

A REPORT  
TO THE  
ARIZONA LEGISLATURE

Performance Audit Division

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Performance Audit and Sunset Review

# **Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers**

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DECEMBER • 2004  
REPORT NO. 04 – 12



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**Debra K. Davenport**  
Auditor General

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AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
**AUDITOR GENERAL**

WILLIAM THOMSON  
DEPUTY AUDITOR GENERAL

December 29, 2004

Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Michael Calderon, President  
Board of Examiners of Nursing Care Institution Administrators and  
Assisted Living Facility Managers

Victoria Martin, Esq., Executive Director  
Board of Examiners of Nursing Care Institution Administrators and  
Assisted Living Facility Managers

Transmitted herewith is a report of the Auditor General, A Performance Audit and Sunset Review of the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board). This report is in response to Laws 2004, Chapter 279, which also directs a sunset review of the Board. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-1279.03 and as part of the sunset review process prescribed 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 agrees with the finding related to complaint processing and plans to implement or implement in a different manner all but one of the associated recommendations. The Board disagrees with the findings related to public information, board oversight, and compliance with state requirements, but plans to implement or implement in a different manner most of the associated 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 December 30, 2004.

Sincerely,

Debbie Davenport  
Auditor General

Enclosure

# PROGRAM FACT SHEET

## Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers

### Services:

The Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) has the following responsibilities:

- License nursing care institution administrators and certify assisted living facility managers;
- Investigate complaints involving potential statutory violations and unprofessional conduct;
- Adjudicate complaints by applying nondisciplinary or disciplinary options;
- Provide consumer information to the public; and
- Approve continuing education programs and monitor continuing education requirements.

### Board membership and staffing:<sup>1</sup>

The Board consists of nine voting members appointed by the Governor:

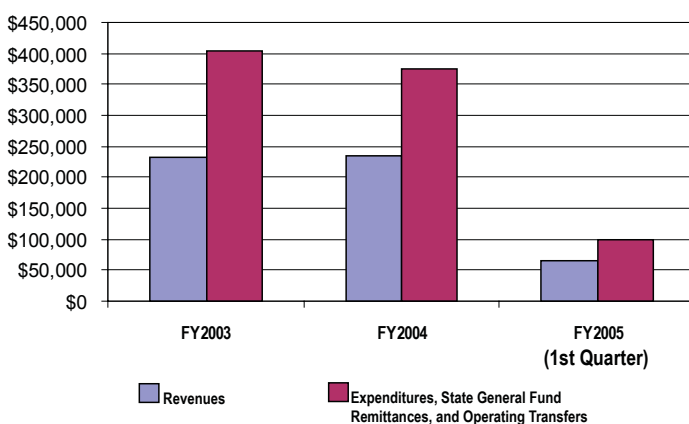
- Two skilled nursing facility administrators, two assisted living facility managers, and one administrator or manager at large;
- Two representatives of the professions concerned with the care and treatment of the chronically ill or infirm elderly patients; and
- Two lay members representing consumers of nursing care institution services and assisted living facility services.

As of November 2004, the Board had six staff members, including an executive director, a licensing coordinator, a business manager, an administrative assistant, and two part-time investigators.

### Facilities and equipment:

The Board leases space in a state-owned building at 1400 West Washington in Phoenix. Its equipment includes typical office equipment such as office furniture and computers.

### Board Revenues, Expenditures, Remittances To the State General Fund, and Operating Transfers



<sup>1</sup> Since August 2003, the Board has had one continuous vacancy.

## Mission:

The Board's mission is *"to protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers."*

## Program goals:

1. To improve agency operations relating to complaint investigations to ensure consistent and timely enforcement of statutes and rules regulating nursing care institution administrators and assisted living facility managers.
2. To ensure that licenses and certificates are processed in a timely and efficient manner.
3. To ensure that agency operations are effective and efficient.

## Adequacy of performance measures:

The Board's performance measures appear to be appropriate and well-aligned with the Board's goals. However, the Board needs to address problems with the mechanism it uses to capture and then report the data that supports its measures. Specifically:

- The Board's database, which provides the information used to report on several of its measures, contains some inaccurate and incomplete information.
- The Board's performance measure that reports on its administrative costs as a percentage of total costs is not based on its costs. Instead, according to the Board's executive director, the Board reports its percentage of administrative costs by taking the average of administrative costs for all state agencies and reducing it to account for the Board's smaller size. The Governor's Office of Strategic Planning and Budgeting recommends that agencies develop standard methods for calculating administrative costs and suggests some common administrative areas, such as human resources and contracting, that should be considered in this calculation.

Source: Auditor General staff compilation of unaudited information obtained from the Arizona Financial Information System (AFIS) Accounting Event Transaction File for the years ended June 30, 2003, and 2004, and the quarter ended September 30, 2004, Master List of State Government Programs, Arizona Revised Statutes, and other information provided by the Board.

# SUMMARY

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The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) pursuant to Laws 2004, Chapter 279. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-1279.03 and as part of the sunset review process prescribed in A.R.S. §41-2951 et seq.

The Board was created in 1975 to fulfill a federal requirement that nursing care institution administrators (administrators) be licensed and regulated in order for the State to receive federal Medicaid monies. In 1990, the Legislature added certification of assisted living facility managers (managers) to the Board's responsibilities in order to ensure minimum care standards for residents of assisted living facilities. The Board's responsibilities include issuing and renewing licenses and certificates, conducting investigations and hearings regarding statutory violations, disciplining administrators and managers, and providing consumer information to the public. As of December 2004, the Board licensed over 290 active administrators and certified nearly 2,300 active managers.

## Facility Definitions:

**Nursing care institutions**—Provide care for people who need nursing services on a continuing basis, but who do not require hospital care or care under the daily direction of a physician. These facilities are often called nursing homes and sometimes are referred to as skilled nursing facilities.

**Assisted living facilities**—Residential care institutions that provide or contract to provide supervisory, personal, or directed care on a continuing basis for people who do not require continuous nursing care. These facilities have staff who assist elderly, disabled, or other residents with eating, personal hygiene, and other activities.

## Board should improve complaint processing (see pages 11 through 19)

The Board needs to take several steps to ensure that complaints are investigated and adjudicated in an appropriate and timely manner. During fiscal years 2003 and 2004, the Board had to dismiss numerous complaints due to untimely investigations. During that time, board staff forwarded 61 complaints for adjudication that had been received in fiscal years 1999 through 2002. The Board dismissed 53 of these

complaints. Many were dismissed because so much time had passed that either the manager's or administrator's credentials had expired or no further investigation could be conducted because necessary information and access to witnesses were no longer available. As a result, the Board's ability to protect the public was decreased.

Board staff have continued to conduct untimely investigations for complaints received in fiscal years 2003 and 2004. Over 100 of the 126 complaints the Board received in those years remained open as of July 2004. Auditors reviewed 19 of the closed complaints and found that all but 3 had been investigated and resolved within 180 days. However, a review of 25 randomly selected complaints still unresolved as of July 2004 showed that they had been open between 260 and 680 days. These lengthy processing times are a concern because information needed to adjudicate complaints may become harder to obtain as time passes and administrators and managers named in the complaints are able to continue to practice unchecked.

Three main factors contribute to the untimely investigations. First, the Board has experienced high turnover among its investigative staff. Second, the Board lacks needed investigation policies and procedures, including time frames for each step in the investigative process. Third, the Board does not adequately monitor the investigation process and does not have an accurate database for doing so. To address these factors, the Board should consider adding a full-time investigator to its staff, at least until it completes the investigations for complaints received in fiscal years 2003 and 2004. As of November 2004, the Board had only two part-time investigators. One option, if the Board has the resources, would be to contract for this assistance. Another option is to convert its business manager position to an investigator position, as it was originally designated by the Legislature. The Board should also implement additional complaint investigation procedures, specify time frames for each step in the investigative process, and use monthly management reports generated from its complaint database to monitor progress.

Finally, two changes would improve the Board's complaint adjudication process. First, the Board should cease issuing letters of concern, which is a nondisciplinary action, in instances where a disciplinary action is appropriate. Auditors identified two instances in its September 2004 board meeting where the Board issued nondisciplinary letters of concern, even though evidence of a violation existed. Second, the Legislature should consider revising A.R.S. §32-3201 to provide the Board with the authority to take action against administrators or managers whose licenses or certificates expire before complaints are fully adjudicated. If the Board has this authority, licenses or certificate holders would not be able to avoid discipline by letting their license or certification expire, and disciplinary action would be appropriately reflected on their professional record.

## Board practices restrict access to public information (see pages 21 through 24)

The public does not have appropriate access to information regarding nursing home administrators and assisted living facility managers. In four of five telephone calls made by auditors, board staff did not release information regarding complaint or disciplinary history, even though this information should be made available to the public. The fifth telephone call concerned an administrator with no disciplinary history but with two complaints. Staff did not disclose that the administrator had two complaints. The Board should establish written procedures that detail the information that is available to the public and then train staff on how to properly respond to public inquiries.

The Board should also improve its Web site information's quality and accuracy. Board staff frequently direct consumers to their Web site for information, but the information regarding administrators and managers is not always accurate. For example, one manager was listed as possessing an active assisted living facility manager's certificate with no disciplinary action taken as of August 2004, even though she had entered into a consent agreement with the Board and surrendered her license in November 2003. Additionally, the site does not include information on the number of complaints, nature of complaints, or how complaints were resolved for each licensee or certificate holder. In addition, the Board does not provide information such as board meeting minutes on its Web site. Therefore the Board should ensure that the information provided on its Web site is accurate, and as resources permit, expand the type of information it includes.

## Board should improve oversight of operations (see pages 25 through 30)

The Board needs to improve its oversight of board operations to address the deficiencies previously identified, as well as other operational concerns. These problems range from the ineffective use of its staff and financial resources, unscheduled formal complaint hearings with the Office of Administrative Hearings, and poor data management, including some inaccurate and incomplete data for both licensing and complaints. These problems have been intensified by high turnover in nearly all of its positions.

The Board should take action concerning its financial situation, including reviewing and potentially reducing its expenditures and determining whether a statutory fee increase is needed. Additionally, the Board could further improve its operations and address its problems by increasing its oversight of the executive director and staff.



Although the Board delegates most of the responsibility for operations to the executive director, board members are still responsible for ensuring that the agency fulfills its statutory requirement to regulate administrators and managers. Auditors found that executive directors at other regulatory boards provide regular updates to their boards on operations and activities. While the Board's executive director has historically provided the Board with some information on operations, auditor observations of the June through September 2004 board meetings found that the executive director did not provide the Board with information regarding finances; or license, certificate, and complaint processing information. As a result, the Board should require its executive director to provide written reports to the Board at least every other month on the number of complaints received, the status of open complaints and hearings, the number of licenses and certificate applications received, staffing issues, and revenues and expenditures. The Board should then review and act on these reports, as needed, at board meetings.

## State requirements not always followed (see pages 31 through 35)

Board members and staff have not always followed state requirements regarding cash handling, procurement, and reimbursement for travel. Specifically, board staff do not make timely deposits and the Board's cash-handling procedures could be enhanced. A recent Department of Administration, General Accounting Office (GAO) review also found that board staff have violated procurement statutes and administrative rules by agreeing to pay a vendor before receiving services, failing to include the terms of the contracts that the State requires, and exceeding the Board's delegated purchasing authority. Finally, the executive director and some board members have been over-reimbursed for some travel expenses, including overpayments for lodging, meals, and parking. As a result, the Board should ensure that it follows all state requirements for these activities. Additionally, consistent with the GAO's recommendations, the Board should recover the overpayments made for travel expenses.

## Other pertinent information (see pages 37 through 39)

During this audit, other pertinent information was obtained regarding Arizona's and other states' regulation of nursing care institution administrators. While all 50 states and the District of Columbia license and regulate administrators, states use three different regulatory models to do so:

- **Independent board**—Eleven states, including Arizona, use this method. The board members are typically appointed by the state's governor and are supported by their own staff and monies. This is the predominant method used in Arizona to regulate health and other professions.

- **Independent board supported by a state agency**—Thirty-three states and the District of Columbia have established independent boards supported by staff from a separate state agency. These states maintain a board composed of industry and public members who approve licenses and take disciplinary actions, but staff and support functions are typically provided by a public health agency or an occupational licensing agency. These agencies typically staff and support numerous health and other professional regulatory boards in their states. The only example in Arizona of this arrangement is the Arizona State Boxing Commission, which relies on the Arizona Department of Racing to provide staff and support to its Governor-appointed commissioners.
- **State agency**—Six states place the responsibility for regulating administrators within a public health agency or an occupational licensing department.

## Sunset factors (see pages 41 through 47)

Terminating the Board would harm the public health, safety, and welfare because the Board is responsible for licensing administrators, certifying managers, and investigating and adjudicating complaints against administrators and managers. Without regulation of these professions, the public could be subject to unqualified and incompetent care. However, the Board could improve regulation by implementing the recommendations in the first three findings in the report, and regulation could be further improved with the following changes:

- The Board should ensure that it processes all initial license and certificate applications within time frames prescribed by administrative rule. While a review of 61 license and certificate applications received from August 2000 through January 2004 determined that most were processed within the required 120 days, the Board did not process 12 of these 61 applications in a timely manner.
- To ensure that the Board operates in the public interest, the Legislature should consider revising A.R.S. §36-446.02(B) to eliminate the requirement that lay members represent consumers of nursing care or assisted living services to make it easier for members of the general public to serve on the Board. One of the consumer representative positions on the Board has been vacant from August 2003 through October 2004. According to a representative from the Governor's Office, the Board's statutes defining lay members are some of the most restrictive among Arizona regulatory boards, and as a result, it has been difficult to fill the positions.
- The Board should update its administrative rules to ensure that they are consistent with statute and, as required by A.R.S. §36-446.04(B)(4), promulgate administrative rules regarding the statutory requirement that assisted living facility managers complete 12 months of work experience in a health-related field.



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# INTRODUCTION & BACKGROUND

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The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) pursuant to Laws 2004, Chapter 279. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-1279.03 and as part of the sunset review process prescribed in A.R.S. §41-2951 et seq.

## Board responsibilities

The Board was created in 1975 to fulfill the federal Medicaid requirement that states license and regulate nursing care institution administrators (administrators) to enable Arizona to receive federal Medicaid monies. To help ensure minimum care standards for residents of assisted living facilities, in 1990, the Legislature added certification and regulation of assisted living facility managers (managers) to the Board's responsibilities. Administrators are responsible for the operations of a nursing care institution, including providing oversight of resident healthcare, quality management, and managing facility staff. Managers are responsible for the administration of an assisted living facility, which includes depositing and refunding fees and charges, resolving resident grievances, and managing resident social, recreational, or rehabilitative activities.

The Board's mission is:

*To protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers.*

The Board has a variety of responsibilities that are designed to help it accomplish its mission, including:

- Issuing and renewing licenses and certificates to qualified persons practicing as nursing home care administrators or assisted living facility managers;

- Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- Disciplining violators;
- Providing consumer information to the public; and
- Approving continuing education and administrator-in-training programs and monitoring continuing education requirements.

According to the Board's database, as of December 2004, the Board licensed 290 active permanent administrators and 2 temporary administrators, and certified over 2,200 active permanent managers and 43 temporary managers.<sup>1</sup> Also, according to the Board's database, the Board received 777 license and certificate applications and 67 complaints in fiscal year 2004.

### DHS-Licensed Facilities As of August 2004

Nursing Care Institutions	138
Assisted Living Centers	186
Assisted Living Homes	1,279

Source: Department of Health Services staff and October 25, 2004, report.

While the Board is responsible for regulating licensed administrators and certified managers, the Arizona Department of Health Services (DHS) regulates the facilities that administrators and managers operate. Specifically, DHS licenses, inspects, and conducts complaint investigations relating to nursing care institutions, assisted living centers, and assisted living homes, both of which are types of assisted living facilities.

## Statutory licensure and certification requirements

The Board's statutes and administrative rules contain the following general education, experience, and examination requirements for initial licensure as an administrator or initial certification as a manager.

### Administrators must:

- Possess a master's degree in healthcare administration or long-term care administration or a bachelor's degree and complete a minimum of 800 hours of training in an approved Administrator in Training Program;
- Pass the National Association of Boards of Examiners for Long Term Care Administrators national examination with a score of 70 percent or higher; and
- Pass the Board's written examination, which tests an applicant's knowledge of Arizona statutes and rules, with a score of 80 percent or higher.

<sup>1</sup> The Board reports that it has 443 administrators and 2,432 managers as of December 2004. However, these counts include administrators and managers who are shown as having inactive licenses and certificates, and some administrators and managers with active temporary licenses and certificates, but whose licenses or certificates have since expired.

**Managers must:**

- Successfully complete a DHS-approved adult care home manager training program or complete at least 34 hours of education and training that includes training related to adult care residents' needs and health facility management;
- Possess 12 months of health-related experience within the preceding 5 years;
- Pass the Board's adult care home manager's examination, which tests an applicant's knowledge of residents' needs, Arizona statutes and rules, and health facility management, with a score of 70 percent or higher; and
- Successfully complete an adult cardiopulmonary resuscitation program and basic first-aid training.

The Board's administrative rule R4-33-103 requires it to review applications for licensure or certification within 120 days after receipt. If an applicant can demonstrate that employment as an administrator or manager has been secured, applicants waiting to complete the required licensure or certification process can apply for a 150-day temporary license or certificate.

The Board issues license and certificate renewals every 2 years. Renewals require a completed renewal application, 50 hours of continuing education for administrators and 12 hours of continuing education for managers, and payment of the required fees.

**Board Fees  
As of October 2004**

	<b>Administrators</b>	<b>Managers</b>
Application	\$100	\$100
Exam	500	100
Temporary Issuance	250	50
Renewal	260	100
	300	100

Source: Auditor General staff analysis of A.R.S. §§36-446.03 and 36-446.12, and administrative rule R4-33-104 .

## Complaint resolution

The Board investigates and adjudicates complaints involving potential statutory violations and unprofessional conduct by licensed administrators and certified managers, as authorized by statute. A.R.S. §36-446.07 provides nine actions that constitute statutory violations for administrators and eight actions that constitute statutory violations for managers. These actions include unprofessional conduct, addiction to or dependency on drugs or alcohol, falsely impersonating another licensee or certificate holder, and unauthorized disclosure of information relating to a patient or a patient's records. Additionally, A.R.S. §36-446 further defines unprofessional conduct as dishonesty, fraud, incompetent or gross negligence, gross immorality or proselytizing, and other abuses, which may include intimidation or neglect of patients.

Unprofessional conduct includes dishonesty, fraud, and gross negligence.



The Board receives complaints from the public and DHS, which is responsible for regulating nursing care institutions and assisted living facilities. The Board may also initiate a complaint on its own judgment. According to statute, all complaints must be submitted in writing to the Board within 1 year of the offending action. According to board procedures, upon receiving a complaint alleging that an administrator or manager violated statute, board staff open an investigation. A complaint investigation includes a notice of complaint to the named administrator or manager, and obtaining a response to the allegations and pertinent care records and witness statements. After board staff complete the investigation, the Board requests that the administrator or manager appear before the Board for questioning. Complainants also have an opportunity to address the Board. If the Board determines that adequate information has been obtained to determine whether a violation has been committed, the complaint is adjudicated.

According to statute, the Board can discipline a licensee or certificate holder at this time, but they must allow the licensee or certificate holder 20 days to request a formal hearing. The Board can also refer complaints to Arizona's Office of Administrative Hearings to be heard by an administrative law judge. Upon its own determination or the recommendation of the administrative law judge, the Board resolves the complaints. If the Board imposes discipline, it can use one or more of the following options:

- Impose a civil monetary penalty of not more than \$500;
- Censure, which is a formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct;
- Impose probationary terms, which may include education, training, and/or monitoring;
- Suspend or revoke the administrator's license or manager's certificate.

## Organization and staffing

The Board consists of nine members who are appointed by the Governor. However, since August 2003, the Board has had one continuous vacancy. The Board is composed of:

- One administrator of a nonprofit skilled nursing facility;
- One administrator of a for-profit skilled nursing facility;
- One manager of an assisted living center;

- One manager of an assisted living home;
- One administrator or manager at large;
- Two representatives of the professions concerned with the care and treatment of the chronically ill or infirm elderly patients;
- One lay member representing consumers of nursing care institution services; and
- One lay member representing consumers of assisted living facility services.

The Board is authorized five full-time staff positions and had all five positions filled as of November 2004. These positions include an executive director responsible for operations; a licensing coordinator responsible for processing applications and administering the state examinations; a business manager responsible for accounts receivable, monitoring the Board's continuing education requirements, procurement, and drafting board meeting agendas and minutes; an administrative assistant who maintains the front office and telephones and assists other staff as necessary; and two part-time investigators who investigate complaints and issues that arise during the license and certificate application process.

## Budget

The Legislature appropriates monies to the Board from the Nursing Care Institution Administrators' Licensing and Assisted Living Facility Managers Fund (Fund). The Fund contains revenues derived principally from licensure and certification application and renewal fees. The Board deposits 90 percent of its revenues into the Fund and remits all of its civil penalties and 10 percent of all other revenues into the General Fund. Table 1 (see page 6) illustrates the Board's actual revenues and expenditures for fiscal years 2003, 2004, and the first quarter of fiscal year 2005. While board expenditures stayed within the legislative appropriation for fiscal year 2004, the expenditures, remittances to the General Fund, and operating transfers have exceeded revenues by over \$171,000 in fiscal year 2003, over \$139,000 in fiscal year 2004, and nearly \$33,000 for the first quarter of fiscal year 2005, which has caused the Board's fund balance to significantly decrease. While the Board raised all of its fees to their statutory maximums in April 2004, it should consider whether a statutory change is needed to further increase its fees. (See Finding 3, pages 25 through 30, for more information on the Board's financial activity.).

Expenditures exceeded revenues in both fiscal years 2003 and 2004.

**Table 1:** Schedule of Revenues, Expenditures, and Other Changes in Fund Balance  
Years Ended June 30, 2003 and 2004 and Quarter Ended September 30, 2004 <sup>1</sup>  
(Unaudited)

	2003	2004	2005 <sup>1</sup> (1 <sup>st</sup> quarter)
<b>Revenues:</b>			
Licenses	\$187,478	\$180,654	\$ 37,896
Charges for services	30,380	43,184	26,236
Interest	7,960	3,406	1,685
Fines and forfeits	3,000	2,732	
Other	<u>3,740</u>	<u>5,134</u>	
Total revenues	<u>232,558</u>	<u>235,110</u>	<u>65,817</u>
<b>Expenditures and other uses: <sup>2</sup></b>			
Personal services and employee-related	235,438	260,117	72,645
Professional and outside services	64,745	28,283	7,516
Travel	5,955	5,187	229
Other operating	60,929	49,809	11,729
Equipment	<u>11,944</u>	<u>6,197</u>	
Total expenditures	<u>379,011</u>	<u>349,593</u>	<u>92,119</u>
Deficiency of revenues under expenditures	<u>(146,453)</u>	<u>(114,483)</u>	<u>(26,302)</u>
<b>Other financing uses:</b>			
Operating transfers out	754	1,556	45
Remittances to the State General Fund <sup>3</sup>	<u>23,813</u>	<u>23,574</u>	<u>6,543</u>
Total other financing uses	<u>24,567</u>	<u>25,130</u>	<u>6,588</u>
Deficiency of revenues under expenditures and other financing uses	<u>(171,020)</u>	<u>(139,613)</u>	<u>(32,890)</u>
Fund balance, beginning of year	<u>457,463</u>	<u>286,443</u>	<u>146,830</u>
Fund balance, end of year	<u>\$286,443</u>	<u>\$146,830</u>	<u>\$113,940</u>

<sup>1</sup> Only the first-quarter financial activity for fiscal year 2005 is presented because Auditor General analysis of the Board's estimates for 2005 found that some revenue projections were possibly overstated and actual first-quarter financial activity differed from board projections.

<sup>2</sup> Includes administrative adjustments from the prior year.

<sup>3</sup> As a 90/10 agency, the Board remits all civil penalties and 10 percent of licenses, charges for services, and other fines and forfeits.

Source: Auditor General analysis of the Arizona Financial Information System (AFIS) *Revenues and Expenditures by Fund, Program, Organization, and Trial Balance by Fund* reports for the years ended June 30, 2003 and 2004, and the *AFIS Accounting Event Extract File* for the quarter ended September 30, 2004.

## Audit scope and methodology

This performance audit and sunset review focused on the Board's complaint investigation and adjudication processes, provision of information to the public, management of operations, and, under the 12 statutory sunset factors, continued need for the Board. This report includes findings and recommendations in the following areas:

- The Board should take several steps to ensure that complaints are investigated and adjudicated in an appropriate and timely manner;
- The Board should ensure that its staff provide accurate and complete information to the public;
- The Board should better oversee its various functions by receiving and reviewing reports from its executive director; and
- Board members and staff should comply with state requirements for cash-handling, procurement, and travel reimbursement.

In addition, this report contains an Other Pertinent Information section that provides information regarding Arizona's and other states' regulation of nursing care institution administrators and assisted living facility managers (see pages 37 through 39). This audit also includes responses to the 12 statutory sunset factors, including a recommendation that the Board should be continued (see sunset factor 10, page 46). This recommendation is made pursuant to Laws 2004, Chapter 279, §22, which requires this performance audit to include a recommendation on whether the Board should be sunset as scheduled.

During the audit, data quality problems limited auditors' ability to more completely assess and provide information on complaint and licensing activity. Auditors received a download of the Board's database in July 2004, which is the only source for information on the number of complaints and licensing applications received, and examined it for completeness and accuracy. Auditors determined that many data fields contained incomplete or inaccurate information. However, according to the Board's executive director, information in the Board's database has been updated and as of September 2004, information received after July 1, 2002, is as complete and accurate as can reasonably be expected. As a result, auditors obtained a second download of the database in December 2004 and found that, while improvements had been made in the licensing data, the complaint data was still inaccurate and incomplete. For example, auditors found that the status of some complaints was inaccurately reflected in the database when compared to the complaint file information and that several data fields, such as the type of complaint, incident date, and complainant name, had missing information. Additionally, over time, board staff employed different methods for numbering complaints, making it difficult to determine the actual number of complaints received each fiscal year.

Finally, despite improvements to the licensing data, the database does not provide an accurate count of the number of active administrators and managers with temporary licenses and certificates because nearly 90 of these administrators and managers had expired licenses or certificates, but were still designated active in the database. Additionally, 33 temporary licenses and certificates did not have an

expiration date in the database, but were designated active as well. Therefore, auditors could not accurately determine the number of complaints the Board received, the source of complaints, the number of open and closed complaints, and the number of temporary licensed administrators and certified managers.

Auditors used a variety of methods to study the issues addressed in this report. These methods included interviewing board members, the Board's executive director, board staff, the Board's Attorney General representative, the DHS director and staff, and stakeholders from industry and consumer groups; attending board meetings; and reviewing statutes, rules, board meeting minutes from fiscal years 2003 and 2004, and board policies and procedures. In addition, the following specific methods were used:

- To assess the timeliness of complaint investigations and whether the Board's adjudication decisions were adequately supported, auditors reviewed and conducted an analysis of a sample of 86 complaints, consisting of a random sample of 18 complaints received during fiscal years 1999 through 2002, 24 complaints received in fiscal years 2003 and 2004 that were not included in the computer database but located in the complaint file cabinets, 19 closed complaints received during fiscal years 2003 and 2004, and a random sample of 25 open complaints received during fiscal years 2003 and 2004.
- To determine whether the Board provides consumers with accurate and complete information, including complaint histories about administrators and managers, five auditors posing as members of the public made telephone calls to the Board requesting information on four managers and one administrator. Information supplied was compared to the information obtained from the Board's complaint files and database. Auditors also reviewed the Board's Web site and compared the information it provides to Web sites maintained by the Arizona Medical Board and the Board of Psychologist Examiners.
- To determine whether the Board exercises adequate oversight of its operations and whether board members and staff comply with various state requirements, auditors reviewed and analyzed the Arizona Financial Information System and other financial information from fiscal years 2003 and 2004, reviewed audit work performed by the Department of Administration, General Accounting Office in 2004 and its December 2004 report on the Board, observed cash-handling practices, interviewed an Arizona Office of Administrative Hearings official, and contacted six Arizona regulatory boards to obtain information on their oversight practices.<sup>1</sup>

<sup>1</sup> Auditors contacted six Arizona regulatory boards with a similar number of staff and budget: the Arizona Boards of Appraisal, Chiropractic Examiners, Examiners of Funeral Directors and Embalmers, Osteopathic Examiners in Medicine and Surgery, Psychologist Examiners, and the Naturopathic Physicians Board of Medical Examiners.

- To evaluate whether there is a continued need for the Board and to understand the models used by other states to regulate administrators and managers, auditors reviewed applicable sections of the United States Code and a study of nursing home administrator regulatory practices in the United States.<sup>1</sup> Additionally, auditors interviewed representatives of the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services; and representatives from other states' agencies and boards that regulate nursing care institution administrators.<sup>2</sup>

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members of the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers, the executive director, and staff for their cooperation and assistance throughout the audit.

<sup>1</sup> Center for Health Workforce Studies. School of Public Health, University of Albany. *A Legal Practice Environment Index for Nursing Home Administrators in the Fifty States*. Rensselaer, New York. July 23, 2004.

<sup>2</sup> Auditors contacted representatives of the following state agencies to gather information on other states' practices: Alaska Department of Community and Economic Development, California Department of Health Services, Colorado Department of Regulatory Agencies, Connecticut Department of Public Health, Florida Department of Health, Hawaii Department of Commerce and Consumer Affairs, Illinois Division of Professional Regulation, Minnesota Board of Examiners for Nursing Home Administrators, Montana Department of Labor and Industry, Nevada Board of Examiners of Long Term Care Administrators, North Carolina Board of Examiners for Nursing Home Administrators, Texas Department of Aging and Disability Services, Utah Division of Occupational and Professional Licensing, and the Wyoming Board of Nursing Home Administrators.



# FINDING 1

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## Board should improve complaint processing

The Board needs to take several steps to ensure that complaints are investigated in a timely manner. Lack of timely investigations affects the Board's ability to protect the public, and many complaints have remained open for so long that the Board has had to dismiss them. These complaints include allegations of abuse or neglect. Improvements needed include hiring a sufficient number of investigative staff, establishing more detailed investigation procedures and time frames, and better monitoring the investigation process. The Board also needs to stop issuing nondisciplinary letters of concern when it finds evidence that violations have occurred. Such action is not consistent with statute. Finally, the Legislature should consider providing the Board with authority to take action against administrators or managers whose licenses or certificates have expired since the complaint was made. The Board's lack of authority to do so, coupled with untimely investigations, has resulted in many complaints being dismissed.

### Untimely investigations resulted in dismissals

During fiscal years 2003 and 2004, the Board had to dismiss numerous complaints due to untimely investigations. During this time, board staff forwarded 61 complaints for adjudication that had been received in fiscal years 1999 through 2002. The Board dismissed 53 of them. Many were dismissed because so much time had passed that either the manager's or administrator's credentials had expired or that no further investigation could be conducted. For example, the Board had to dismiss 21 complaints because the license or certificate of the person named in the complaint had expired, thus eliminating the Board's jurisdiction. In several other instances, the Board found that a lack of information prevented it from adjudicating the complaint and that further investigation could not be conducted because of the complaint's age or the absence of information in the file. Several of these complaints involved allegations of abuse or neglect.

Not being able to appropriately adjudicate these complaints decreased the Board's ability to adequately protect the public. Not only was the Board unable to take action

In fiscal years 2003 and 2004, the Board dismissed 53 complaints, many because of untimely investigations.



## Case Examples

- The Board received a complaint from DHS in September 1999 that alleged that the manager of an assisted living facility abused and neglected the residents. The manager was accused of not having enough food in the facility and keeping the temperature of the facility at 90 degrees for 1 week. DHS substantiated the allegations in August 1999. However, the manager maintained an active certificate for almost 2 more years until June 2001, when she allowed it to expire, and therefore was eligible to manage another facility until that time. Board staff did not submit this complaint to the Board for its review and adjudication until November 2003. This was over 4 years after the complaint had been filed, and the Board could not take action because the manager's certificate had long since expired.
- The Board received another complaint from DHS in April 2000 that alleged that a manager abused and neglected the residents at her facility. In this case the manager was accused of verbal abuse. DHS substantiated the allegations in March 2000 and required the manager to provide a plan of correction related to the facility. The manager closed the facility in October 2003. The Board did not review the case until April 2004, when it dismissed the complaint because it was 4 years old and the Board had never notified the manager of the complaint. However, according to the Board's database as of July 2004, the manager maintained an active certificate.

against these administrators or managers, but during the time that these complaints were pending, administrators and managers named in the complaint could continue to practice.

## Recent complaints also resolved slowly

Processing times continue to be long for many of the complaints the Board receives. According to the Board's executive director, during fiscal years 2003 and 2004, the Board's investigators focused, in part, on sending complaints received during fiscal years 1999 through 2002 to the Board. However, based on a comparison of board meeting minutes to the complaints available in the database, it appears that over 100 of the 126 complaints received during fiscal years 2003 and 2004 remained open as of July 2004. Auditors reviewed 19 of the closed complaints and found that all but 3 had been investigated and resolved within 180 days. However, a review of 25 randomly selected complaints that were still unresolved as of July 2004 showed that

Auditors reviewed 25 open complaints and found they had been open between 260 and 680 days.

## Case Examples

- In February 2003, the Board received a complaint accusing an administrator of neglect. The complaint alleged that a patient in the administrator's nursing home had developed gangrene in a wound due to improper care. The complaint file included the complaint and the accused administrator's written response to the allegations, including medical records related to the case. In addition, the file contained a letter from DHS indicating that the Board's investigator had submitted the complaint to DHS in February 2003, and a second letter from DHS along with a redacted copy of DHS' complaint investigation report stating that their investigation had substantiated one of the allegations in May 2003. However, there is no evidence in the file that board staff conducted any further investigation after May 2003, such as contacting witnesses named in the original complaint letter or preparing an investigative summary and report documenting the allegations, the statutes violated, and whether the allegations were substantiated. According to the Board's executive director and investigator, since the Board did not receive all the information it needed from the redacted copy of DHS' investigation report, additional investigation became necessary and this complaint was set aside to focus on other, higher-priority complaints.
- The Board received a complaint in August 2003 accusing a manager of abuse and neglect. The complaint alleged that the manager forced a patient to take his medication and slapped him so hard that his dentures fell out. DHS substantiated these allegations and, as a result, the manager, who also owned the home, surrendered his facility license in September 2003. The complaint file included the DHS field report, a DHS facility survey, the notice of complaint sent to the manager by the Board, the manager's response to the allegations, and a copy of a criminal indictment against the manager on charges related to patient abuse. However, as of August 2004, board staff had not prepared an investigative summary and report, which is the final step in the investigation process that must be completed before forwarding the complaint to the Board for review. According to the Board's executive director and investigator, this complaint investigation has not been completed due to the Board's workload.

they had been open between 260 and 680 days. Four of these complaints, which board staff say are the most critical to investigate as they involved allegations of abuse or neglect, had been open for longer than 1 year.

The continued lengthy investigation times are a concern because information needed to appropriately adjudicate these complaints may become harder to obtain as time passes. Witnesses, as well as complainants and accused managers and administrators, may forget details of the incidents, or may move and not provide updated contact information. For example, the Board received a complaint against

Lengthy complaint investigation times can make it more difficult to obtain necessary information.

an administrator in October 2003 alleging improper care and inadequate medication of a patient. However, the Board did not contact the administrator until July 2004, several months after he had moved out of state. Although the administrator retains an active Arizona license, it may be more difficult for the Board to complete its investigation. Additionally, timely investigations are important because during the investigation, licensees and certificate holders are able to continue to practice unchecked.

## Several factors contribute to untimely investigations

Three main factors contribute to untimely investigations. First, the Board has experienced high turnover among its investigative staff. Second, the Board does not adequately monitor the investigation process and does not have an accurate database for doing so. Third, the Board lacks needed investigation policies and procedures, including time frames for each step in the investigative process.

**Board should ensure it has adequate staff**—The Board has experienced high turnover in its investigator position, and has not used an additional appropriated investigator position to assist in complaint investigations. Specifically, during fiscal years 2003 and 2004, the Board has employed five different investigators. According to the Board's executive director, reasons for this high turnover are termination due to nonperformance, retirement, and transfer to other state boards. Additionally, although the Legislature appropriated one additional position to the Board in fiscal year 2002 to conduct complaint investigations, the executive director reassigned the position to a business manager position instead of an additional investigator position. According to the executive director, while an employee was hired to fill the second investigator position, this person was performing mostly administrative work. This may have occurred because the employee's background when hired did not include any investigation experience. Auditor review of the employee's resume determined that although the employee was previously employed as a paralegal, most of her work experience was in human resources. In August 2003, the executive director requested, and the Department of Administration (DOA) approved, the change to a business manager position. As a result, as of November 2004, the Board had two part-time investigators instead of the two full-time investigators authorized by the Legislature.

To help ensure that it investigates complaints in a timely manner, the Board should consider adding a full-time investigator to its staff, at least until it completes the investigations for complaints received in fiscal years 2003 and 2004 that remain open. The Board can consider two options for adding an investigator. First, if it has available resources, the Board could contract for the additional investigator. This option would allow the Board to obtain the assistance needed without affecting its current staffing. Conversely, similar to when it changed the appropriated investigator position to a business manager position, the Board could request DOA approval to change the current business manager position back to an investigator position. This

would enable the Board to hire an additional full-time investigator using the position originally appropriated by the Legislature. The business manager responsibilities could then be shared among the Board's executive director, licensing coordinator, and administrative assistant.

**Complaint policies and procedures should be enhanced**—While the Board has complaint investigation policies and procedures, additional policies and procedures are needed, as well as time frames for completing various steps in the process. Currently, the Board's policies provide only basic instructions for how to process a complaint. In addition to some administrative requirements, these procedures require board staff to send a letter to the accused administrator or manager informing him or her of the allegations, obtain a response from the administrator or manager, conduct necessary interviews, obtain necessary documentation, and prepare an investigative report for the Board. However, the Board's policies and procedures lack the following:

- **Complaint categorization and prioritization**—The Board lacks written guidelines for categorizing and prioritizing complaints. While the Board indicates that it places high-priority cases in red folders and lower-priority cases in blue folders, it lacks specific written procedures for prioritizing complaints based on their severity. The Board should categorize complaints based on the nature of the allegations, such as whether they involve abuse and neglect, financial mismanagement, or other, less-serious allegations. The Board should then determine the complaint's investigative priority based on the severity of its allegations. Other state agencies have specific methods for evaluating the severity of complaints. For example, DHS complaint policies include procedures for classifying the allegations in new complaints, procedures for prioritizing complaints based on the classification, and guidelines for determining investigative priority.
- **Internal time frames for complaint investigation process**—Although the Board has defined the basic steps for investigating a complaint, it has not established time frames for completing these steps. Creating deadlines for different phases of the process could help the Board ensure that cases are not unattended for extended periods. The Board should ensure that the number of days from complaint receipt to adjudication is no longer than 180 days, which is a reasonable amount of time to investigate and adjudicate complaints based on other regulatory boards' time frames. Additionally, the Board should establish time frames for how quickly its highest- priority cases should be investigated. For example, DHS policies require that its most severe complaints be investigated within 10 days.
- **Guidelines for processing complaints referred by DHS**—The Board has requested that DHS refer to it all manager-related complaints that resulted in a DHS enforcement action against an assisted living facility, and any administrator-related complaints involving the quality of care at nursing care

Investigation time frames can help ensure complaints are not unattended.

institutions. DHS referred at least 62 such complaints in fiscal years 2003 and 2004, 17 of which were in the sample that auditors reviewed. However, the Board has not established policies and procedures for obtaining all relevant information from DHS or for determining what additional investigation is required by board staff. For example, for 2 complaints in the auditors' sample, the only additional investigative work conducted by board staff involved requesting a response from the manager or administrator to the allegations contained in DHS' report—which a manager and/or administrator had already responded to as part of DHS' investigation. Therefore, the Board should establish policies and procedures that guide its staff on the investigation of complaints received from DHS to help ensure that board staff obtain all relevant complaint information, that adequately investigated complaints are immediately forwarded to the Board for consideration, and that any areas needing further investigation are addressed.

Once the Board develops and implements these additional policies and procedures, it should ensure that its investigative staff are fully trained on them.

**Board should monitor complaint investigation progress**—Once the Board establishes complaint investigation time frames, it should monitor the progress of complaint investigations against these time frames. However, to accomplish this, the Board must better manage its complaint database. As previously mentioned, auditor tests found some information to be incomplete and inaccurate.

The Board should develop procedures directing staff to enter information on complaint and investigative activity in an accurate and timely manner and verify the information's accuracy. To assist staff in consistently entering data, the Board should define key investigative activities and complaint information, such as the complaint-received date, closed date, disciplinary actions, and type of complaint. Once these procedures have been established, the Board's executive director should generate monthly management reports to help it track the progress of complaint investigations by ensuring that the internal time frames of the investigative process are met. Auditor review of the Board's complaint database confirmed that it is programmed to generate the management reports needed to track investigation progress.

## Complaint adjudication needs improvement

Based on auditors' review of the 19 complaints received by the Board in fiscal years 2003 and 2004 that have since been resolved, the Board appropriately adjudicated all but one of these complaints based on the allegations and supporting investigations. However, two changes would improve the adjudication process. First,

The Board should better manage its complaint database to better monitor complaint investigation progress.

the Board should cease issuing nondisciplinary letters of concern in instances where disciplinary action is appropriate. Second, the Legislature should consider revising statute to provide the Board with the authority to take action against administrators or managers whose licenses or certificates expire before complaints are fully adjudicated.

**Letters of concern used inappropriately**—During the four board meetings that auditors attended, auditors identified two instances where the Board issued nondisciplinary letters of concern when disciplinary action was warranted. According to A.R.S. §36-446.07(D), the Board may file a letter of concern if there is insufficient evidence of a violation, but the Board wants to communicate and record its concern about the manager’s or administrator’s action. However, in the September 2004 board meeting, auditors observed two instances in which the Board inappropriately issued letters of concern when evidence of violations existed.

### Case Examples

- The Board issued a letter of concern to a manager for employing a caregiver who did not speak sufficient English, and who failed to notify the State when discovering that a resident had a bruise of unknown origin. During the board meeting, the manager admitted to the allegations and stated that a plan of correction had been submitted for the facility to DHS, which had separately substantiated the allegations.
- In a second instance, the Board imposed a \$200 civil penalty, but also issued a letter of concern to a manager for inadequate training records and for providing care to more residents than the facility license allowed. During the board meeting, the manager admitted to the training records violation and to taking in a friend’s elderly relative, even though the facility already had the maximum number of permitted patients. Similar to the first example, DHS separately substantiated these allegations and took enforcement action against the facility’s license.

When asked by auditors, one board member acknowledged using letters of concern in instances where the complaint allegations were substantiated, but explained that she chose to issue a letter of concern in instances where the manager or administrator confessed to the charges because she felt that the individual’s remorse spoke to the person’s character. However, to comply with statute and to help ensure that it adequately protects and informs the public, the Board should use letters of concern only when a complaint has unsubstantiated allegations. To aid the Board in using letters of concern appropriately, the Board should first determine whether each allegation constitutes a violation, and then take appropriate nondisciplinary or disciplinary action.

The Board should not issue letters of concern when disciplinary action is appropriate.

Board would benefit from additional disciplinary authority—Finally, the Legislature should consider providing the Board with authority to discipline managers and administrators with expired licenses. Under A.R.S. §§32-3201 and 3202, several state boards, such as the Arizona Medical Board, the Board of Chiropractic Examiners, and the Arizona Nursing Board, have the authority to take disciplinary action against a practitioner even after their license has expired. In effect, these boards can suspend a practitioner’s license rather than allowing it to expire until an ongoing investigation can be completed. This authority affords state health profession regulatory boards the opportunity to conduct investigations, take appropriate disciplinary action against licensees, and appropriately reflect any disciplinary action as part of their professional record. Additionally, licensees cannot avoid discipline by letting their license or certification expire. However, the Board does not have this authority. This lack of authority, coupled with the untimely complaint investigations, has resulted in the Board having to dismiss complaints against managers and administrators because their licenses expired during the course of the complaint investigation.

## Recommendations

1. The Board should consider adding a full-time investigator either by contracting for additional investigator assistance or by requesting DOA approval to change the current business manager position back to an investigator position, at least until it completes the investigations for complaints received in fiscal years 2003 and 2004.
2. The Board should enhance its complaint policies and procedures by:
  - a. Developing and establishing policies and procedures for categorizing and prioritizing complaints based on their severity, including timelines for investigating the most serious complaints;
  - b. Establishing time frames for each phase of its investigation process to help ensure that complaint investigations are conducted in a timely manner; and
  - c. Developing and implementing policies and procedures that guide its staff on the investigation of complaints received from DHS to help ensure that staff obtain all relevant complaint information from DHS, that adequately investigated complaints are immediately forwarded to the Board for consideration, and that any additional investigative activity addresses areas needing further investigation.
3. The Board should improve the quality of the information in its complaint database and use it to monitor complaint investigations by:
  - a. Developing and implementing procedures directing staff to enter information on complaint and investigative activity in an accurate and timely manner and verifying the information's accuracy;
  - b. Defining key investigative activities and complaint information, such as received date, closed date, disciplinary actions, and type of complaint to help ensure the consistency of information entered into the database; and
  - c. Generating monthly management reports to help it track the progress of complaint investigations by ensuring that the internal time frames of the investigative process are met.
4. Once developed and implemented, the Board should ensure that its investigative staff are fully trained on the additional complaint investigation policies and procedures, and also ensure that all of its staff are trained on procedures for entering complaint information in its complaint database and its capability for generating management reports.
5. The Board should use letters of concern only when it is concerned about unsubstantiated allegations in a complaint. To help ensure the appropriate use of these letters, the Board should revise its procedures to first determine whether each allegation constitutes a statutory violation, and then take appropriate adjudicative action.
6. The Legislature should consider revising A.R.S. §32-3201 to provide the Board with the authority under A.R.S. §32-3202 to discipline administrators and managers whose licenses or certificates have expired.





# FINDING 2

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## Board practices restrict access to public information

The public does not have appropriate access to information regarding nursing home administrators and assisted living facility managers. Auditor telephone calls requesting information found that board staff do not provide proper information about licensees and certificate holders because the Board's procedures are not clearly defined. Additionally, the Board should improve its Web site information's accuracy and quality because it provides helpful information to the public.

### Access to public information is important

One of a regulatory board's important responsibilities is providing information that allows the public to make informed decisions about using the services of licensees or certificate holders whom the board regulates. For example, by informing the public of disciplinary actions taken against licensees or certificate holders, boards assist consumers in selecting competent and ethical professionals. The public records statute seeks to increase public access to government information and to make government agencies accountable to the public.

### Board needs to provide more complete public information

The Board's practices impede consumer access to public information. To ensure that consumers have appropriate access to public information about administrators and managers, the Board should strengthen its public information policies and practices.

Board provides erroneous information—Auditor General staff called the Board to request information on five different administrators or managers with

Board staff did not provide complete or correct information on complaint histories.

complaint histories. For each request, board staff either did not disclose public information regarding the administrator's or manager's complaint or disciplinary history, provided incomplete or inaccurate information, or restricted access to public information. Specifically:

- **Complaint information not disclosed**—According to statute, complaint information, including the nature and disposition of the complaint, and any resulting disciplinary action, is public information. However, for three of the five telephone calls, board staff would not release any complaint information, incorrectly stating that this information is confidential. Additionally, board staff would not release disciplinary information involving one of the managers, again incorrectly stating that this information is confidential. For a fourth call, staff did not provide any information on closed complaints as they were unclear on whether or not they could release this information.
- **Complaint information incomplete**—The remaining telephone call concerned an administrator with no disciplinary action but with two complaints. Even though the administrator had no disciplinary history, staff did not disclose that he had two complaints.
- **Complaint information restricted**—Finally, in response to two auditors' telephone requests to view complaint files, board staff indicated that access to complaint files is restricted. However, according to A.R.S. §39-121, "public records . . . shall be open to inspection by any person at all times during office hours." While board policy also makes public files available to inspections, board staff incorrectly stated to one auditor that the Board's files are confidential and not open to public inspection. In response to the second auditor, board staff were unclear on whether closed complaint files are open to public inspection.

**Strengthen public information policies and practices**—To help ensure that consumers have access to all public information, the Board should establish written procedures that detail the information that is available to the public. The Board has a general public information policy, but it lacks direction on what information staff should provide. The Board should expand this policy to include procedures for properly responding to public information requests, including providing information on the number of open, closed, and dismissed complaints, and the nature and resolution of substantiated closed complaints. Other state boards have developed written policies to assist their staff in making some of this information available by phone. For example, the Board of Nursing has policies requiring staff to provide the public with information over the telephone regarding the number and nature of both dismissed and pending complaints, and the resolution of closed complaints.

The Board should also ensure that its procedures properly address the public's ability to view complaint and licensing files. In addition, once the Board has developed and implemented these procedures, it should ensure that all staff are trained on the procedures and how to properly respond to public information requests.

Board policy should prescribe how to properly respond to public information requests.

## Web site needs improvement

The Board should also improve the quality and accuracy of its Web site information. Board staff frequently direct consumers to their Web site for information, and it is a helpful tool for public information. In fact, for four of the five auditor telephone calls, auditors were referred to the Board's Web site for the requested information. However, Web site information is sometimes inaccurate and is not comprehensive. For example, one manager was listed as possessing an active assisted living facility manager's certificate with no disciplinary action taken as of August 2004, even though she had entered into a consent agreement with the Board and surrendered her license in November 2003. Additionally, the site does not include information on the number, nature of complaints, or how they were resolved for each licensee or certificate holder. In addition, while the Web site notes whether a licensee or certificate holder has been subject to disciplinary action, the number and types of disciplinary actions are not included.

The Board could also provide additional information on its Web site. For example, board meeting minutes could be posted on the Web site. The Board of Psychologist Examiners and the Arizona Medical Board post their board meeting minutes and detailed information regarding the nature and disposition of complaints on their Web sites. The Arizona Medical Board also provides information on the nondisciplinary and disciplinary actions taken against its licensees. Therefore, the Board should ensure that the information provided on its Web site is accurate and, as resources permit, expand the type of information available.

Board staff refer callers to the Board's Web site, but it is sometimes inaccurate and not comprehensive.

## Recommendations

1. The Board should establish written public information policies and procedures that detail the information that will be made available to the public, including:
  - a. The number of open, closed, and dismissed complaints;
  - b. The nature of closed complaints that resulted in board action;
  - c. The type of disciplinary action taken; and
  - d. The public's ability to view complaint and licensing files.
2. The Board should ensure that staff is fully trained on how to properly respond to public information requests.
3. The Board should ensure that its Web site information is accurate.
4. As resources permit, the Board should expand the information it provides on its Web site, including:
  - a. Board meeting minutes;
  - b. The number of open, closed, and dismissed complaints against an individual;
  - c. The nature of closed complaints that resulted in board action; and
  - d. The type of disciplinary action taken.

# FINDING 3

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## Board should improve oversight of operations

Board members need to improve their oversight of board operations to address the deficiencies discussed in previous sections of this report, as well as other operational concerns ranging from ineffective use of staff to high turnover. Board members should improve their oversight by requiring that the executive director prepare management reports, and reviewing and acting on these reports as needed at board meetings.

### Numerous problems at the Board

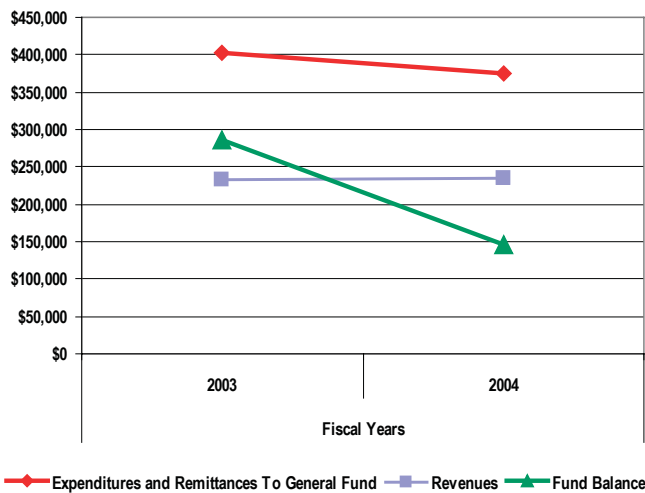
The Board faces problems in a number of areas. Some of these problems, such as resolving complaints in a timely manner and ensuring that the public has access to information, have already been discussed in earlier parts of this report (see Finding 1, pages 11 through 19, and Finding 2, pages 21 through 24). In addition, staff and financial resources have been poorly managed, formal disciplinary hearings have not been scheduled with the Office of Administrative Hearings, and critical data on complaints and licensing is inaccurate. These problems have been intensified by high staff turnover.

**Staff resources not used effectively**—The Board has not ensured that its staff resources are used effectively and directed to the Board's most critical activities. For example, as indicated in Finding 1 (see pages 11 through 19), while the Board, including its investigator, focused in part on closing complaints received between fiscal years 1999 through 2002, the majority of complaints received in fiscal years 2003 and 2004 remained open. However, resources appropriated to assist with complaint investigations have not been allocated to address this problem. Specifically, as discussed in Finding 1 (see pages 11 through 19), the Legislature appropriated an additional investigator position to the Board, but the executive director had this position changed to a business manager position.

However, it is not clear that there is a strong need for a business manager, especially at the expense of an investigator position. Five of six other Arizona regulatory boards

Staff resources have not been allocated to critical activities.

Figure 1: Expenditures, Revenues, and Fund Balance  
Years Ended June 30, 2003 and 2004



Source: Auditor General staff analysis of the Arizona Financial Information System Revenues and Expenditures by Fund, Program, Organization, and Object; and Trial Balance by Fund reports for the years ended June 30, 2003 and 2004.

auditors contacted did not have business or office managers. Specifically, auditors contacted six other Arizona state regulatory boards that have a similar number of staff and budget.<sup>1</sup> Only one board had a business or office manager assigned to only administrative duties, such as accounting and board support. The five other boards assign staff to assist with both administrative and regulatory functions, including three boards that have deputy directors with responsibility for complaint investigations or licensing. For example, the Board of Osteopathic Examiners in Medicine and Surgery, with 5.5 authorized positions, has a licensing coordinator who is also responsible for some administrative activities, such as human resources and procurement. Therefore, in addition to the Board's executive director, the administrative assistant and licensing coordinator could potentially take on the tasks currently assigned to the business manager.

**Financial resources not effectively managed**—In addition to the ineffective staff use, the Board has not effectively managed its financial resources. As illustrated in Figure 1, during fiscal years 2003 and 2004, the Board's operating expenditures have been much greater than its revenues, decreasing its fund balance from over \$457,000 at the beginning of fiscal year 2003 to less than \$115,000 by the end of September 2004. Specifically, board expenditures, remittances to the General Fund, and operating transfers exceeded revenues by over \$171,000 in fiscal year 2003 and

over \$139,000 in fiscal year 2004. Some of these expenditures included substantial payments for temporary employees and a raise that the Board authorized for its executive director in September 2003. Based on auditor review of board meeting minutes, while the Board determined that the executive director deserved a 30 percent pay increase, the Board authorized the pay increase without discussing its effect on their financial situation.

While the Board raised all of its fees to their statutory maximum in April 2004 in an effort to generate additional revenues, these higher fees may not improve the Board's financial situation. Based on financial projections developed by the Board, with the fee increase revenues are

### Fees: Increases Were Effective April 2004

	Old Fee	New Fee
<b>Administrators:</b>		
Initial Application and Examination	\$350	\$600
License Renewal	240	300
<b>Managers:</b>		
Initial Application and Examination	40	200
Certificate Renewal	100	100

Source: Auditor General staff summary of information from the *Arizona Administrative Register*, Volume 10, Issue 10, and the *Arizona Administrative Code*, R4-104 and R4-33-205.

<sup>1</sup> Auditors contacted six boards that have a similar staff and budget: the Arizona Boards of Appraisal, Chiropractic Examiners, Examiners of Funeral Directors and Embalmers, Osteopathic Examiners in Medicine and Surgery, Psychologist Examiners, and the Naturopathic Physicians Board of Medical Examiners.

anticipated to exceed expenditures by approximately \$83,000 in fiscal year 2005. This is projected to increase the Board's Fund balance to nearly \$273,000. The Board's executive director provided information to the Department of Administration, Central Services Bureau to help develop projections, but according to the executive director the information used to project revenues, such as the anticipated number of license or certificate renewals for fiscal year 2005, came from the Board's licensing database in April 2004, which auditors found to be inaccurate. Additionally, the Board is required to remit 10 percent of its revenues to the General Fund. However a review of the projections found that the Board did not include the required remittance in its revenue or expenditure projections. Finally, in the first quarter of fiscal year 2005, the Board received nearly \$66,000 in revenues, but expended, remitted to the General Fund, or transferred over \$98,000.

Since the Board's expenditures, remittances to the General Fund, and operating transfers continue to exceed revenues, the Board should take appropriate action concerning its financial situation. Specifically, the Board should review expenditures and determine if any expenditures can be reduced, and consider whether a statutory change to allow the Board to further increase its fees is necessary. If the Board determines that a fee increase is necessary, it should request that the Legislature increase the statutory fee limits.

**Hearings not scheduled**—Formal complaint hearings have not been scheduled with the Office of Administrative Hearings, which has delayed board action for some of its most serious complaints. According to board members, the Board sends complaints to formal hearings when the violations appear to be knowingly committed and serious. Auditor review of board meeting minutes for fiscal years 2003 and 2004 identified six complaints that the Board referred to a formal hearing at the Office of Administrative Hearings. However, as of August 2004, board staff had not scheduled these complaints for a hearing, even though the Board directed that all six hearings be scheduled prior to March 2004. The Board's executive director could not explain why these complaints had not been scheduled for a hearing. Further, for another complaint, the executive director signed a consent agreement after the Board had rejected it and sent the complaint to a formal hearing. Board staff should ensure that they schedule complaints for formal hearings as directed by the Board.

Board staff did not schedule six formal hearings.

**Problems with data accuracy**—As previously mentioned in the Introduction and Background (see page 7), auditors identified several problems with the Board's database, including missing and inaccurate information for both complaint and licensing data. Specifically:

- **Complaint information incorrect and incomplete**—Information in the database on the number of complaints received, complaint investigation progress, and complaint closed date is incomplete and inaccurate. For example, auditor review of 44 complaints the Board received in fiscal years 2003 and 2004 found that 2 complaints reflected as closed in the database were actually still open, while 6 complaints reflected as open were actually closed. Board staff have also used different methods for tracking complaints received, making it difficult to



determine the number of complaints received during any given period. Additionally, auditor review of the database determined that many of the fields used to track and document the progress of complaint investigations, such as date that the complaint was received, the date that board staff completed its complaint investigation, and date that the complaint was closed, did not have information, thus limiting its usefulness as a tool to track investigation progress.

- **Licensing information missing**—Information in the database on license and certificate applications and complaint investigation progress is also incomplete. For example, auditor review of license and certificate applicant data found that the Board approved an estimated 984 applications received in fiscal years 2003 and 2004, but the database did not include the date of board approval for 112 of these applications. As a result, the database does not include the information needed to determine whether the Board approved these licenses in a timely manner.

As recommended in Finding 1 (see pages 11 through 19), the Board should improve the quality of the information in its complaint database. The Board should also improve the quality of information in its licensing database.

**Turnover intensifies some problems**—Some of these problems have been intensified by high turnover. Since July 2002, the Board has employed at least five different investigators, five different licensing coordinators, and four different business managers. According to the Board's executive director, this high turnover has resulted from terminations due to nonperformance, retirement, voluntary resignations and transfers to other state boards. In addition, the Board has used temporary help from a private company several times during fiscal years 2003 and 2004 to help fill vacant positions, paying nearly \$13,000 for temporary employees in fiscal year 2003 and nearly \$15,000 for temporary employees in fiscal year 2004.

## Greater oversight could improve operations

In order to address these problems, board members should improve their oversight of operations. Although the Board delegates most of the responsibility for its operations to its executive director, board members are still responsible for ensuring that the agency fulfills its statutory requirement to regulate administrators and managers. According to the executive director, she currently provides verbal reports to the Board on a quarterly basis that include information about its performance goals. These goals include revising the managers' state examination, reducing the backlog of open cases, and amending the Board's administrative rules to increase licensing and certification fees. While the executive director has historically provided some information to the Board on operations, including some financial information, auditor observations of the June through September 2004 board meetings found that the executive director's verbal reports were very limited and did not provide sufficient

information related to progress toward goals or the Board's operations, such as the Board's finances, or license, certificate, and complaint processing.

Similar to the six Arizona regulatory boards contacted by auditors, the executive director should provide written reports regarding board operations and activities to the Board for its review. These six regulatory boards provide at least some written information to their boards during meetings. Four of the six executive directors provide some type of written financial information at least every other board meeting, and five of the six provide information on complaint status. Additionally, three of the six provide information on licensing activity. Therefore, the Board should require that its executive director provide a written report that includes information on such things as the number of complaints received, the status of open complaints and hearings, the number of license and certificate applications received, staffing issues, and revenues and expenditures. The Board meets monthly and, at a minimum, the report should be prepared and provided to it every other month. The Board should then use this report to review board operations and activity and to direct its staff on needed changes and improvements.

The executive director should provide written reports to the Board.

## Recommendations

1. The Board should take the following actions concerning its financial situation:
  - a. Develop realistic revenue and expenditure projections based on anticipated licensing activity;
  - b. Review expenditures and determine if they can be reduced;
  - c. Consider whether a statutory change to allow the Board to further increase its fees is necessary; and
  - d. If so, request that the Legislature increase statutory limits on its fees.
2. In conjunction with recommendation 3 in Finding 1 (see page 19), the Board should improve the quality of the information in its complaint and licensing database.
3. Board staff should ensure that they schedule complaints for formal hearings as directed by the Board.
4. The Board should improve its oversight of operations by requiring that the executive director provide it with a written report at least every other month. The Board should use the reports to review board operations and activity and provide direction to staff. The report should include:
  - a. Information on the number of complaints received;
  - b. The status of open complaints and hearings;
  - c. The number of license and certificate applications received;
  - d. Staffing issues; and
  - e. Revenues and expenditures.

# FINDING 4

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## State requirements not always followed

In addition to greater oversight, board members and staff need to comply with state requirements regarding cash handling, procurement, and reimbursement for travel. Specifically, the Board lacks adequate controls to protect the monies it receives, which leaves these monies vulnerable to loss or theft, and has violated several state procurement and travel requirements. Therefore, the Board should strengthen its internal controls to better safeguard the monies it receives and ensure that it follows procurement and travel requirements.

### Internal controls are weak

Auditors found that the Board has not implemented sufficient internal controls to adequately safeguard the monies it receives. Specifically, the Board does not deposit monies in a timely manner and inadequately segregates responsibilities for receiving, recording, and depositing its cash receipts.

**Monies inadequately safeguarded**—According to the *State of Arizona Accounting Manual*, cash receipts totaling more than \$500 should be deposited on a daily basis. However, auditor review of the Board's receipt log for July 2004 found that the Board deposited its receipts in an average of 6 days. These deposits ranged from \$2,300 to nearly \$10,000 and included \$3,400 that board staff held in its office for over 10 days. The Board's business manager stated that these receipts are locked in her office when she is not there and accessible only to her and the executive director. However, this practice is inconsistent with *State of Arizona Accounting Manual* requirements, and board staff should deposit receipts totaling \$500 or more on a daily basis.

The Board does not always deposit cash receipts in a timely manner.

**Cash-handling procedures could be improved**—In addition to making timely deposits, the Board should enhance its cash-handling procedures to better protect the monies it receives. For instance, the administrative assistant is responsible for processing the mail, restrictively endorsing checks, and creating a cash log that reflects the day's receipts. Ideally, the cash-handling duties of the

administrative assistant should be segregated. Given the small number of board staff, it is reasonable for one person to perform these tasks as long as there are compensating controls in place. While some of these controls are in place, according to the executive director, board staff do not reconcile the number of licenses issued or renewed to the licensing revenue received. This increases the potential for loss or theft. As a result, the Board should adopt procedures to reconcile monies received by the administrative assistant to licenses issued or renewed.

Additionally, the business manager is responsible for many aspects of the cash-handling process, including creating a receipt log, reconciling the receipt log to the cash log, and preparing and making the deposits. However, based on auditor observation, the business manager creates the receipt log by basically duplicating the cash log, which she receives electronically. Additionally, while the deposit slips and receipt log are submitted to the executive director for review, procedures do not require that the executive director reconcile the deposit by comparing deposit slips to the original password-protected cash log. Again, these inadequate procedures create the potential for loss or theft of state monies. Therefore, the Board should strengthen its cash-handling procedures by requiring that the executive director or a separate board staff person reconcile the prepared deposit to the password-protected cash log.

## Procurement and travel policies not always followed

In addition to the internal control weaknesses, the Board has not always complied with state procurement and travel requirements. As reflected in its December 2004 report, the Department of Administration's General Accounting Office (GAO) reviewed several board practices, including the Board's procurement and travel practices. GAO identified several violations of state procurement and travel requirements. Auditor review of two additional contracts identified continuing violations. Therefore, the Board should take several steps to comply with these requirements, including sending staff to available travel policy and procurement training, developing and implementing policies and procedures, and recovering the overpayments for travel expenses.

**Procurement violations exist**—Violations identified by GAO included agreeing to pay a vendor prior to receiving services, obtaining services from a vendor who already had a state contract and developing different payment terms, and failing to include the state-required uniform terms and conditions. The following examples illustrate the numerous procurement and contracting violations that the Board committed:

The Board has violated multiple procurement requirements.

- **Consulting contract**—The GAO found that in fiscal year 2004, the Board entered into a contract for computer consulting that violated several procurement statutes and administrative rules. While the Department of Administration (DOA) has entered into numerous contracts for these services that are available to all state agencies, the Board opted not to use them and entered into a separate contract without obtaining written, prior approval from DOA's State Procurement Office (SPO). The Board awarded a contract to this consultant for \$10,000 in fiscal year 2003. However, over the course of the contract, the Board paid the vendor more than \$11,000, which exceeded the Board's delegated purchasing authority.

The Board has continued to violate procurement requirements as evidenced by its contracts with this same consultant for fiscal year 2005. In September 2004, the Board's executive director indicated that the Board had continued to use this same vendor during fiscal year 2005 while a new contract was being drafted. According to the executive director, the Board entered into two contracts with this vendor in October 2004, each for \$10,000. One contract is for computer programming, and the other is for computer maintenance, service, and repair. Auditors' review of these signed but undated contracts, which were effective July 1, 2004, and other documentation revealed the following concerns:

- The Board did not competitively procure the services outlined in the two contracts. According to administrative rule R2-7-336, state agencies and boards should obtain price quotes or bids for the planned purchase of goods and services. Specifically, for the purchase of goods and services between \$5,001 and \$9,999, three written quotes must be obtained. For the purchase of goods and services between \$10,000 and \$25,000, potential vendors must be notified of the planned procurement and given the opportunity to submit quotes in response to the advertised procurement. These procedures must be followed unless SPO has approved an impracticable, sole source, or emergency procurement. However, the Board could not provide documentation that any price quotes or bids were obtained or that it had received approval from SPO for an impracticable, sole source, or emergency procurement.
- The Board appears to have split the services defined within the two contracts to stay within their delegated procurement authority of \$10,000. Auditors compared the scope of work defined in the two fiscal year 2005 contracts to the scope of work defined in the fiscal year 2004 contract with this same vendor and found the fiscal year 2005 contracts to be very similar to the single fiscal year 2004 contract. For example, the fiscal year 2004 contract provided for the following services: 1) review data needs with staff; 2) develop forms, basic reports, and queries; 3) evaluate the Board's

current computer network; 4) propose new hardware and software; 5) set up network and work stations and load and configure software; and 6) convert database and restructure tables and fields. While this partial list of services was included in a single contract for fiscal year 2004, these services have been separated into the two contracts for fiscal year 2005. According to the Board's executive director, the Board entered into two contracts instead of one at the vendor's suggestion and indication that another state board has similar contracts with this vendor.

Additionally, the Board paid this vendor for work performed prior to signing the contracts and without a documented purchase order. Specifically, the Board paid the vendor approximately \$1,150 for work completed in July and August 2004 and received invoices for approximately \$1,200 for additional work completed in August through October 2004. However, according to the *State of Arizona Accounting Manual*, state agencies must prepare a purchase order to obtain goods and services in excess of \$500.

- **Contract signed with inappropriate terms**—The GAO also found that the Board entered into a contract to develop a legislative action plan that inappropriately included a clause to indemnify, defend, and hold the contractor harmless for legal costs, attorney fees, and judgments arising out of work that the Board authorized. This violates administrative rule R2-10-301(C), which states that state agencies must obtain approval from DOA's Office of Risk Management before agreeing to indemnify a contractor.

**Several travel reimbursement violations were identified**—The GAO also identified several travel policy violations. These violations included board members and staff being inappropriately reimbursed for lodging, meals, and parking for travel related to board activities. Based on the GAO's review of 18 claims submitted between July 2002 and December 2003, board members and staff were inappropriately reimbursed approximately \$1,600 for 11 claims. For example, the executive director and one board member attended a National Association of Boards of Examiners of Long Term Care Administrators conference in Portland, Oregon, in June 2003. Both of them stayed an additional night after the conference ended, but did not provide documentation to justify the additional night's stay. In addition to being reimbursed a total of over \$300 for this additional night's stay, the executive director and board member were reimbursed a total of more than \$160 for several meals included in the price of the conference and for meals on the additional day. Consistent with the GAO's recommendation, the Board should recover any overpayments made to its members and staff for travel expenses. The Board should work with its Assistant Attorney General on this matter as needed.

**Board should adhere to state requirements**—The Board should ensure that it follows all state procurement and travel requirements. To help ensure that the Board and its staff follow these requirements, the Board's executive director and

appropriate staff should attend available training provided on the state travel policy and procurement requirements. For example, DOA provides a training class on the GAO travel policy and several training classes on procurement policies. Additionally, the Board should develop and implement procurement and travel policies and procedures based on the State's requirements.

## Recommendations

1. The Board should strengthen its cash-handling procedures to ensure that they are consistent with the *State of Arizona Accounting Manual* and to help ensure that its cash receipts are properly safeguarded. These procedures should include:
  - a. Depositing receipts once they total \$500 or more or on a daily basis;
  - b. Performing an independent reconciliation of monies received by the administrative assistant to licenses issued or renewed; and
  - c. Performing an independent reconciliation of monies received as reflected on the cash log to the prepared deposit.
2. Consistent with the GAO's recommendation, the Board should recover any overpayments made to its members and staff for travel expenses. The Board should work with its Assistant Attorney General on this matter as needed.
3. The Board should ensure that it follows all state requirements, policies, and procedures for procurement and travel. In order to do this, the Board should:
  - a. Ensure that its executive director and appropriate staff attend DOA's travel policy and procurement training classes; and
  - b. Develop and implement procurement and travel policies and procedures based on the State's requirements.





# OTHER PERTINENT INFORMATION

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During this audit, other pertinent information was obtained regarding Arizona and other states' regulation of nursing care institution administrators.

## States' regulation of nursing care institution administrators

While all 50 states and the District of Columbia license and regulate administrators, states use three different regulatory models to do so. These regulatory structures are as follows:

- **Independent board**—Eleven states, including Arizona, have established independent boards to license administrators.<sup>1</sup> These boards are typically composed of members representative of both industry and the public who are appointed by the state's governor and are supported by their own staff and funds. Arizona also predominantly relies on the independent board structure to regulate health and other professions in the State. According to several board members and representatives from trade associations, an independent board represents their preferred option for regulating administrators and managers.
- **Independent board supported by a separate state agency**—While an additional 33 states and the District of Columbia have also established independent boards to license administrators, these boards do not have their own staffs, but are staffed and supported by a separate state agency. These states maintain an independent board, generally composed of industry and public members, that is responsible for approving licenses and taking disciplinary actions. However, staff and support functions for these boards are provided by another state agency, typically a public health agency or umbrella agency for occupational licensing. For example:
  - **Public health agency**—Sixteen states and the District of Columbia have independent boards that rely on the state's health department to provide

<sup>1</sup> Alabama, Arizona, Louisiana, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, Oklahoma, West Virginia, and Wyoming.

staff and support to the board.<sup>1</sup> In addition to supporting the board that licenses administrators, these states' health departments typically staff and support many if not most other health profession regulatory boards in the state. For example, Michigan's Department of Community Health not only provides staff and support to the Michigan board that regulates administrators, but also supports the Michigan boards that regulate nurses, physicians, dentists, and many other health professions.

- **Occupational licensing agency**—Fifteen states have independent boards that rely on that state's professional or occupational licensing agency to provide staff and support to the board.<sup>2</sup> These professional or occupational licensing agencies typically staff and support numerous regulatory boards within these states. For example, Georgia's Professional Licensing Boards Division consists of over 40 boards, regulating medical professions such as administrators and podiatrists, as well as other professions such as librarians, foresters, and private detectives.

The remaining states use another type of agency, such as their Department of Human Services, to provide staff and support to their independent boards.<sup>3</sup>

While statute allows for a separate state agency to provide staff and support to the Board, this type of regulatory structure is not typically used in Arizona. Specifically, A.R.S. §36-446.03(G) allows the Board to contract with other agencies to provide investigative, professional, and clerical assistance. However, Arizona currently licenses most medical and other professions through separate agencies or independent boards. Auditors identified only one example of this type of regulatory structure in Arizona—the Arizona State Boxing Commission, which is a commission consisting of Governor-appointed members that relies on the Arizona Department of Racing for staff and operational support.

Although this regulatory structure is not typically used in Arizona, various stakeholders indicated that this regulatory approach would have both benefits and drawbacks. For example, some board members and trade and consumer advocacy association representatives indicated that there could be benefits from an agreement between the Board and another state agency to provide staff and support including "economy of scale" savings. However, it is unclear with what agency the Board could contract. DHS officials indicated that their limited resources would preclude the

<sup>1</sup> District of Columbia, Florida, Iowa, Kansas, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Dakota, Tennessee, and Washington.

<sup>2</sup> Colorado, Delaware, Georgia, Idaho, Indiana, Kentucky, Maine, Montana, New Mexico, Pennsylvania, South Carolina, Utah, Vermont, Virginia, and Wisconsin.

<sup>3</sup> Arkansas and Oregon.

agency from taking on the responsibility of staffing and supporting the Board. DHS also indicated that this regulatory approach may have merit, but it would not make sense to pursue this regulatory approach for just this board when the other professional regulatory boards in the State do not follow this approach. Finally, board members and representatives of trade associations expressed a desire to keep the regulation of long-term care facilities, which DHS currently performs, separate from that of the administrators and managers. Board members further expressed concern that DHS' focus on facility compliance with regulations may affect its ability to impartially and appropriately assist with the regulation of administrators and managers.

- **State agency**—Six states regulate and license administrators within a state agency and do not have an independent board.<sup>1</sup> These states have placed this responsibility within either their public health agency, occupational licensing, or aging department. For example, California recently eliminated its independent administrator's licensing board and transferred the authority and responsibilities for licensing and regulating administrators to the California Department of Health Services. Department representatives reported a mixed reaction to this change from licensees. Newly licensed administrators appreciate the agency's quick, efficient service, while those who have been licensed for longer periods indicate that they miss the role of their peers in deciding on disciplinary actions.

Texas uses a somewhat different model to regulate administrators. Specifically, while the Texas Department of Aging and Disability Services regulates administrators, the state has also established an advisory committee to provide recommendations on rule changes and disciplinary actions to this agency. The advisory committee membership is similar to Arizona's board membership.

In other states, relying on a state agency to regulate administrators is the least prevalent regulatory structure, and board members and trade association representatives voiced opposition to this approach. Some of these stakeholders explained that an independent board consisting of peers is important for input in licensing and disciplinary decisions and is more flexible and understanding in their regulatory approach, while a state agency is perceived as much more rigid.

<sup>1</sup> Alaska, California, Connecticut, Hawaii, Illinois, and Texas.



# SUNSET FACTORS

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In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) should be continued or terminated.

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

The Board was created in 1975 to protect the public's health, safety, and welfare by licensing and regulating nursing care institution administrators and also in response to federal requirements that each state must license administrators of nursing homes in order to receive certain federal Medicaid funds. In 1990, the Board's statutes were amended to add the responsibility for certifying and regulating adult care home managers, renamed in 1998 to assisted living facility managers.

The Board's mission is to "protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers." To accomplish this mission, the Board has established three goals: 1) to improve agency operations relating to complaint investigations to ensure consistent and timely enforcement of statutes and rules regulating nursing care institution administrators and assisted living facility managers; 2) to ensure that licenses and certificates are processed in a timely and efficient manner; and 3) to ensure that agency operations are effective and efficient.

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

While the Board performs some of its responsibilities efficiently and effectively, it needs to improve most of the functions it performs. Specifically, the Board approves continuing education programs and ensures that licensees and certificate holders have completed the required amount of continuing education prior to license or certificate renewal. The Board also processes most of the

The Board performs some responsibilities effectively but needs to improve most of its functions.

initial license and certificate applications it receives within the required 120 days. Auditors reviewed information obtained from 61 license and certificate applications received from August 2000 through January 2004 for compliance with processing time frames established by the Board and found that the Board processed 49 of these applications within 120 days. However, the Board did not comply with its time frames for the remaining 12 applications, either because it did not review the applications in a timely manner, or it did not close pending applications when applicants failed to submit deficient information in a timely manner. Therefore, the Board should ensure that it processes license and certificate applications within time frames prescribed by administrative rule.

The audit also identified several additional areas in which the Board can improve its effectiveness and efficiency in fulfilling its statutory responsibility to protect the public:

- The Board needs to investigate and adjudicate the complaints it receives in a timely and appropriate manner. Auditor review of complaints found numerous instances where the Board had to dismiss complaints received between fiscal years 1999 and 2002 due to untimely investigations. Additionally, most of the complaints received by the Board during fiscal years 2003 and 2004 were open as of July 2004. Auditor review of 25 randomly selected open complaints found they had been open between 260 and 680 days. To improve its investigation timeliness, the Board should ensure that it has adequate and trained staff; develop and implement additional complaint investigation policies and procedures, including time frames for each stage of the investigation process, and generate management reports on the status of open investigations. Additionally, the Board should use letters of concern only when it cannot substantiate complaint allegations, but has concerns about an administrator's or manager's conduct (see Finding 1, pages 11 through 19).
- Further, the Board needs to improve its oversight of board operations. Auditors identified numerous problems at the Board, including ineffective use of staffing and financial resources, unscheduled formal hearings, and inaccurate and incomplete data. Most of the problems could be addressed through increased oversight and guidance from the Board, including requiring the executive director to submit reports at least every other month on complaint and licensing activity, staffing issues, and revenues and expenditures (see Finding 3, pages 25 through 29).
- Finally, the Board has not always complied with state requirements regarding cash-handling, procurement, and travel reimbursement. The Board should ensure that it complies with these requirements by enhancing its cash-handling procedures and making deposits in a timely manner, attending training on procurement and travel requirements, and developing procurement and travel policies based on state requirements (see Finding 4, pages 31 through 35).

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

The Board has operated in the public interest in some areas, but can improve in others. The Board also maintains a Web site, which has some helpful information.

However, auditors identified two areas in which the public interest could be better served. Specifically:

- The Board's public information policies and practices should be strengthened to ensure that consumers have appropriate access to public information on administrators and managers. First, board practices for responding to public requests for information are inappropriate, as board staff either provided incomplete or inaccurate information or did not disclose public information. Therefore, the Board should establish written procedures that detail information available to the public, and then train staff on how to properly respond to public information requests. Additionally, the Board should ensure its Web site information is accurate. Also, as resources permit, the Board should provide additional Web site information that includes board meeting minutes; information on individuals with dismissed or closed complaints, including the number of open, closed, and dismissed complaints; and the nature and resolution of closed complaints resulting in board action (see Finding 2, pages 21 through 24).
- Although required to have two "lay member" consumer representatives on its Board, one position has been vacant for several months, while the other position does not appear to be appropriately filled. First, one of the Board's consumer representative positions has been vacant from August 2003 through October 2004. Statute requires that "lay members" must represent consumers of nursing care or assisted living services. According to a representative from the Governor's Office, the statute defining lay members is one of the most restrictive among Arizona regulatory boards, and as a result, it has been difficult to fill the positions. Additionally, the Board's other consumer representative position is filled by an individual who worked as a nursing care institution administrator in the past and maintains an active administrator's license, although he is currently not employed as an administrator. According to a representative from the Governor's Office, this information was overlooked when the member was originally appointed, but when this member's term expires in January 2005, he will not be reappointed as a lay member.

The Legislature and the Board should both take action to remedy the situation. First, the Legislature should consider revising A.R.S. §36-446.02(B) to eliminate the requirement that the lay members represent consumers of nursing care or assisted living services and make it easier for



The Board should work with the Governor's Office to make sure that lay member positions are filled.

members of the general public to serve on the Board. Second, the Board should work with the Governor's Office to ensure that these board positions are appropriately filled by statutorily designated consumer representatives.

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

The Governor's Regulatory Review Council (GRRC) reviewed the Board's rules in August 2004 and determined that the Board needs to amend some of its rules to ensure that they are consistent with statutes. For example, GRRC noted a discrepancy between A.R.S. §36-446.04(B), which states that the Board shall issue a certificate to an assisted living facility manager who satisfactorily completed Department of Health Services (DHS)-approved training, and administrative rule R4-33-402, which states that an applicant can provide transcripts from an accredited college in lieu of completed, board-approved training. While the Board revised its rules in 2004 to increase fees, it acknowledges that additional rules are needed. However, as of October 2004, the Board had not yet opened a rule docket or retained a rule writer's services to begin the process.

The Board needs to define what constitutes acceptable work experience for managers.

In addition to rule revisions, the Board needs to adopt a new rule that defines the work experience it will accept to satisfy the certification requirement for managers. Specifically, A.R.S. §36-446.04(B)(4) requires that applicants for manager certificates complete 12 months of work experience in a health-related field within the preceding 5 years, as board rule prescribes. While the Board recognizes the need to define the work experience it will accept as of October 2004, the Board has yet to prescribe this rule.

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

The Board followed all requirements for noticing and public comments when it amended its rules concerning fees for administrator licenses and manager certificates in fiscal year 2004. This included filing the formal notice of rulemaking with the Secretary of State's Office and providing for a period of public review and comment. The Board does not report using any other methods, such as its Web site or a newsletter, to encourage public input when developing its proposed rules and regulations.

The Board has also complied with the State's open meeting laws. The Board has posted public meeting notices at least 24 hours in advance at the required

location, made agendas available to the public, maintained meeting minutes, and has the required statement of where meeting notices will be posted on file with the Secretary of State.

**6. The extent to which the Board 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, the Board has not investigated complaints in a timely manner. Specifically, during fiscal years 2003 and 2004, the Board had to dismiss 53 complaints that it had received in fiscal years 1999 through 2002, in some cases citing that so much time had passed that either the manager's certificate or administrator's license had expired or that further investigation could not be conducted. Some of these complaints involved abuse and/or neglect and had been substantiated by DHS. Additionally, over 100 of the 126 complaints received by the Board during fiscal years 2003 and 2004 remained open as of July 2004. Auditors' review of 25 of these open complaints determined they had been open between 260 and 680 days. To improve the timeliness of complaint investigations, the Board should enhance its policies and procedures, establish complaint investigation time frames, and generate management reports that would enable greater oversight of open investigations.

Additionally, the Board should use letters of concern only when it is concerned about unsubstantiated allegations in a complaint (see Finding 1, pages 11 through 19).

**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.**

The Board's statutes have been amended several times since 1998, when the Legislature revised the designation of adult care homes and other long-term care facilities to assisted living facilities. In its September 2003 Sunset Review Report, the Board reported that it needed to seek a number of additional changes to address deficiencies in its enabling statutes. These include the need

to better organize its statutes and increase fees, the authority to issue cease-and-desist orders to unlicensed practitioners, and the need to incorporate provisions of the Administrative Procedures Act within board statutes. Despite these stated needs, the Board did not request these legislative changes in 2004 and reports that it will not request these changes during 2005 in order to focus on the sunset process.

**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.**

Based on audit work, the Legislature should consider revising:

- **A.R.S. §32-3201** to grant the Board authority to discipline managers and administrators with expired licenses. This statute authorizes health regulatory boards to suspend a practitioner's license, rather than allowing it to expire, until an ongoing investigation can be completed under A.R.S. §32-3202. This authority affords state health profession regulatory boards the opportunity to discipline licensees or certificate holders and have this action appropriately reflected on their professional record (see Finding 1, pages 11 through 19).
- **A.R.S. §36-446.02(B)** to eliminate the requirement that the lay members represent consumers of nursing care or assisted living services and make it easier for members of the general public to serve on the Board.

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

Terminating the Board would harm the public health, safety, and welfare as the Board is responsible for licensing administrators, certifying managers, and investigating and adjudicating complaints against administrators and managers. Without state laws establishing educational and competency standards, the public could be subject to unqualified or incompetent administrators and managers. Currently, all 50 states license and regulate administrators. However, while all 50 states license and regulate administrators, they use different regulatory structures for doing so (see Other Pertinent Information, pages 37 through 39).

**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.**

The audit generally found that the current level of regulation exercised by the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers is appropriate. However, as previously mentioned, the Board could benefit from the authority to discipline managers and administrators with expired licenses or certificates (see sunset factor 9, page 46).

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

The Board has used private contractors to perform certain services. For example, the Board has contracted for the development and support of its database and Web site, rule development, and several other functions.

While there do not appear to be any additional opportunities to contract services, the Board needs to follow state procurement requirements for its contracts. Specifically, during its review of board operations, the Department of Administration, General Accounting Office, identified numerous violations of the State Procurement Code. These included agreeing to pay a vendor before receiving services and obtaining services from a vendor that already had a state contract and developing different payment terms (see Finding 4, pages 31 through 35).



# AGENCY RESPONSE





**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND  
ASSISTED LIVING FACILITY MANAGERS**

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**Janet Napolitano**

**Governor**

**Victoria Martin**

**Executive Director**

December 27, 2004

Debra Davenport  
Auditor General  
2910 North 44<sup>th</sup> Street, Room 201  
Phoenix, AZ 85018

RE: Response to Sunset Audit Report

Dear Ms. Davenport:

I respectfully submit the Nursing Care Board's response to the Auditor General's performance audit. I am pleased note that the audit did not find any missing funds, misappropriated funds, or malfeasance and that the Auditor General recommended that the Board be continued.

The Board is a small (5 FTEs) self-supporting 90/10 agency that currently licenses 2,726 long term care professionals. The Board's annual budget appropriation is about \$370,000.

The Board was steadily deteriorating from FY98 through FY02 due to rapid growth and repeated management turnover. But in FY03, the Board hired its current Executive Director, entered a rebuilding period, and began to address its challenges. Despite the significant obstacles it has had to overcome in the last couple of years, the Board has made great progress.

In the last couple of years, under my direction, the Board created a website, provided staff with e-mail, raised fees for the first time in 12 years, addressed the large backlog of complaint cases and license applications that were here in July 2002, created the first policies and procedures for the Board's processes, developed an enforcement coordination program with DHS, underwent a Sunset Review in FY 04, underwent a Sunset Audit in FY 05, held the Board's first Retreat, timely reviewed all of its rules with GRRRC, processed renewals in record



times, and in FY 04 processed 1,478 different types of applications with only 9 processed outside the licensing timeframes.

In calendar year 2004, the Board underwent two audits, which is an unprecedented burden for a small 90/10 agency. The Auditor General's Sunset Audit involved at least 6 different auditors, took 6 months, cost the Auditor General \$135,000 and produced a 47-page audit report. The Department of Administration's GAO audit also involved at least 6 different auditors, took 12 months and produced a 43-page audit report. This was an unprecedented level of audit scrutiny for a small 90/10 Board and was a great financial and administrative burden for the Board. It effectively brought our rebuilding efforts to a standstill. But the audits did not find any missing funds, misappropriated funds, or malfeasance.

In the future, Arizona will face the growing challenge of a rapidly increasing number of frail elderly adults who will need the services of Arizona's long term care professionals. This Board regulates those professionals and looks forward to being a part of Arizona's response to this growing social issue.

On behalf of the Board, I would like to thank you for the courtesies extended to us by the audit team.

Sincerely,

Victoria Martin  
Executive Director



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**FINDING #1. THE BOARD SHOULD IMPROVE COMPLAINT PROCESSING.**

The Board agrees with this finding.

**RECOMMENDATIONS:**

**1. Consider adding a full-time investigator:**

The Board will implement this recommendation in a different manner. The Board will consider adding a full-time investigator when it raises its fees so that it can afford to hire an additional full-time investigator.

**2. Enhance complaint policies and procedures to:**

**a. develop and policies and procedures to categorize and prioritize complaints;**

The Board will implement this recommendation in a different manner. The Board will expand its existing written complaint and hearing policies, procedures, and checklists by formalizing our informal guidelines and including specific written guidelines to categorize and prioritize complaints

when it has additional investigative staff to devote to developing more detailed complaint policies and procedures.

**b. establish complaint timeframes;**

The Board will not implement this recommendation. The Board does not currently have adequate investigative staff and needs to maintain the flexibility to address the most serious complaint cases as they arise rather than try to meet arbitrary timeframes on all complaint cases. Moreover, the Board is not aware of any statute or rule that requires the Board to establish complaint timeframes.

**c. guide staff on investigation of complaints received from DHS.**

The Board will implement this recommendation by expanding its existing written complaint and hearing policies, procedures, and checklists to include formal guidelines concerning processing DHS complaints when it has additional investigative staff to devote to developing more detailed complaint policies and procedures.

**3. Improve the quality of complaint database information and monitor complaint investigations by:**

**a. creating procedures directing staff to enter information on complaint and investigative activity in an accurate and timely manner and verifying the information's accuracy;**

The Board will implement this recommendation by expanding its existing written complaint and hearing policies, procedures, and checklists to

include these procedures when it has additional investigative staff to devote to developing more detailed complaint policies and procedures.

- b. defining key investigative activities and complaint information to help insure the consistency of information entered into the database;**

The Board will implement this recommendation by expanding its existing written complaint and hearing policies, procedures, and checklists to include these definitions when it has additional investigative staff to devote to developing more detailed complaint policies and procedures.

- c. generating monthly management reports to track complaint investigations.**

The Board will implement this recommendation.

- 4. Once the policies and procedures are developed, ensure that investigative staff are fully trained on them.**

The Board will implement this recommendation.

- 5. Use Letters of Concern only when complaint allegations are not proven and revise procedures to first determine whether each allegation is a violation and then take appropriate action.**

The Board will implement this recommendation in a different manner. The Board will consult with its Assistant Attorney General for guidance on a case-by-case basis to determine whether it would be appropriate to use a Letter of Concern under the Board's statutes.

- 6. The Legislature should consider legislation to provide the Board with authority to discipline licensees whose licenses expire prior to adjudication of complaints against the license.**

The Board will work with the Legislature to implement this recommendation.

**FINDING #2: BOARD PRACTICES RESTRICT ACCESS TO PUBLIC INFORMATION.**

The Board does not agree with this finding, but will implement the recommendations as follows:

**RECOMMENDATIONS:**

- 1. Establish written public information policies and procedures that detail the information that will be made available to the public.**

The Board will implement this recommendation by expanding its existing written public information policies and procedures to include detail about information that is available to the public.

- 2. Train staff on how to respond to public information requests.**

The Board will implement this recommendation.

- 3. Ensure that the Board's website information is accurate.**

The Board will implement this recommendation in a different manner. The Board believes that its website information is reasonably accurate because the audit report, at page 23, lists only one example of inaccurate information on the website. However, the Board will correct any inaccuracies brought to our attention.

- 4. Expand the website.**

The Board will implement this recommendation in a different manner. The Board will consider expanding its website when it has the resources to do so.

### **FINDING #3: BOARD SHOULD IMPROVE OVERSIGHT OF OPERATIONS.**

The Board does not agree with this finding and believes it is currently adequately performing its oversight duties in accordance with good governance principles, but will implement the recommendations as follows:

#### **RECOMMENDATIONS:**

##### **1.a. Develop realistic financial projections:**

The Board will not implement this recommendation because it believes that its financial projections are realistic. They were prepared by a CPA who is independent from the Board, using information provided by the Board and other state agencies that are independent from the Board. And the current FY 05 revenues and expenditures are consistent with the projections.

##### **b. determine if expenditures can be reduced**

The Board will not implement this recommendation because it believes that there is no need for it at this time. Although the Board's expenses exceeded its revenues for several years, the Board addressed this issue in FY04 by raising fees. The Board's FY05 financial projections show that the Board's revenues will cover or exceed expenses for the first time in several years.

##### **c. consider increasing fees:**

The Board will implement this recommendation.

- d. **if necessary, request that the Legislature increase the statutory limit on the Board's fees.**

The Board will implement this recommendation.

2. **Improve complaint and licensing database quality.**

The Board will implement this recommendation.

3. **Schedule complaints for formal hearing.**

The Board will implement this recommendation. The Board has sent its complaint hearing cases to the Attorney General's Office for hearing processing. When the AAG finishes preparing the cases for hearing and drafts the Notice of Complaint for the cases, the Board will schedule the cases for hearing.

4. **Require a written report from the Executive Director at least every other month.**

The Board will implement this recommendation.



**FINDING #4: State requirements not always followed.**

The Board does not agree with this finding but will implement the recommendations as follows:

**RECOMMENDATIONS:**

- 1. Strengthen cash handling procedures by depositing receipts daily, reconciling receipts to licenses issued, reconciling the cash log to the deposit.**

The Board will implement this recommendation in a manner that is consistent with, reasonable for, applicable to, and uniformly applied to very small, self supporting, 90/10 agencies.

- 2. Recover any overpayments made for travel expenses.**

The Board will implement this recommendation in a different manner. The Board will have its Office Manager attend a travel training class and will attempt to obtain a travel training presentation for its Board Members.

- 3. Ensure that the Board follows all state requirements, policies, and procedures for procurement and travel.**

The Board will implement this recommendation in a manner that is consistent with state law and consistent with, reasonable for, and uniformly applied to very small, self supporting, 90/10 agencies.

## Performance Audit Division reports issued within the last 24 months

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02-12	HB2003 Children's Behavioral Health Services Monies	04-L1	Letter Report—Arizona Board of Medical Examiners
02-13	Department of Health Services—Office of Long Term Care	04-L2	Letter Report—Gila County Transportation Excise Tax
03-L1	Competitive Electric Metering, Meter Reading, and Billing and Collections	04-01	Arizona Tourism and Sports Authority
03-01	Government Information Technology Agency—State-wide Technology Contracting Issues	04-02	Department of Economic Security—Welfare Programs
03-02	Registrar of Contractors	04-03	Behavioral Health Services' HB2003 Funding for Adults with Serious Mental Illness
03-03	Water Infrastructure Finance Authority	04-04	Department of Emergency and Military Affairs and State Emergency Council
03-04	State Board of Funeral Directors and Embalmers	04-05	Department of Environmental Quality—Water Quality Division
03-05	Department of Economic Security—Child Protective Services—Foster Care Placement Stability and Foster Parent Communication	04-06	Department of Environmental Quality—Waste Programs Division
03-06	Arizona Board of Appraisal	04-07	Department of Environmental Quality—Air Quality Division
03-07	Arizona Board for Charter Schools	04-08	Department of Environmental Quality—Sunset Factors
03-08	Arizona Department of Commerce	04-09	Arizona Department of Transportation, Motor Vehicle Division— State Revenue Collection Functions
03-09	Department of Economic Security—Division of Children, Youth and Families Child Protective Services—Caseloads and Training	04-10	Arizona Department of Transportation, Motor Vehicle Division—Information Security and E-government Services
		04-11	Arizona Department of Transportation, Motor Vehicle Division—Sunset Factors

## Future Performance Audit Division reports

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Department of Economic Security—Unemployment Insurance Program

Department of Administration—Financial Services Division

Government Information Technology Agency