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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

March 17, 2004

Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Mr. Edward J. Schwager, M.D., FAAFP, Chairman
Arizona Medical Board

Mr. Barry A. Cassidy, Ph.D., PA-C, Executive Director
Arizona Medical Board

The Office of the Auditor General has conducted a performance audit of three areas within the Arizona Medical Board (Board): board authorities delegated to the executive director; technological and other purchases; and staff turnover. This audit specifically addresses a legislative request approved by the Joint Legislative Audit Committee on September 25, 2003, and was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-1279.03. This audit was also conducted in accordance with government auditing standards.

Summary

The Auditor General has developed the following information and, where appropriate, recommendations to respond to a legislative request to review three different areas within the Arizona Medical Board:

- **Executive director complaint dismissals**—Based on a review of 36 complaints the executive director dismissed between July 2002 and October 2003, auditors found that most of these complaints were adequately investigated and reviewed prior to dismissal. However, auditors question the executive director's dismissal of 5 complaints. The authority delegated to the executive director to dismiss complaints has reduced the Board's workload through hundreds of complaint dismissals annually. However, the Board should further enhance the executive director's dismissal of complaints by establishing and implementing additional complaint investigation and review policies.
- **Board purchases**—The Board purchased over \$290,000 in technological hardware and software in fiscal year 2003. Most of the Board's technology purchas-

es are not particularly excessive. However, one of the purchases was made without obtaining the required review and approval from the Government Information Technology Agency (GITA), and some purchases were made without proper cost analysis or documented business justification. Specifically, a purchase of 11 laptop computers and associated equipment at a cost of nearly \$33,000 was not submitted for GITA review and approval as required. Additionally, the purchase of two 42-inch plasma screens and associated equipment costing more than \$5,200 each and several 20-inch computer monitors costing approximately \$1,700 each lacked proper cost analysis or documented business justification. To help ensure that all of its technology purchases are appropriate and necessary, the Board should annually prepare an internal technology plan or assessment that identifies its planned technology purchases and obtain GITA's review and approval when necessary.

- **Staff turnover**—The Board experienced nearly a 60 percent turnover rate among its staff in fiscal year 2003. However, this turnover did not result in vacancy savings because the Board's personnel expenditures increased by nearly \$498,000 in fiscal year 2003. This increase resulted from an increase in employee base salaries, incentive pay, and Attorney General services, and an increase in annual leave expenditures.

Introduction and background

The Board is a 12-person board that regulates the practice of allopathic medicine in Arizona through licensure and complaint investigation and resolution. The Board is composed of eight Arizona licensed physicians and four public members, one of whom is a registered nurse. The Board employed an executive director and had 50.5 filled staff positions and 7 vacant positions as of January 2004. The Board collected more than \$4.8 million in revenues in fiscal year 2003, over \$4.5 million of which came from licensing fees. At the end of fiscal year 2003, the Board had a fund balance of approximately \$2.6 million.

The Board has several statutory responsibilities related to physician regulation. These include:

- **Licensing physicians**—The Board is responsible for licensing physicians who meet the statutory criteria for licensure. Among other things, potential licensees must graduate from an approved medical school, complete an internship, and not have a revoked license in another state. According to the Board, more than 16,500 physicians were licensed in Arizona as of December 2003.
- **Investigating complaints against a physician**—Statute requires that the Board determine through an investigation whether a doctor has engaged in unprofessional conduct or may be medically incompetent.

- Disciplining and rehabilitating physicians**—If the Board finds that a physician has engaged in unprofessional conduct or is medically incompetent, it has several options available. Options the Board can pursue include placing a physician on probation, requiring rehabilitation, or suspending or revoking a physician’s license. Additionally, the Board may issue a nondisciplinary advisory letter when there is insufficient evidence to support disciplinary action against a physician, but the Board believes that continuation of the activities that led to the investigation may result in further board action against the licensee; the violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; or the physician has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, but repetition of the activities that led to the investigation may result in further board action against the licensee.

The Board also provides information to the public on licensed physicians both over the telephone and through its Web site. For each licensed physician, the Web site provides information such as the number of open investigations, the number of disciplinary and nondisciplinary actions the Board has taken, and the number of malpractice cases resulting in payment.

Most complaints adequately investigated and reviewed prior to dismissal

As authorized by statute, the Board has delegated to its executive director the authority to dismiss complaints that are without merit. To help ensure complaints are handled appropriately, the Board has implemented a process for the investigation, review, and disposition of complaints. Auditors’ review of 36 complaints dismissed by the executive director between July 2002 and October 2003 found that most of the complaints were adequately investigated and reviewed prior to dismissal. However, auditors question the executive director’s dismissal of 5 complaints. The Board should further enhance the executive director’s dismissal of complaints by establishing and implementing additional complaint investigation and review policies.

Executive director has authority to dismiss complaints—In 1999, the Legislature gave the Arizona Medical Board the authority to delegate to the executive director the ability to dismiss complaints that do not involve medical incompetence. According to a fact sheet prepared by legislative staff, the intent of this delegated authority was to reduce the Board’s workload. In July 1999, the Board delegated this authority and adopted substantive policy statements to describe the types of complaints the executive director could dismiss, such as complaints involving small fee disputes.

Arizona Medical Board Activity Fiscal Year 2003

| | |
|---------------------|-------|
| New licenses issued | 1,247 |
| Licenses renewed | 8,536 |
| Complaints received | 1,346 |
| Complaints resolved | 1,462 |

Source: The Arizona Medical Board.

Legislative concerns related to delegated authorities—Misuse of authority delegated to the executive director to dismiss complaints, including dismissal of serious complaints, complaints containing multiple violations of statute, and inconsistent investigations.

Types of Complaints

Quality of care—Complaints involving allegations in which the physician has failed to meet the accepted standard of care. For example, a quality-of-care complaint could allege medical misdiagnosis, inappropriate prescribing, and/or medical malpractice.

Professional conduct—Complaints involving allegations that do not involve quality-of-care issues, such as substance abuse, fraud, or inappropriate sexual conduct.

Source: Auditor General staff summary of information provided by the Arizona Medical Board and the Federation of State Medical Boards.

In 2001, the Legislature broadened the statute to allow the Board to delegate to its executive director the ability to dismiss all complaints that are without merit. This change expanded the delegated authority to quality-of-care complaints, including medical malpractice complaints. Subsequently, in February 2002, the Board adopted an administrative rule to define the executive director's delegated authority. According to R4-16-407, "The executive director, with the concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate." In practice, according to the Board, this means that, for quality-of-care complaints, if the Board's medical director recommends that a complaint be dismissed, regardless of whether other medical consultants or investigative staff have determined that the evidence supports the allegations, the executive director can dismiss the complaint. As such, the Board does not expect the executive director to forward complaints to the Board for a decision when all or the majority of investigative staff do not agree on the dismissal. Rather, the Board has delegated to the executive director the exact same authority it has to dismiss complaints.

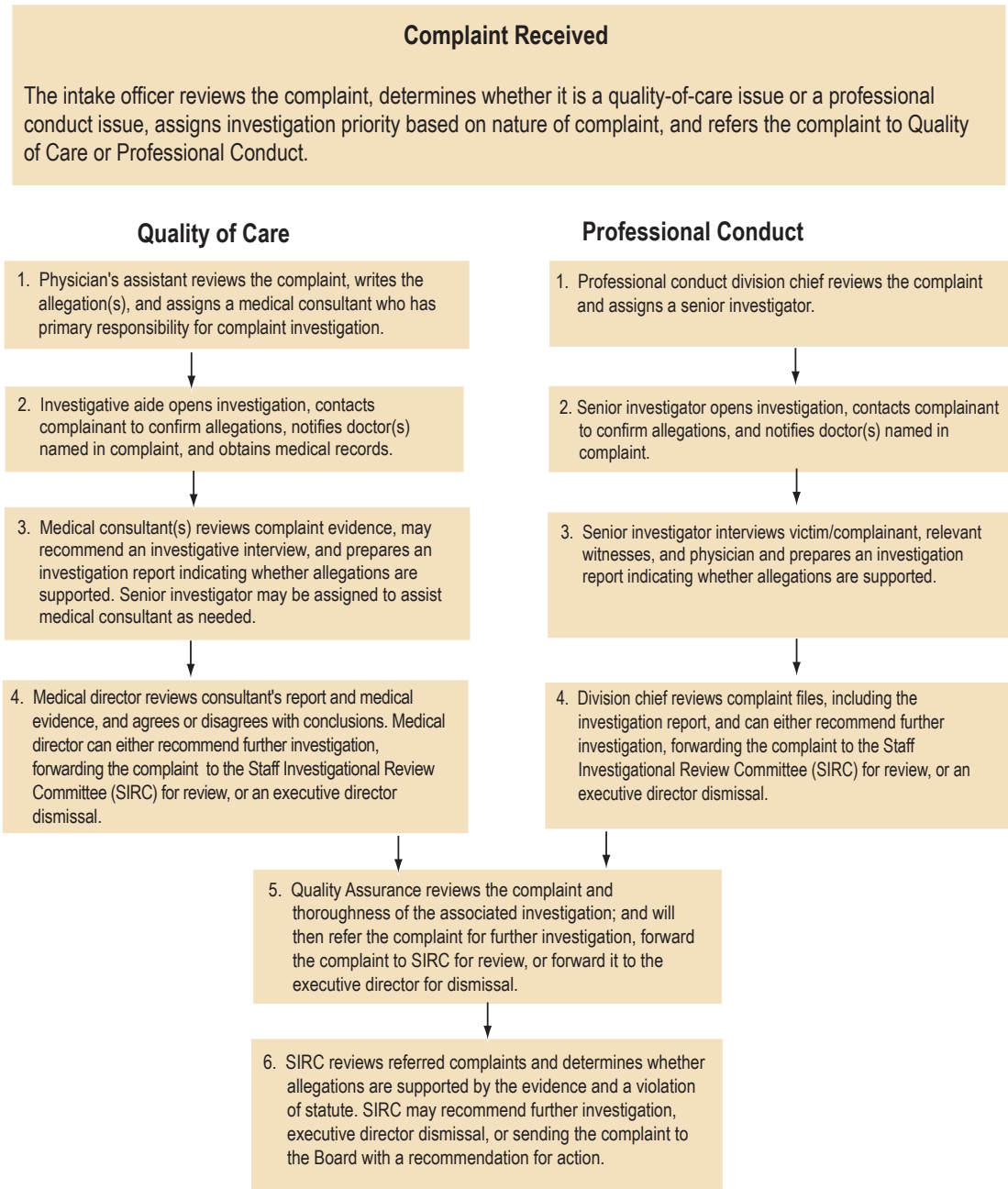
As illustrated in Figure 1 (see page 5), the Board has adopted a process for the investigation and review of all complaints. Steps in this process include interviews with complainants and witnesses, review of medical records, and if necessary, an investigative interview with the licensed physician. Additionally, the process provides for multiple reviews, including review by a medical consultant, the medical director, and the quality assurance division chief.

The Board's executive director first dismissed complaints in April 2001. According to board data, the Board annually receives an average of 1,248 complaints. The executive director dismissed 979 complaints during fiscal year 2002 and 712 complaints during fiscal year 2003. Ninety-two percent of the total complaints the executive director dismissed in fiscal years 2002 and 2003 were quality-of-care complaints.

Should a complainant disagree with the executive director's dismissal of a complaint, statute provides a mechanism to appeal this action to the Board.¹ In the letter notifying the complainant of the decision to dismiss the complaint, the complainant is advised of the right to appeal the executive director's action and provided a complainant appeal form. According to board staff, from July 1, 2002, through February 13, 2004, 142 appeals of complaints dismissed by the executive director have been filed with the Board. The Board has upheld 132 of these appeals, referred 4 complaints for further investigation, and overturned one executive director dismissal, which resulted in an advisory letter being issued to the physician. The Board is scheduled to hear five appeals at its April 2004 meeting.

¹ According to a board official, executive director dismissal of malpractice complaints cannot be appealed. While the review of these complaints is statutorily required, since there is no complainant, there is no aggrieved party to appeal the executive director's action.

Figure 1: Summary of Complaint Investigation Process
As of January 2004



¹ The Staff Investigational Review Committee consists of the following board staff: executive director, medical director, quality assurance division chief, intake officer, and the assistant director of operations.

Source: Auditor General staff analysis of the Arizona Medical Board's complaint investigation and review process.

Most complaints appropriately dismissed, but some dismissals are questionable—Auditors reviewed a random sample of 36 complaints, including 10 malpractice complaints, that the executive director dismissed between July 2002 and October 2003 and found that the executive director dismissed most of the complaints after an adequate investigation and review. However, auditors question the dismissal of five of the complaints. These included two complaints that board staff did not adequately investigate prior to the executive director dismissing the complaint. Even though the executive director dismissed these complaints upon the recommendation of the medical director or investigative staff, the dismissal may have been premature without additional information. In both of these complaints, staff did not corroborate information obtained via physician statements. Board staff acknowledged to auditors that additional investigative work should have been done prior to these complaints' dismissal. For example:

- In May 2003, the Board received a complaint that included an allegation that a doctor refused to release a patient's medical records despite the patient completing a signed release. The doctor responded to the Board, stating that she had only recently received a signed release and provided the medical records. Based on the physician's response, the medical consultant and medical director recommended dismissing the complaint. The executive director subsequently dismissed the complaint in August 2003. According to the investigative report, "The alleged refusal of release of records was properly rectified and the records appropriately released." The complainant appealed the dismissal to the Board and submitted evidence that as of September 2003, the doctor still had not released her medical records. In December 2003, board staff verified that the medical records were never sent, and the Board opened a new complaint against the doctor.

In three other cases, auditors question the executive director's dismissal of the complaints because, based on the documentation in the complaint files, it appears as though evidence, including experts' opinions, supports the allegations. For two of these complaints, board staff indicated that the dismissals were appropriate because the medical director had recommended the complaints be dismissed. According to board staff, dismissal of these complaints is appropriate because the medical director's opinion regarding quality-of-care complaints represents the most appropriate and up-to-date interpretation of the evidence. Further, board staff explained that the Board trusts the medical directors' judgment in weighing all evidence in conjunction with his/her medical background to form an opinion. For example:

- In March 2002, the Board received a notice of settlement for a malpractice case. The information alleged that, among other things, an anesthesiologist improperly monitored the patient and improperly monitored the patient's airway during an in-office cosmetic surgery, which led to the patient's respiratory arrest and death. Since the Board did not have an internal medical consultant who specialized in anesthesiology, it contracted with an anesthesiologist to review the complaint and determine if the physician met the standard of care.

In his opinion to the Board, the outside medical consultant stated that all patients are entitled to receive the same level of monitoring during anesthesia regardless of where they have their surgical procedure performed. He went on to say that it is generally accepted that during anesthesia, circulation, ventilation, oxygenation, and temperature should be monitored. However, he concluded that although the physician states he was visually monitoring ventilation, the medical record does not support that the physician adequately monitored ventilation, and thus failed to meet the standard of care. Additionally, in response to the physician's later claims in a letter that he met the standard of care and monitored the ventilation appropriately by using a specific medical device, the outside medical consultant said that the device cannot be used as a proxy for ventilatory monitoring. He also reiterated that the medical record does not indicate that the standard of care for monitoring ventilation was met.

After subsequently conducting an investigative interview with the physician, the Board's medical director recommended that the executive director dismiss the complaint. Specifically, the medical director stated that during the interview the physician appeared knowledgeable and sincere and the physician's contention that using the specific medical device provided appropriate monitoring is valid. During the investigative interview, the physician had stated to the medical director that he thought the specific medical device was an appropriate proxy for monitoring ventilation and that he was also visually monitoring the patient's ventilation.

In January 2003, the executive director dismissed the complaint, indicating that the allegations were without merit. As mentioned above, regardless of the outside medical consultant's opinion, according to board staff, dismissal of this complaint was appropriate because the medical director said it should be dismissed. Regarding whether the physician was visually monitoring the patient's ventilation, according to the Board's legal counsel, if under oath a physician states that he/she did something and appears credible and knowledgeable, the Board and Board staff can choose to operate under the assumption that the physician did it, whether or not the medical record supports the assertion.

In the remaining case, it appears that not all of the complainant's five allegations were appropriately resolved by the dismissal. Evidence gathered during the investigation appears to support the allegation that the physician failed to maintain adequate medical records. Records reviewed included two sheets of paper that represented the complete medical chart, but did not contain such things as the patient's blood pressure, weight, height, and pulse. Further, the doctor, in his response to the complaint allegations, admitted to the Board that he should have documented all the testing he performed on the patient. Moreover, the Board raised concerns about the physician's medical documentation when it heard this complaint, and subsequently referred the complaint for additional investigation. The Board's executive director indicated to auditors that the complaint as a whole lacked merit because the complainant was trying to blackmail the doctor. He further explained that he consulted with the Board's Assistant Attorney General on all issues related to the case. However, while the com-

plaint documentation illustrated involvement of an Assistant Attorney General regarding one of the complaint allegations, there is no documentation in the complaint file to support that the Assistant Attorney General indicated there was insufficient evidence to support further board action regarding the allegation in question. Further, when auditors contacted this Assistant Attorney General, he informed the auditors that he had no involvement with the allegation in question.

Improvements should further enhance executive director's dismissal of complaints—The Board should direct its staff to:

- **Thoroughly conduct and document its complaint investigations**—In June 2003, the Board established its current complaint investigation and review process. The process outlines the steps that board staff should follow when conducting an investigation, including required reviews by designated staff. However, while the Board has some complaint investigation policies, its process is not fully supported by needed policies. Specifically, the Board has not established policies regarding when to follow up with complainants and appropriate witnesses and when to corroborate information received from physicians. Additionally, the Board has not established policies to help ensure that complaint investigations and recommendations are fully supported and documented. Therefore, to help ensure even more consistent and thorough investigations, the Board should develop and implement additional policies to support its current investigation process, including policies for following up with complainants and witnesses, corroborating information received from physicians, and fully documenting investigation analyses and recommendations. Once developed, the Board should also train its investigative staff regarding these policies.
- **Establish policies to guide decision-making**—Similarly, the Board should establish and implement policies to guide decision-making during the complaint review process. Currently, although quality-of-care complaints may be reviewed by a medical consultant(s), the medical director, the executive director, and, in some instances, the Staff Investigative Review Committee, there are no written policies directing some of these reviews. As a result, the Board should establish additional policies that detail the factors that complaint investigation reviewers should consider when deciding whether a complaint should be recommended for dismissal or forwarded to the Board. Factors to be considered should include such things as whether all allegations are addressed, the adequacy of the evidence, and whether the evidence supports that statutory violations may have occurred. The policy should also outline the process to be followed in arriving at the final recommendation. For example, the policy should define how any differing conclusions among reviewers should be addressed.

By implementing these additional policies, the Board will institute additional safeguards within its complaint investigation and review process that will further enhance the executive director's dismissal of complaints.

Board should better document need for all technological purchases

The Board purchased over \$290,000 in technological hardware and software during fiscal year 2003. Most of the Board's technology purchases are not particularly excessive, but one purchase lacked required review and approval by the Governmental Information Technology Agency (GITA), and some purchases lacked proper cost analysis or documented business justification. Additionally, auditors' review of other questioned purchases identified no problems.

Most technological purchases not excessive, but need for purchases not documented—With legislative authorization to spend over \$197,000 on technology in fiscal year 2003, the Board has acquired a variety of both computer hardware and software.¹ Based on auditor review, most of the Board's technology purchases are not particularly excessive and many of its information technology-related practices are consistent with those in other organizations. However, one of the Board's purchases was not approved by GITA as required. In December 2000, GITA approved a \$282,000 project investment justification (PIJ) to replace some of the Board's aging technological equipment during fiscal years 2002 and 2003, including computers, printers, and file servers. The Board completed its purchase of this equipment approved in the PIJ in September 2002. However, in March 2003, the Board purchased 11 laptop computers and associated equipment that cost nearly \$33,000 and did not seek GITA's approval even though this purchase exceeded the \$25,000 statutory threshold required for submitting projects to GITA for review and approval. Additionally, at the request of auditors, GITA staff reviewed the Board's technological purchases for fiscal years 2002 and 2003 and concluded that the Board purchased technology at a cost exceeding \$25,000 without GITA approval. According to the Board's executive director, the Board did not submit a new PIJ or amendment to its PIJ approved in December 2000 because it assumed the additional purchase was covered by the December 2000 PIJ.

Additionally, some of the Board's technology purchases lacked proper cost analysis or documented business justification. According to management guidelines from the Information Systems Audit and Control Association's Control Objectives for Information and related Technologies, several critical success factors should be considered to properly manage an organization's technology investment.² These include defining the formal investment criteria for decision making, and defining an investment decision-making process that considers, among other things, short- and long-term impacts, business justification, and the strategic contribution such investments make to the organization. The Board did not appear to develop such criteria

Legislative concerns regarding board purchases—Purchases of unnecessary and questionable technological equipment, as well as the purchase of chinaware and a dishwasher for board members.

¹ For fiscal year 2003, the Board received legislative authorization to spend \$197,000 on technology. This included specific authorization for computer hardware purchases, such as personal computers, printers, and servers; software purchases; and Web site management and maintenance.

² Information Systems Audit and Control Association, IT Governance Institute, Management Guidelines, COBIT, 3rd Edition, July 2000.

or perform proper cost analyses when it purchased some of its equipment. For example, the Board purchased two 42-inch plasma screens with associated equipment costing more than \$5,200 each without performing a proper cost analysis. Additionally, although purchased under the December 2000 PIJ, the Board's purchase of ten 20-inch flat panel monitors, costing approximately \$1,700 each, lacked proper business justification either in the PIJ or other documented assessment.

To help ensure that all of its technology purchases are appropriate and necessary, the Board should annually prepare an internal technology plan or assessment, using an investment decision-making process that identifies its planned technology purchases. While the Board annually prepares and submits an annual information technology plan to GITA, this plan and decisions to make technology purchases should be supported by a documented investment decision-making process and assessment. Additionally, the Board should also submit PIJs to GITA for its review and approval when necessary.

No problems identified with other questioned purchases—Auditors also reviewed the purchase of a dishwasher, dinnerware, and silverware, which were made in fiscal year 2003. According to auditor review of purchase receipts and claims, the executive director purchased the dishwasher at a cost of \$199 and did not seek reimbursement from the Board. The dinnerware, costing \$88, and silverware, costing \$30, were purchased with board monies. Since these items cost less than \$1,000, state procurement requirements did not apply. According to the Board's executive director, these items were purchased for the Board's use during board meetings.

High staff turnover, but no vacancy savings due to increased costs

While the Board has experienced significant turnover, this turnover has not yielded vacancy savings. Specifically, the Board experienced nearly a 60 percent turnover rate in fiscal year 2003 and a 22 percent turnover rate for the first 6 months of fiscal year 2004. However, this turnover has not resulted in vacancy savings due to an increase in personnel expenditures. Additionally, auditors found that executive assistant salaries are consistent with Department of Administration (DOA) salary specifications.

High staff turnover has not resulted in vacancy savings—As illustrated in Table 1 (see page 12), for fiscal year 2003, the Board experienced nearly a 60 percent turnover rate and for the first 6 months of fiscal year 2004, the Board experienced a 22 percent turnover rate. Specifically, from July 8, 2002, through December 31, 2003, a total of 48 employees terminated their employment with the Board. During this time, the Board was authorized 58.5 staff positions. Additionally, employee turnover has varied among the Board's different departments and positions. For

example, in fiscal year 2003, information technology positions experienced a greater than 100 percent turnover rate, the enforcement division experienced a 30 percent turnover rate, and one executive assistant position was filled three different times.

Employee turnover at the Board has consisted of both covered and uncovered employees. Covered employees work under the State Service Merit System, which is governed by administrative rules that must be followed regarding employment, classification and compensation, conduct, grievances, discipline, and separations. Uncovered employees work at the pleasure of the Board's executive director. In 1998, the Board began to transition its covered staff positions to uncovered status because the responsibilities and reporting relationships of these positions met the statutory criteria for designation as uncovered positions. During the period reviewed, the Board's two remaining covered employees were terminated, and now all of the Board's positions are uncovered. Additionally, some employees voluntarily left their positions with the Board, while others were terminated. Specifically, of the 48 employees who left the Board, 13 were terminated and 35 left voluntarily.

Consistent with the *Arizona Agency Handbook* and on the advice of the Attorney General's Office, the Board did not disclose specific reasons for termination of the uncovered employees. Further, based on auditor review of terminated employees' personnel files, the Board did not document the performance of these employees. However, according to the Board's executive director, the Board plans to implement an employee performance evaluation system by the end of 2004. For its two covered employees, the Board documented these employees' performance and specific reasons for termination as required by state personnel rules.

Staff turnover has affected board operations. According to the Board's executive director, new processes and a new vision have been put in place at the Board, which led to some people leaving. However, high employee turnover in key investigation and medical consultant positions has had a negative effect on the quality and timeliness of the complaint investigations. According to board records, for the 36 complaints reviewed by auditors that the executive director dismissed between July 2002 and October 2003, complaint investigations ranged from 18 to 880 days to complete, with some cases being assigned to multiple investigators. For example, a case that opened in May 2001 was handled by three different investigators between March 2003 and September 2003. In addition, according to the Board's executive director, it takes approximately 6 months for a new investigator or medical consultant to become fully trained in the complaint investigation and review process.

Legislative concerns regarding staff turnover and vacancy savings—50 to 70 percent turnover in critical investigator and staff positions, use of vacancy savings, and whether administrative assistants are working at higher grade levels than senior investigative staff.

Table 1: Quarterly Employee Turnover Rates
July 8, 2002 through December 31, 2003

| Period | Rates | |
|-------------|---------|---------|
| | FY 2003 | FY 2004 |
| 1st quarter | 13.68% | 18.80% |
| 2nd quarter | 17.09 | 3.42 |
| 3rd quarter | 15.38 | — |
| 4th quarter | 13.68 | — |

Note: The fiscal year 2003 turnover rate was 59.83 percent

Source: Auditor General staff analysis of Arizona Medical Board personnel files.

Because of a variety of circumstances, this turnover has not yielded vacancy savings. Specifically, in fiscal year 2003, the Board's personnel expenditures increased by nearly \$498,000. Some reasons for this increase include the Board increasing base salaries by 5 percent at the end of fiscal year 2002; reclassifying some positions at higher salaries and promoting some of its staff; employee incentive pay; an increase in the amount of annual leave paid; and payment for Attorney General legal and other professional services. The Board also was able to fill 17 vacant positions within 2 weeks of the vacancies. Finally, auditors identified that a board member erroneously received a \$6,000 payment in board funds in July 2002. Board staff had not previously detected the erroneous payment because staff did not verify the accuracy of its payroll and review this payment prior to its disbursement. Additionally, at the request of auditors, Department of Administration staff reviewed the payment, but could not determine how it occurred. However, the Board is currently attempting to recover these monies and has implemented procedures to review and ensure the accuracy of its payroll payments.

Executive assistants paid according to DOA salary specifications—

Finally, as illustrated in Table 2, while auditors found that executive assistants are paid at a higher level than senior medical investigators and investigators, their salaries are consistent with DOA's salary specifications. For example, executive assistants start

at \$32,522, while senior medical investigators' starting salary is \$29,296. Executive assistants provide administrative support to the Board's administrative team, including the executive and assistant directors; and administrative assistants respond to public information requests, prepare files for public review, and prepare for board meetings. Typically, senior medical investigators assist medical consultants with quality-of-care complaints and conduct professional conduct complaint investigations, while investigators provide investigative assistance by contacting complainants, preparing initial complaint files, and conducting some investigation research. Medical consultants conduct quality-of-care complaint investigations and make recommendations regarding the appropriate disposition of these complaints.

Based on a review of the Department of Administration's Alphabetical List of Job

Classifications, the pay grade levels of these board positions are comparable to similar positions at other state agencies.

Table 2: Pay Grade and Salary Levels
As of January 2004

| | Number of Positions | Pay Grade | Salary Levels | |
|------------------------------|---------------------|-----------------|---------------|-------------|
| Medical consultants | 7 | sr ¹ | \$66,450 | — \$181,450 |
| Executive assistants | 3 | 20 | 32,522 | — 40,000 |
| Senior medical investigators | 8 | 19 | 29,296 | — 50,471 |
| Investigators | 3 | 17 | 25,070 | — 43,557 |
| Administrative assistants | 1 | 15 | 21,728 | — 37,239 |

¹ Special rates are established for job classes when their ranges do not fit the regular salary grades, or for job classes paid on an hourly, daily, or per-performance basis.

Source: Auditor General staff summary of classification action requests prepared by the Board and approved by the Department of Administration (DOA) between April 1999 and November 2003; the DOA Arizona State Service Salary Schedule, effective June 8, 2002; and the DOA Arizona State Special Rate Salary Schedule, effective December 29, 2003..

Recommendations

1. To further enhance the executive director's dismissal of complaints, the Board should:
 - a. Establish and implement additional policies to guide board staff on properly conducting, completing, and documenting complaint investigations, including policies for following up with complainants and witnesses, corroborating information received from physicians, and fully documenting complaint investigation analysis and recommendations. Once developed, the Board should also train its investigative staff regarding these policies.
 - b. Establish and implement additional policies to guide decision-making during the complaint review process. Policies should reflect the factors that reviewers should consider when deciding whether a complaint should be referred for further investigation, dismissed, or forwarded to the Board, including whether all allegations are addressed, the adequacy of the evidence, and whether the evidence supports that statutory violations may have occurred. Policies should also outline the process the reviewers should follow in arriving at the final decision, including how differing conclusions among reviewers should be addressed.
2. The Board should annually prepare an internal technology plan, using an investment decision-making process, that identifies its planned technology purchases.
3. As required by statute, the Board should ensure that it submits project investment justifications to the Government Information Technology Agency to obtain review and approval for qualifying technology purchases.

We have discussed the results of this review with the Arizona Medical Board, and their response is enclosed. My staff and I will be pleased to discuss or clarify items in this letter.

Sincerely,

Debbie Davenport
Auditor General

AGENCY RESPONSE

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March 17, 2004

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Re: Audit Response

Dear Ms. Davenport:

I respectfully submit this response to the Auditor General's performance audit of the Arizona Medical Board. I am pleased that the audit confirmed my original position that there was no malfeasance, mismanagement or failure to protect the public by either myself, the agency, or the Board.

The Board takes extraordinary steps to protect the public and is one of the leading medical boards in the United States, ranking 6th among national medical boards in serious actions taken. Since my appointment as Executive Director in July 2002, I changed Board processes allowing the Board to focus on the most egregious cases that present an immediate threat to the public. For instance, since July 2002, 41% of Board actions restricted or removed a physician from practice.

Under my direction, the Board created DocFinder, a website containing pertinent licensing and disciplinary actions from eight Arizona licensing boards. The Board improved its operational efficiency through enhanced electronic Board meetings, a web-based voting software program for Board members, and virtually paperless agency processes. Additionally, changes to the agency's internal processes for licensing physicians allowed the Board to issue licenses in 30 days, rather than the previous 120 days. Furthermore, changes to the investigative process ensure due process and more importantly, public protection. Finally, the Board's website continues to be top-ranked among medical board websites for available public information and ease of use.

The Board has been publicly recognized and commended. In recent months, several state medical boards have turned to the Board for assistance in improving their operations, disseminating public information, developing policies and creating a technological infrastructure.

I would like to thank you for the professionalism and courtesies extended to us by the audit team.

Sincerely,

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Executive Director

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Summary Response

- **Executive Director Complaint Dismissals** – The Board is confident that the process adopted as of June 2003 addresses all of the Audit’s concerns. However, the Board will adopt some of the recommended additional policies. The Board agrees that in three of the five cases noted in the Audit there were process errors. The fourth case involved human error. In the fifth case the Board disagrees with the Audit’s “questioning” the dismissal. This is the only case of the five that went through the Board’s current process and there were no process errors. The Audit seems to be questioning the **outcome** of the case regarding medical standard of care issues. If so, the Audit has gone beyond the scope of its area of expertise. It is not coincidental that the delegated authority was first granted in 1999 and the Board’s rank for discipline issued by medical boards in the United States went from 38th in 1998 to 6th in 2002.¹ The Board annually receives approximately 1,100 cases and approximately eighty percent of these cases are without merit. Having delegated dismissal authority the Board can focus on the remaining twenty percent of the meritorious cases and has eliminated the tremendous backlog of cases that existed in years past.
- **Board Purchases** – The Board has an Internal Technology Plan as part of its Strategic Plan. The Board is unclear regarding the Audit’s reference to the “IT Governance Institute.” The Board is unaware of any statutory or rule requirement that a State agency comply with the Institute’s Policies and Recommendations. The Board appreciates the need to comply with all applicable State financial and technology requirements, including the requirements of the Government Information Technology Agency.
- **Staff Turnover** – The Board agrees with the findings regarding staff turnover and the reasons the Agency had no vacancy savings. While the turnover did have an effect on Board operations, it did not have a negative effect on the quality and timeliness of investigations. In July 2002 investigations took an average of 213 days to complete. By December 2003 this number had dropped to 132 days. Also, Board minutes reflect the timeliness and quality of cases presented. For instance, the Board noted in August 2003 the superb job being done in timely processing cases, and in December 2003 that the medical consultants were doing a great job with the quality and detail of their presentations.

¹ The 2003 rankings have not yet been issued.

Response to Findings and Recommendations

Audit Finding:

The Board should further enhance the executive director's dismissal of complaints by establishing and implementing additional complaint investigation and review policies.

Audit Recommendation:

To further enhance the executive director's dismissal of complaints, the Board should:

- a. Establish and implement additional policies to guide board staff on properly conducting, completing, and documenting complaint investigations, including policies for following up with complainants and witnesses, corroborating information received from physicians, and fully documenting complaint investigation analysis and recommendations. Once developed, the Board should also train its investigative staff regarding these policies.*
- b. Establish and implement additional policies to guide decision-making during the complaint review process. Policies should reflect the factors that reviewers should consider when deciding whether a complaint should be referred for further investigation, dismissed, or forwarded to the Board, including whether all allegations are addressed, the adequacy of the evidence, and whether the evidence supports that statutory violations may have occurred. Policies should also outline the process reviewers should follow in arriving at the final decision, including how differing conclusions among reviewers should be addressed.*

The finding of the Auditor General is agreed and the recommendation will be implemented regarding some of the additional policies.

Response to Recommendation a:

The Board currently has an "Investigator Standard Operating Instruction Manual" that is accessible on the Board's internal network. All investigators are required to refer to this manual and follow the policies and procedures outlined. This manual contains certain minimum investigative activities and informs investigators that they are to "conduct other activities [that] ensure the completeness of the investigation."

The Board also has a "Policies and Procedures" manual that contains general agency policies (e.g., use of State vehicles) as well as policies specifically applicable to the Investigations Division.² This manual contains a ten-page section entitled "Complaint Investigation Guidelines" that addresses, among other things, notifying a physician of a pending investigation, subpoena of records, conducting additional investigation to ensure the investigation is complete, conducting

² Board Staff is in the process of updating these manuals to conform to current Board practices. However, much of the material is not impacted by the change in Board process.

interviews with licensees, keeping the complainant and licensee informed, and the applicable burden of proof. The Audit suggests that the Board implement specific policies regarding when each piece of information collected is to be corroborated and how to fully document investigation analysis and recommendations. Each investigation the Board conducts is unique and, other than policies and procedures already in place, the Board is unaware of a method to implement a policy to deal with the nuances of each investigation. However, the Board will be adopting a policy to guide Board Staff on corroborating certain physician statements. The Board will also offer additional training for its investigative Staff.

Response Recommendation b:

The factors considered by reviewers of Quality of Care cases in deciding whether a case should be referred for further investigation, dismissed, or forwarded to the Board have been established by the Court of Appeals in *Webb v. State ex rel. Arizona Bd. of Medical Examiners*, 202 Ariz. 555, 48 P.3d 505 (App. 2002). Pursuant to *Webb*, before the Board may act against a physician's license it must articulate the applicable community standard of care, how the physician deviated from that standard, and the harm, potential harm, or death caused by the deviation. Based on *Webb*, the Board created a form used by the medical consultants that requires they articulate the standards required by *Webb* (as well as additional necessary information.) If a medical consultant cannot identify an applicable standard of care, a deviation and the resultant harm, potential harm, or death, the Board cannot act against a physician's license and the case must be dismissed. Similarly, if the medical consultant reviewing the case needs additional information to determine whether the *Webb* criteria have been met he will ask an investigator to obtain additional information. For instance, an investigator will be asked to obtain medical records from a previous surgery referenced in the materials being reviewed if the medical consultant feels those records are relevant to the analysis of the case. The investigator could not have identified this as necessary information because it is outside the investigator's expertise.

In non-Quality of Care cases there is no applicable standard of care and the factor reviewers consider is whether there is a preponderance of the evidence that the physician committed an act of unprofessional conduct. The language of the applicable statutes and any relevant case law interpreting the statutes often dictates this analysis. For instance, the "commission of a felony" statute requires that the act committed by the physician be classified as a felony. In such a case the reviewers could consult with one of the Assistant Attorneys General who represent the Board for guidance on whether there is evidence for the Board to determine that the physician committed a felony.

As indicated in the Complaint Investigation Process Chart on Page 5 of the Audit there are two levels of review wherein the reviewer can assess the thoroughness of the investigation and recommend additional investigation. (See Boxes 4 and 5.) There are no additional policies or factors that can be established to guide the decision making process in quality of care cases.

Also, three of the five cases noted in the Audit address process issues that would have been addressed under the Board's current process implemented as of June 2003. The fourth case was reviewed under the June 2003 process and involved human error. In the fifth case, the Audit focused on the outcome of the case, not the *process*. This case was initially forwarded to the

Executive Director by an investigator for dismissal. Upon review the Executive Director noticed that the previous Medical Director had recommended an Advisory Letter. The Executive Director then asked the current Medical Director to review the case and opine. The Medical Director reviewed the case and opined that the standard of care had been met and the Executive Director should dismiss the case. The Executive Director then properly dismissed the case. Whether the Audit disagrees with the Medical Director's analysis is irrelevant, and more important, since the Audit is attempting to opine on a medical standard of care, improper.

In cases where conclusions among reviewers differ, current Board practice allows for the Medical Director's opinion to direct the final decision. However, because this practice is not codified as a written Board policy, the Board will be adopting a policy.

The audit notes that the Executive Director explained that he consulted with an Assistant Attorney General ("AAG") regarding all issues related to the case discussed on page 7 of the Audit, however, the Audit then states that the AAG indicated he had no involvement in the record keeping allegation. This case was originally considered by the Board and continued at the suggestion of counsel because one of the issues in the case required additional legal research. Subsequently, in a meeting with the Executive Director and the Assistant Director, the AAG opined that the case did not have to be returned to the Board. The Executive Director then dismissed the case based on this opinion and his determination that the medical records met the statutory requirements.

Audit Finding:

Some of the Board's purchases were made without proper cost analysis or documented business justification.

Audit Recommendation:

The Board should annually prepare an internal technology plan, using an investment decision-making process, that identifies its planned technology purchases.

The finding of the Auditor General is not agreed to and the recommendation will not be implemented because the Board is not required to use the referenced "investment decision making process" and already employs a decision making process and prepares an annual technology plan that identifies its planned technology project purchases.

In finding that the Board "lacked proper cost analysis or documented business justification" the Audit references management guidelines from the "IT Governance Institute, Information Systems Audit and Control Association." The Board is unaware of this entity and knows of no State statute or rule requiring State agencies to follow the Institute's objectives. The Board annually adopts a strategic plan that contains an internal technology plan. This plan is also submitted annually to the Government Information Technology Agency (GITA.) In its strategic plan the Board lays the foundation for its annual business goals and objectives and also analyzes both the short and long term impact of the decisions made. Many of these decisions are carried out through the Internal Technology plan.

The Audit specifically questions the Board's purchase of two 42-inch plasma screens and ten 20-inch flat panel monitors. In keeping with the Board's practice regarding technology expenditures the Executive Director, Chief Information Officer, and Chief Financial Officer thoroughly discussed and assessed the available technology before the plasma screens were purchased. The Board then chose to purchase the plasma screens, one of two available technologies. The total cost of purchase and maintenance over 50,000 hours of use for a plasma screen is \$5,000 - six times less expensive than the approximately \$33,000 cost of the alternative technology that was rejected. The Board did not document these discussions and is unaware of any statutory requirement that it do so. The Board is aware of at least one other healthcare regulatory board that has also purchased plasma screens for board business.

A former Executive Director authorized the purchase of the ten 20-inch flat panel screens within a PIJ that was approved and monitored by GITA. The former IT Staff received quotes for the monitors and, when all necessary information was received, requested that the Business Office prepare the purchase order. This purchase order was prepared within a week of the current Executive Director beginning his employment with the Board. Because a former Executive Director had authorized the purchase, neither the former IT Staff nor the Business Office informed the Executive Director of the purchase when the purchase orders were issued.

The purchase of this technology is in line with the agency's goals and internal technology plan.

Audit Finding:

Some purchases were made without obtaining the required review and approval from the Government Information Technology Agency (GITA).

Audit Recommendation:

As required by statute, the Board should ensure that it submits project investment justifications to the Government Information Technology Agency to obtain review and approval for qualifying technology purchases.

The finding of the Auditor General is agreed to and the recommendation will be implemented.

The Audit notes that in December 2000 GITA approved a project investment justification (PIJ) for hardware upgrades and refresh totaling \$282,000. Consistent with its internal technology plan and as approved by GITA during fiscal years 2002 and 2003 the Board spent approximately \$500,000 on technology. The Board agrees that an approximately \$33,000 purchase of 11 laptop computers was made without prior submission to GITA. While an exceedingly small percentage of the total amount spent on technology during the fiscal years reviewed, the Board appreciates the need to comply with GITA and will ensure that purchases are not made without doing so.