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March 17, 2004

Debra K. Davenport, CPA
Auditor General – State of Arizona
2910 N. 44th Street, Suite 410
Phoenix, AZ 85018

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 then 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.