint records are necessary for the Board to operate effectively and efficiently. However, the Board's complaint recordkeeping is inaccurate and insufficient, limiting the Board's ability to protect the public. In addition, a recent statutory mandate to delete Board complaint records will restrict both the Board's and the public's access to physicians' complaint histories.

### **Recordkeeping Problems Impact Complaint Process and Public Information**

Flaws in the Board's complaint recordkeeping limit its ability to manage the complaint process and provide public information. Problems with the complaint database, complaint log, and files impact the efficiency and effectiveness of the Board's complaint process. In addition, these problems can result in the Board providing inaccurate or incomplete information to the public.

***Poor recordkeeping problematic***—The Board's complaint recordkeeping is inaccurate, insufficient, and redundant, and negatively impacts the Board's management of the complaint process. Specifically:

- **The complaint database is inaccurate and incomplete**—The Board uses a database as its main method of recording complaint information. However, the database contains duplicate complaints and inaccurate information in important fields, such as those that record the Board's actions. Of equal concern is the information that the database does not contain. Although the database has fields to capture important dates, such as when a complaint is assigned to the various steps in the process, these fields are typically not used and therefore the database cannot be used to track where complaints are in

the process. Finally, auditors found that the database did not include at least 17 complaints listed on the Board's complaint log.

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*The complaint database  
not used to full potential.*

These database problems result from a general lack of management controls. First, Board management has chosen not to use the database to track complaints; therefore, the database cannot provide useful information regarding complaint-processing steps. Further, the Board lacks edit controls and policies to ensure staff enter accurate information. The Board also lacks a method to routinely check the database for accuracy and completeness. As a result, the Board's database cannot be used to its full potential as a complaint-tracking tool. The Board needs to correct the database errors and use it to track where complaints are in the process. In addition, the Board needs to establish a method to routinely check the database for accuracy and completeness.

- **Complaint log duplicative and insufficient**—In addition to the database, the Board also maintains a computerized complaint log. However the log is redundant and is insufficient as a complaint-tracking tool. The complaint log includes only basic information, most of which is already in the complaint database. It differs from the database only in that it records the status of pending complaints; i.e., where they are in the complaint process. However, because the complaint log is a word processing document, the Board cannot use it to create management reports that include overall time frames or aggregate status information, such as how many complaints have been assigned to the medical consultant. As a result, Board staff is doing duplicative work by updating the log and not obtaining sufficient benefits. The Board should stop using this complaint log.
  
- **Complaint files not controlled**—Further, the Board lacks controls over the location of its pending complaint files. Although closed complaints are filed by complaint number, the Board lacks procedures to control the location of pending complaint files. According to the Board's complaint log, it appears that three complaint files have been lost prior to adjudication, essentially making further action on those complaints impossible.

***Public information is potentially inaccurate and incomplete—***

Because the Board uses its inaccurate and incomplete database to provide public information, there is no assurance that the information the Board gives to consumers is correct. This may not only prevent consumers from receiving complete information about a physician's complaint history, but can also unfairly impact physicians. For example:

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*The public could receive inaccurate physician complaint histories.*

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- One physician's cover sheet, which contains the information that the Board provides in response to a public information request, did not include the Decree of Censure or the probation terms the Board imposed for a malpractice complaint.
- In contrast, another physician's cover sheet includes information on two complaints; however, one complaint is the duplicate of the other. The physician actually has only one complaint.

Providing accurate and complete information is essential. Consumers need accurate information to make informed decisions. Further, physicians should be able to expect the Board to present correct information.

**Wording of Statutory Mandate to Delete Records Could Have Negative Consequences**

The Board's ability to protect the public will also be impacted by a recent statutory change that requires the Board to delete certain complaint records. Recent statutory amendments have limited public information on physicians' complaint histories for both the osteopathic and allopathic medical boards. However, the wording now included in the Board's statutes is more far-reaching than the changes in the BOMEX statutes and may limit the Board in using past complaint records in its investigations and adjudications, and will also result in the public receiving incomplete complaint histories.

***Statute requires deleting complaint records—***In the past two years, the Legislature has amended statutes to limit public access to physicians' complaint histories. Specifically, Laws 2000, Chap-

ter 176 states that the Board must delete records of complaints resolved without discipline:

- **Three** years after the receipt date, if dismissed with prejudice because the Board determined the complaint did not fall within the Board’s jurisdiction;
- **Five** years after the receipt date, if dismissed without prejudice after a settlement conference; and
- **Five** years after the receipt date if the Board issues a Letter of Concern.<sup>1</sup>

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*BOMEX’s statutes do not require deleting complaint records.*

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In contrast, the Legislature amended BOMEX’s statutes in 1999 to limit public information on complaints, but did not require record deletion. Specifically, BOMEX’s statutes mandate the provision of public information regarding complaints resolved in the past five years and BOMEX provides all disciplinary actions. That amendment did not include any reference to permanently deleting records, and BOMEX staff and the Board have the ability to use the complete complaint histories in investigations and adjudications. Further, five comparable Arizona health profession regulatory boards have no statutory time limit on providing public information about a licensee’s complaint history.

***Deleting records will hamper the Board’s ability to protect the public***—The Board’s requirement to delete nondisciplinary complaint records poses a number of other challenges:

- First, by basing the time frame for complaint record retention on the receipt date, untimely complaint investigations could result in complaint records being deleted soon after adjudication.
- Second, the Board does not specify whether it dismisses complaints with or without prejudice.

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<sup>1</sup> Dismissal “with or without prejudice” is a legal term that relates to the Board’s ability to later pursue compliant allegations that were dismissed. Complaints dismissed without prejudice can be revisited by the Board because all facts in the case were not considered. In contrast, complaints dismissed with prejudice cannot be reconsidered.

- Third, the Board's Attorney General representative has advised the Board to provide public information on dismissed complaints for the past three years rather than five years.
- Finally, despite the requirement to delete records of Letters of Concern, the Board's statutes also state that Letters of Concern may be used in future adjudicative decisions. This may prove impossible if the records are deleted.

The requirement to delete complaint records could also have a negative impact on the Board's ability to protect the public for two reasons:

- First, deleting complaint records (database and file documentation) would eliminate information that illustrates a pattern of behavior and would also result in investigation evidence being destroyed. For example, a physician was given a Letter of Concern for a complaint received in 1996 for failure to provide medical records. This physician's complaint record includes five dismissed complaints and one prior Letter of Concern for failure to provide medical records. Further, in 1994, a Board staff review of the physician's files sustained the allegations of improper recordkeeping for one of these dismissed complaints. Soon this prior history will not be available to the Board or its investigative staff.
- Second, deleting complaint records will result in the public receiving incomplete complaint histories. An auditor, posing as a member of the public, requested information from the Board about another physician recently featured in a newspaper article that noted the physician had 51 complaints. This physician has not been disciplined for any of these 51 complaints, which cover a 24-year period. Due to the new statute, the Board only provided information about the five dismissed complaints from the past three years, a pending complaint, and a Letter of Concern from 2000.

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*Deleting complaint records will limit public information.*

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In order to prevent these problems, the Legislature should amend A.R.S. §32-1803(A) to eliminate the requirement to delete complaint records. The Legislature could amend the Board's statutes to mirror BOMEX's statute to provide consistency between the boards for patients who may receive treatment from both allopathic and osteopathic physicians.

## **Recommendations**

1. The Legislature should consider amending A.R.S. §32-1803(A) to eliminate the requirement to delete complaint records. The Legislature could consider amending the Board's statutes to be consistent with BOMEX's statutes.
2. The Board should ensure the accuracy and completeness of its complaints database by:
  - a. Developing a procedure and time frame to identify and correct errors;
  - b. Developing and implementing a policy to routinely monitor the databases's accuracy and completeness;
  - c. Working with its computer consultant to revise the database to include edit controls and receipt date, and ensure the database captures other needed management information such as the final adjudication of complaints; and
  - d. Developing a policy for data entry to help ensure information is entered in the correct fields.
3. The Board should discontinue using its word processing complaint log. For future complaints, the Board should ensure staff complete the data fields in the complaint database and use it to track the complaint process.
4. Board management should use the complaint database to generate on at least a monthly basis routine reports that indicate complaint timeliness and status.
5. The Board should develop a procedure to specifically account for the location of open complaint files.

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## OTHER PERTINENT INFORMATION

During this audit, other pertinent information was obtained about the Board's current financial crisis and how it was resolved. The Board has had to address its lack of funds to support operations by obtaining a loan from the Governor and reducing staff and budgeted expenditures. This financial crisis resulted from several fiscal management problems. In response, the Governor, Department of Administration (DOA), and Board members have increased oversight over the Board's finances to prevent future problems.

### **Board's Financial Crisis Has Significant Impact**

The Board has experienced a financial crisis that will impact its operations and service levels significantly. In June 2000, the Board realized that it lacked sufficient monies to continue operations and had to obtain a loan from the Governor's emergency funds. As a result, the Board had to reduce its budgeted expenditures, which will negatively impact the Board's operations and services.

***Board experienced financial crisis***—In late June 2000, the Board faced a financial emergency that required a loan from the Governor's emergency funds to resolve. As of June 30, 2000, the Board had approximately \$35,000 in resources, which at the time was not sufficient to fund the Board for one month. Further, the majority of the Board's fiscal year 2001 revenues would not be available for months because license renewal fees are typically received at the end of the calendar year.

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*The Board lacked monies to fund its operations.*

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*The Board received a loan from the Governor.*

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In response to this severe condition, the Governor provided a loan to the Board from the Health Crisis Fund (Fund). The Fund was established in 1997 with monies from the Medically Needy Account of the Tobacco Tax and Health Care Fund. In order to appropriately use the Fund, the Governor must declare a health crisis or the potential for a health crisis. On July 21, 2000, the Governor signed Executive Order 2000-15, declaring a significant potential for a health crisis because osteopathic physicians would

no longer be regulated if the Board ceased to operate. As part of that order, the Governor loaned \$125,000 to the Board.

***Financial crisis will significantly impact the Board***—The Board's financial crisis will have a considerable impact, resulting in increased fees, reduced fiscal year 2001 budgeted expenditures, and reduced services.

- First, the Board will have to increase fees to repay the loan it received from the Governor's Office. As a condition of the loan, the Board agreed to seek statutory fee increases for all fees including license applications and renewals. On January 2, 2001, the Board voted to increase several of its fees, which included raising the license renewal fee from \$200 to \$300.
- Second, the Board has reduced staffing levels. Although the Board is authorized 8 FTE employees, it can pay only 5.5 FTEs.
- Third, the Board has had to delay payments and reduce services. The Board has delayed payment of its rent and risk management costs, which should have been paid at the beginning of fiscal year 2001 for the entire fiscal year. In addition, the Board has made other changes to reduce expenditures for other services, such as no longer returning all long-distance telephone calls. The Board states that it still returns appropriate long-distance calls.
- Finally, the Board has had to cancel one of its three service contracts. In fiscal year 2000, the Board held contracts for rule writing, the development of an on-line licensure application system, and database development and support. The Board canceled its rule-writing contract. As a result, the Board will have difficulty developing needed rules (see Sunset Factors, pages 35 through 42).

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*The Board has reduced staffing levels.*

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### **Fiscal Mismanagement Caused Funding Shortage**

The Board's financial crisis resulted from a number of fiscal management problems. First, the Board's revenue projections were overly optimistic, resulting in it receiving appropriation

authorizations that were not matched by revenues. Second, the Board's expenditures consistently exceeded revenues; consequently the Board used its fund balance to pay for expenditures. Third, the Board's inaccurate accounting caused it to overspend its expenditure limit. Finally, because the Board's financial controls are inadequate, it failed to prevent and identify the crisis in a timely manner.

***Board made inaccurate revenue projections***—The Board's overly optimistic revenue projections resulted in the Legislature giving the Board spending authority that greatly exceeded its revenues. The Board's actual revenues are relatively stable because they are primarily based on license renewals and new license applications, both of which remain relatively constant each year. Since 1998, annual revenues have averaged \$360,000. However, Board projections for revenue growth far exceeded the level of revenues the Board could logically expect. Additionally, for the fiscal year 2000 budget the Board projected revenues of approximately \$500,000, because it anticipated increased licensure growth due to the location of an osteopathic medical school in Arizona. The Legislature increased the Board's spending authority based on the Board's projected revenues. Although the projected revenues did not materialize, the Board proceeded to spend as though it had received the projected revenues.

***The Board has overspent revenues***—In addition, in the past three fiscal years, the Board has spent more than it collects in revenues, mostly for personnel-related expenditures. For example, in fiscal year 2000, Board expenditures were approximately \$541,600, while revenues were \$360,000. As a result, the Board's cash balance has declined from approximately \$568,000 in July 1997 to approximately \$36,000 in June 2000 (see Table 1, page 5).

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*The Board spent more than its actual revenues.*

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Much of this overspending related to an increase in personal services and employee-related expenditures over the past few years. For example, the Board's Executive Director's salary increased 25 percent from fiscal year 1999 to fiscal year 2000. In addition, the Board added 2.5 FTE positions as part of its fiscal year 2000 budget.

***Accounting error compounded problem***—Further compounding the problem, the Board incorrectly accounted for revenues as re-funded expenditures. This resulted in the Board technically ex-

*The Board exceeded its expenditure limit.*

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ceeding its spending authority. The Board receives reimbursements from doctors for some of its costs to monitor their compliance with probationary requirements. In addition, \$20 from every Board license renewal payment is supposed to fund the Board's Impaired Physician Program. However, the Board incorrectly accounted for these monies as negative expenditures, which would act as a reduction in expenditures. As a result, it appeared that the Board's expenditures were within its fiscal year spending limit of approximately \$492,000. Instead, the Board's actual expenditures were approximately \$523,000.

***Internal financial controls inadequate***—Finally, further complicating the situation, the Board lacked appropriate internal financial controls to prevent the Board from exceeding its spending authority. This lack of internal financial controls was identified by a fiscal year 2000 internal control and financial compliance review conducted by the Arizona Department of Administration General Accounting Office (GAO). The October 25, 2000, GAO review included 13 findings and related recommendations. Some of these findings directly concerned problems associated with the Board's financial crisis. For example, the Board did not reconcile its revenues and expenditures. Each month the Board receives a statement from the Department of Administration listing the deposit and expenditure activity for the preceding month. All state agencies are expected to reconcile this statement with their own records, similar to balancing a personal checkbook, to prevent problems such as overspending. However, the Board failed to conduct these reconciliations and, as a result, was unaware of its significant financial problem until it became an emergency.

### **Increased Oversight Should Prevent Future Problems**

Increased oversight by the Governor's Office, DOA, and Board members should prevent future fiscal mismanagement. Specifically:

- As part of its loan to the Board, the Governor's Office of Strategic Planning and Budgeting (OSPB) made several conditions to reduce expenditures and increase oversight. The conditions included the following:

## ***Other Pertinent Information***

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*OSPB has increased oversight of the Board's finances.*

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- Repayment of the \$125,000 loan by June 30, 2002;
  - Submission of a revised budget reducing projected expenditures;
  - Preparation of monthly financial statements including revenues, expenditures, and the cash balance that should be compared with the revised budget; and
  - Reduction in the Executive Director's salary to the fiscal year 1999 level and freezing of other staff salary increases unless approved by OSPB.
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- In addition, increased GAO oversight will strengthen internal financial controls over Board monies. At the Board's request, GAO conducted its October 2000 review and made several recommendations to improve internal financial controls. The Board, in its response to the review, stated that it has corrected or plans to correct many of the problems identified. Further, when the Board has sufficient revenues, it plans to contract with GAO to provide its accounting services.
  - Finally, it appears Board members will increase their oversight of the Board's financial situation. Board members have requested more detailed monthly statements of revenues and expenditures than they received previously.

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## SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Osteopathic Examiners in Medicine and Surgery (Board) should be continued or terminated.

**1. The objective and purpose in establishing the Board.**

The Board was established in 1949 to license osteopathic physicians in Arizona. Osteopathic physicians are one of two types of physicians who are qualified for unlimited medical practice in all 50 states. Allopathic physicians, or M.D.'s, are the other. Osteopathic physicians receive similar education and training to allopathic physicians and also receive training in the musculoskeletal system and manipulation.

The Board's mission is "To protect the public health and safety of both citizens and visitors to the State of Arizona through the efficient and effective regulation of the practitioners and practice of osteopathic medicine and surgery in the State."

The Board has established three goals to meet its mission. These goals are: 1) ensuring licensees are competent; 2) completing timely investigation and adjudication of complaints; and 3) providing timely and accurate information to the public.

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

The Board performs some responsibilities efficiently and effectively, but can improve its performance in others. Audit research found that the Board processes licensure applications and renewals in a timely manner. Further,

according to the Board, it created the first on-line renewal system in the country. In 2000, the Board was recognized by the association of state medical board executive directors for its on-line license renewal system. In addition, the Board appropriately monitors physicians placed on probation.

However, the Board needs to improve its efficiency and effectiveness in other areas:

- The Board needs to impose disciplinary action when warranted. Auditor review of Board complaint files and observation of Board meetings found instances when the Board did not discipline physicians who violated statute. Specifically, the Board has issued Letters of Concern when statutory violations have occurred and has dismissed complaints when violations appear to have occurred or when a Letter of Concern would have been more appropriate. The Board needs to improve investigations and develop its decision-making process to address this problem (see Finding I, pages 9 through 16).
- In addition, the Board needs to improve its complaint processing. To better protect the public, the Board should comply with statute and investigate instances where a malpractice lawsuit was resolved by settlement or judgment. In addition, some malpractice complaints have been open a significant amount of time and should be prioritized for resolution. Although its resolution of non-malpractice complaints is more timely, the Board should improve the management of its investigation process to further reduce the time it takes to resolve all complaints. (see Finding II, pages 17 through 22).
- Further, the Board needs to improve its recordkeeping. The Board's complaint database is inaccurate and incomplete and therefore cannot be used to help manage the complaint process. Auditors found problems with the other methods the Board employs to track complaints as well. Poor recordkeeping can re-

sult in the Board providing inaccurate information to the public (see Finding III, pages 23 through 28).

- Finally, the Board has experienced a significant shortfall of monies which impacts its ability to provide services. In late June 2000, the Board discovered that it had nearly expended all of its fund balance and would not receive revenues until later in fiscal year 2001. Without a loan from the Governor's emergency funds, it would have been forced to cease operating. A subsequent Arizona Department of Administration General Accounting Office review found that the Board's expenditures exceeded revenues and the Board lacked internal financial controls to identify the problem. The \$125,000 loan from the Governor's emergency funds included a number of requirements that reduced budgeted expenditures, required an increase in revenues, and mandated additional oversight. The Board has had to reduce staff and cancel a contract to reduce fiscal year 2001 budgeted expenditures (see Other Pertinent Information, pages 29 through 33).

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

The Board has effectively acted in the public interest in some areas, but can improve in others. The Board appropriately allows complainants to participate in all aspects of the complaint adjudication process. In addition, the Board provides the public with information about a physician's license and complaint history, including pending complaints. However, recent statutory changes will limit the amount of complaint information the public can receive (see Finding III, pages 23 through 28). Finally, based on the Board's advice, one of Arizona's osteopathic medical schools requires its students to attend a board meeting as a means of providing jurisprudence education.

Audit work identified some instances in which Board members appeared to have bias, or the potential for bias, and did not appropriately recuse themselves from adjudicating complaints. The Attorney General's Office

Agency Handbook states that hearing officers should recuse themselves in instances where they have bias or the potential for bias. Although this usually concerns instances where a hearing officer would be biased against the accused, it is equally important for hearing officers to show no bias in favor of the accused. However, auditors found at least five instances in which Board members had a potential bias and did not recuse themselves or refute the bias. For example, one Board member recused himself from adjudicating a complaint due to his “intense dislike for the accused doctor.” However, that Board member then inappropriately participated in the Board’s discussion regarding proposed sanctions. The Board should receive additional training from its Attorney General representative on instances where recusal is necessary.

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

According to the Governor’s Regulatory Review Council (GRRC), the Board has not adopted a substantial number of rules necessary to fulfill its statutory mandates and responsibilities. The list of needed rules is over five pages long (a full list of needed rules was provided to the Board). The needed rules include provisions for things such as teaching license and training permit fees, which the Board has charged without the necessary rules; prescribing its jurisprudence exam; and approving schools of osteopathic medicine. Further, a recently completed five-year rule review report indicates that two of the Board’s rules are inconsistent with statute and that all of the Board’s rules, since most of them were adopted between 1987 and 1993, need to be updated to improve their clarity, conciseness, and understandability. Unfortunately, the Board’s recent financial crisis resulted in the cancellation of the Board’s rule-writing contract. The Board needs to work closely with GRRC to promulgate necessary rules.

In addition, as of December 2000, the Board has not adopted licensure time frame rules that it was required by law to have in place by December 1998. A.R.S. §41-1073 required the Board to adopt time frames in rule for

issuing licenses by December 1998. Although the Board submitted proposed time frame rules in 1998, they were not accepted by GRRC. The Board submitted new proposed time frame rules to GRRC in September 2000.

**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.**

According to the Board it has encouraged public input in drafting its proposed rules. The Board created task forces to encourage input in developing its proposed rules and regulations. The Board also sought input from stakeholder groups such as the Arizona Osteopathic Medical Association.

However, the Board does not comply with all Open Meeting Law requirements. The Board complies with Open Meeting Laws regarding notifying the Secretary of State where agendas will be posted and appears to appropriately use executive sessions. However, the Board's failure to maintain complete Board meeting minutes violates Open Meeting Law requirements. Auditors reviewed Board and executive session meeting minutes for the past three fiscal years. Minutes for ten Board meetings and six executive sessions were not available. Although auditors gave the Board the opportunity to find or reproduce the missing Board meeting minutes, none were provided. The Board needs to comply with Open Meeting Law requirements by making meeting minutes available to the public within three days of a Board meeting.

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

The Board has sufficient statutory authority and disciplinary options to investigate and adjudicate complaints. However, this audit found that the Board has not imposed discipline when warranted, needs to improve its investigations, and need to develop its decision-making

process (see Finding I, pages 9 through 16). Further, the Board has failed to investigate some malpractice complaints as statutorily mandated. Finally, malpractice complaint investigations are extremely slow and the Board did not resolve non-malpractice complaints within recommended time frames (see Finding II, pages 17 through 22).

**7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

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

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

Numerous changes have been made to the Board's statutes over the years, some of which have enhanced the Board's ability to fulfill its statutory mandate. For example:

- The Board has successfully requested that additional categories of unprofessional conduct be added to its statutes, including failure to conduct a physical examination prior to prescribing medication; and
- The Board requires interns and residents to register with the Board to ensure their competency and supervision and allow the Board disciplinary authority.

- 9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset Law.**

As discussed in Finding III (see pages 23 through 28), Laws 2000, Chapter 176 amended the Board's statutes, requiring the Board to delete records of complaints resolved by dismissal or Letter of Concern. The wording of this amendment went beyond a similar 1999 amendment to the Board of Medical Examiners' statutes, which only limited public information about complaints. Deleting records could result in the Board losing access to complaint histories and investigation evidence. The Legislature could amend the Board's statutes, removing the requirement to delete.

In addition, the Board is pursuing legislation to increase its fees. A fee increase was a required condition of the loan the Board received from the Governor's Emergency funds and is needed to repay the loan.

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

Terminating the Board would harm the public health, safety, and welfare because osteopathic physicians would no longer be regulated in Arizona. In fact, the Governor declared a health emergency when faced with the prospect of the Board closing due to lack of funds. Currently, all 50 states license osteopathic physicians, and 14 states have independent osteopathic boards to regulate osteopathic physicians.

- 11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.**

Licensure is the appropriate level of regulation for osteopathic physicians. It helps ensure that applicants meet required education and training requirements and prevents unqualified or unprofessional physicians from practicing.

12. **The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Board has relied on private contractors to perform activities beyond its staff resources. For example, the Board currently contracts for the development and support of its databases, its on-line license renewal system, and participates in a state contract for its Impaired Physicians Program's laboratory testing. Further, the Board has held a contract for rule writing. The Board complied with procurement requirements in contracting for these services. However, the Board's recent financial crisis has resulted in the cancellation of its rule-writing contract. In response to its recent financial problems, the Board is considering contracting with the Department of Administration to perform the Board's accounting services.

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## **Agency Response**

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April 2, 2001

Debbie Davenport  
Auditor General  
2910 N. 44<sup>th</sup> Street, Suite 410  
Phoenix AZ 85018

RE: Performance Audit

Dear Ms. Davenport:

Enclosed please find the Arizona Board of Osteopathic Examiners in Medicine and Surgery's response to the Performance Audit recently conducted by your Staff. The Board has addressed the findings as required by law. The Board has concerns regarding the performance audit but will be addressing those issues in a different format in the near future.

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

- 1) The board should take disciplinary action when physicians violate the statutes;
- 2) The board can improve complaint processing; and
- 3) Poor complaint record keeping negatively impacts complaint process and public information.

The Board agrees with these findings and has already instituted numerous steps to implement the recommendations.

I would like to draw your attention to Chapter 7 of the Reporting Standards for Performance Audits issued by the United States General Accounting Office in setting the Government Auditing. The standards states:

- 7.39. One of the most effective ways to ensure that a report is fair, complete, and objective is to obtain advance review and comments by responsible audit officials and others, as may be appropriate.
- 7.41 Advance comments should be objectively evaluated and recognized, as appropriate, in the report. Advance comments, such as a promise or plan for corrective action, should be noted but should not be accepted as justification for dropping a significant finding or a related recommendation.
- 7.42 When the comments oppose the report's findings, conclusions, or recommendations, and are not, in the auditors' opinion, valid, the auditors may choose to state their

reasons for rejecting them. Conversely, the auditors should modify their report if they find the comments valid.

7.43 Auditors should report noteworthy accomplishments, particularly when management improvements in one area may be applicable elsewhere.

7.44 Noteworthy management accomplishments identified during the audit, which were within the scope of the audit, should be included in the audit report along with deficiencies. Such information provides a more fair presentation of the situation by providing appropriate balance to the report.

The reason for reviewing these standards with you is the Board's request that upon reviewing the attached Response by the Board, that your office consider these standards in preparing the final report. The Board has confidence that the Governor, Legislature and the public will be provided an accurate and fair report.

Thank you for your assistance in this matter.

Sincerely,

Ann Marie Berger  
Executive Director

CC: Board Members

**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY'S  
RESPONSE TO AUDITOR GENERAL'S PERFORMANCE AUDIT**

The Arizona Board of Osteopathic Examiners in Medicine and Surgery (hereinafter "Board") has issued the following response to the recent Performance Audit conducted by the Auditor General's Office as part of the Sunset Review set forth in A.R.S. § 41-2951 *et seq.* The Board has attached as part of its response an action plan to implement recommendations of the Auditor General's office as well as to enhance the management and investigative processes of the Board.

The Board agrees with the conclusion of the Performance Audit that the agency should be continued and believes it does a good job in fulfilling its legislative mandate to protect the public from unqualified and unfit physicians. The Board believes the audit report does not adequately show the innovations or accomplishments of the Board. Below is a partial listing of some of the Board's recent accomplishments:

*Disciplinary Action Ranking.* The Board has been recognized by the Federation of State Medical Boards in their listing of all medical boards as being in the top five out of sixty-eight medical boards in the United States for actions taken per thousand physicians for the past six years. The Board's composite action index rating, an average of a several kinds of disciplinary actions, was 18.6 in 1999, which ranked the Board first in disciplinary actions taken per thousand physicians by the Federation. That index rating has only changed slightly since 1993. The Board requested this outstanding accomplishment be recognized in the Auditor General's report but it was not mentioned and the Federation of State Medical Boards was never contacted for verification. As the Auditor General's plan consistently compares the Board to the Arizona Board of Medical Examiners ("BOMEX"), BOMEX's composite action index rating for 1999 was 6.5.

*On-line Renewal System.* The Board is the first regulatory board in Arizona and the first medical board in the United States to implement on-line renewal of licensure. This system has allowed physicians throughout the country to renew their Arizona licenses in a timely and efficient manner. The report states that "according to the Board"; the Board was first with this accomplishment. This is an accurate statement. Had the Staff of the Auditor General's office taken the time to verify this information, they would have seen that it was an accurate statement. In the year 2000, the Board was recognized by both the Council on Licensure, Enforcement and Regulation and the Administrators in Medicine for this innovative on-line renewal system..

*Education of Medical Students.* In 1999 the Board, in conjunction with the Arizona Osteopathic Medical School/Midwestern University, instituted a requirement that all students would be required, during their third year of medical school, to attend a full Board Meeting. This requirement must be met before the student has begun his final year of medical school. The Federation of State Medical Board's adopted a resolution in 2000 to request that all 68 medical boards in the country have a system in place to educate medical students on the laws and regulations of licensure prior to graduation based on the Arizona Osteopathic Medical Board's implementation of this program.

Impaired Physician Program. The Board is being recognized by the Administrators in Medicine in 2001 for its Impaired Physician Program. The Program not only appropriately monitors physicians under probationary or suspension orders for various type of impairment, but also includes Education, Mentoring and Volunteer Programs to assist these physicians in their recovery. Unlike other medical boards, the Arizona Osteopathic Medical Board's Impaired Physician Program allows full public access to information about these physicians.

Public Participation. All Complainants are invited to participate at all levels of the Board 's evaluation of an allegation of unprofessional conduct. The Board has found that having the patient and/or complainant present during the adjudication of a complaint, assures a fair, balanced and unbiased proceeding. It assures the Board has accurate and complete information in order to make an informed decision.

Prior to the issuance of this response, the Board had taken action to resolve its financial situation. Despite the financial limitations faced by the Board, the Board continued to meet its statutory requirements and the finances did not adversely impact the Board's ability to meet its statutory responsibilities. Legislation has been passed and is currently in effect allowing the Board to raise its fees. The Board has completed all functions in relationship to a financial action plan submitted to the Governor's office resolving all financial problems.

While the Board is concerned with the many inaccuracies contained in the audit report, it believes this response should be limited Findings and Recommendations by the Auditor General's Office.

I. *FINDING I: THE BOARD SHOULD TAKE DISCIPLINARY ACTION WHEN PHYSICIANS VIOLATE STATUTES*

The Board is in agreement with Finding I. The Board regularly disciplines physicians for violation of the Statutes. As evidence, The Board took more actions per 1000 physicians in 1999 and 2000 than any other medical board in the United States.

*Recommendations:*

1. *The Board should take disciplinary action when it determines that a statutory violation has occurred.*

The Board agrees with this recommendation. The Board weighs the evidence and determines if there are any mitigating factors or circumstances before determining discipline.

2. *Board staff should ensure complete investigations are performed by including at least the following procedures:*

- a. *Identifying each allegation and potential associated statutory violation;*
- b. *Requiring the named physician to address each potential violation;*
- c. *Interviewing all complainants to confirm the allegations; and*
- d. *Providing the Board with reports indicating whether the evidence collected verifies each allegation of statutory violation.*

The Board agrees with this recommendation and has already implemented the above procedures.

3. *The Board's medical consultant should be required to provide an opinion on whether the named physician's actions met the standard of care for each allegation involving quality of care*

The Board agrees with this Recommendation and has implemented this recommendation. The Board requests that the Board's medical consultant and/or outside medical consultants provide the Board with all factual information related to the care provided by the physician as well as what defines the applicable standard of care. The medical consultant informs the Board as to whether or not the standard of care has been met and the Deputy Director provides information to the Board as to which statutory violations may have occurred.

The report suggests that staff should make a finding of a violation. The Board has been delegated the authority by A.R.S. § 32-1803 to determine whether or not the physician has met the standard of care and violated the statutes. The Board takes this responsibility extremely serious and fulfills its duty of protecting the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of osteopathic medicine in the State of Arizona. It would be inappropriate and illegal for a medical consultant or any staff member to make decisions or act as the Board.

4. *As part of its adjudication process and prior to taking appropriate action, the Board should determine and include documentation of whether a violation occurred for each alleged statutory violation.*

The Board agrees with this recommendation and believes it has implemented this process.

5. *The Board should establish and use disciplinary guidelines that include consideration of violation severity, the need to take progressive action and mitigating factors*

The Board agrees with this recommendation and is in the process of developing disciplinary guidelines. (See Action Plan).

6. *The Board should consistently receive and review the named physician's disciplinary and letter of concern history as part of the adjudication process.*

The Board agrees with this Recommendation and has implemented this recommendation. The Board has been provided legal advice by its Assistant Attorney General that it cannot review a physician's complaint history if a matter has been dismissed because it would violate the physician's due process rights as it relates to the Board's determination of a violation of its statutes. The Board does review prior violations, discipline and Letters of Concerns in determining appropriate sanctions after it has determined that the physician has violated its statutes.

## II. *FINDING II: THE BOARD CAN IMPROVE COMPLAINT PROCESSING*

The Board agrees with Finding II and continually strives to improve the complaint process, reports and data management. The Board, as recognized by the Auditor General, currently is experiencing a lack of funds due to a lack of revenue. The Board agrees with many of the recommendations related to this finding but may not be able to implement them immediately due to a lack of funding and personnel. (See Action Plan)

*Recommendations:*

1. *The Board should ensure it fulfills its responsibility to protect the public in regard to malpractice complaints by;*
  - a. *Immediately opening complaint investigations on the approximately 45 malpractice settlements and judgments for which it received notice, but has not yet initiated an investigation.*
  - b. *Prioritizing the resolution of open malpractice complaints based on the severity of the complaints; and*
  - c. *Not opening malpractice investigations until it receives notice of a settlement or judgment unless the Board believes a physician involved in a pending malpractice lawsuit may be an immediate threat to the public.*

The Board currently prioritizes complaints. In March, 1999 the Board established criteria for investigating medical malpractice cases which prioritizes those types of investigations. The Board also prioritizes investigations that concern an “immediate threat to the public” as required in its statutes. The Board believes that all cases should be considered by the Board in a timely manner. While all complaints are important, the Board recognizes that there are cases that have a larger impact on the public welfare and safety. In addition to the eleven regularly scheduled Board Meetings, the Board held nine telephone conference call Board Meetings since January 2000 in order to deal with urgent matters before the Board. During these telephone conference call Board Meetings, the Board summarily suspended the licenses of three physicians, suspended the license of two physicians, accepted the surrender of two physicians’ licenses, restricted the practice of four physicians, sent at least three cases immediately to a hearing, and placed two physicians on probation.

The Board agrees with this Recommendation and has implemented the Recommendation.

2. *The Board should amend its current complaint policy to address process deadlines for each step of the complaint process.*

The Board agrees with this recommendation and revised its Investigative Guidelines.

3. *The Board should generate monthly management reports that track all steps in the complaint process to ensure process deadlines are met.*

The Board agrees with this recommendation and will implement this request. (See Action Plan)

4. *The board should develop performance standards for medical consultant reviews, including the number of reviews to be completed and the amount of time it should take to complete the reviews.*

The Board agrees with this Recommendation and will implement the Recommendation.

5. *The Board should develop and implement policies and procedures to prioritize all complaints based on severity.*

The Board believes it does prioritize complaints. The Board also prioritizes investigations that concern an “immediate threat to the public” as required in its statutes. The Board feels that all cases should be considered by the Board in a timely manner and none should be considered “less” important but

recognizes that there are cases that have a larger impact and possess a threat to the public. The Board held nine telephone conference call meetings since January, 2000 in order to deal with urgent matters before the Board. During these unscheduled telephone conference call Board Meetings, the Board summarily suspended the licenses of three physicians, accepted the surrender of two physicians' licenses, restricted the practice of four physicians, sent at least three cases immediately to a hearing, and placed two physicians on probation.

The Board agrees with this Recommendation and has implemented the Recommendation. The Board is revising its Policies and Procedures and developing Disciplinary Guidelines. (See Action Plan).

### III. *FINDING III: POOR COMPLAINT RECORDKEEPING NEGATIVELY IMPACTS COMPLAINT PROCESS AND PUBLIC INFORMATION*

#### *Recommendations:*

1. *The Legislature should consider amending A.R.S. § 32-1803(A) to eliminate the requirement to delete complaint records. The Legislature could consider amending the Board's statutes to be consistent with BOMEX's statutes.*

The Board agrees with the Recommendation to remove the word "delete" from the Board's Statutes. Legislation has been passed and A.R.S. § 32-1803(A) has corrected the Board's statutes as to the terminology.

2. *The Board should ensure the accuracy and completeness of its complaints database by:*
  - a. *Developing a procedure and time frame to identify and correct errors;*
  - b. *Developing and implementing a policy to routinely monitor the databases' accuracy and completeness;*
  - c. *Working with its computer consultant to revise the database to include edit controls and receipt date, and ensure the database captures other needed management information such as the final adjudication of complaints; and*
  - d. *Developing a policy for data entry to help ensure information is entered in the correct fields.*

The Board agrees with this Recommendation, as it has already been addressed in Finding II. The Board will implement this Recommendation. (See Action Plan)

3. *The Board should discontinue using its word processing complaint log. For future complaints, the Board should ensure staff completes the data fields in the complaint database and use it to track the complaint process.*

The Board agrees with this recommendation and believes it is redundant and has already been addressed. The Board will implement the recommendation. (See Action Plan)

4. *Board management should use the complaint database to generate on at least a monthly basis routine reports that indicate complaint timeliness and status.*

The Board agrees with this recommendation and believes it is redundant and has already been addressed. The Board will implement the recommendation. (See Action Plan)

5. *The Board should develop a procedure to specifically account for the location of open complaint files.*

The Board agrees with this Recommendation and will implement the Recommendation.

# ARIZONA BOARD OF OSTEOPATHIC EXAMIENRS IN MEDICINE AND SURGERY

## ACTION PLAN

OBEX  
March 31, 2001

**GOAL:** To improve the functions and processes of the Board and ensure the public health, welfare and safety through the licensing and regulation of osteopathic physician.

**OBJECTIVE:** By July 1, 2002 Board improve all areas as recommended by the Arizona Auditor General in their April, 2001 Performance Audit

**STRATEGY:** Implement improvements based on the recommendations of the Auditor General's office in their April 2001 Report.

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	<b>Action Steps</b>	<b>Persons Responsible</b>	<b>Due Dates</b>	<b>Resources Needed</b>
1.	Develop Disciplinary Guidelines	Board Members/Staff	July 1, 2001	Statutes/Rules
2.	Develop Policies and Procedures Manual	Board Members/Staff	July 1, 2001	Statutes/Rules
3.	Revise Investigative Guidelines	Board Members/Staff	March 31, 2001	Statutes/Rules
4.	Board Training by the Attorney General's office	Assistant Attorney General	July 1, 2001	Statutes/Rules
5.	Review and Consideration of Medical Malpractice Investigations	Board Members/Staff	September 1, 2001	Investigative Materials
6.	Reformat Board Investigation Reports	Staff	March 31, 2001	Investigative Materials
7.	Implement Database Improvements	Staff/Computer Consultant	July 1, 2002	Computer
8.	Completion of Financial Responsibilities	Executive Director	July 1, 2002	Revenue
9.	Fill vacant positions	Executive Director	July 1, 2002	Revenue

## Other Performance Audit Reports Issued Within the Last 12 Months

00-7	Department of Public Safety— Aviation Section	00-17	Arizona Department of Agriculture— Sunset Factors
00-8	Arizona Department of Agriculture— Animal Disease, Ownership and Welfare Protection Program	00-18	Arizona State Boxing Commission
00-9	Arizona Naturopathic Physicians Board of Medical Examiners	00-19	Department of Economic Security— Division of Developmental Disabilities
00-10	Arizona Department of Agriculture— Food Safety and Quality Assurance Program and Non-Food Product Quality Assurance Program	00-20	Department of Corrections— Security Operations
00-11	Arizona Office of Tourism	00-21	Universities—Funding Study
00-12	Department of Public Safety— Scientific Analysis Bureau	00-22	Annual Evaluation—Arizona’s Family Literacy Program
00-13	Arizona Department of Agriculture Pest Exclusion and Management Program	01-01	Department of Economic Security— Child Support Enforcement
00-14	Arizona Department of Agriculture State Agricultural Laboratory	01-02	Department of Economic Security— Healthy Families Program
00-15	Arizona Department of Agriculture— Commodity Development	01-03	Arizona Department of Public Safety— Drug Abuse resistance Education (D.A.R.E.) Program
00-16	Arizona Department of Agriculture— Pesticide Compliance and Worker Safety Program	01-04	Department of Corrections—Human Resources Management
		01-05	Arizona Department of Public Safety— Telecommunications Bureau

## Future Performance Audit Reports

Arizona Game and Fish Department—Wildlife Management

Arizona Game and Fish Department—Heritage Fund

Department of Public Safety’s Licensing Bureau