



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

**A PERFORMANCE AUDIT
OF THE**

BOARD OF PODIATRY EXAMINERS

SEPTEMBER 1983

**A REPORT TO THE
ARIZONA STATE LEGISLATURE**



DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

September 19, 1983

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. M. Barry Rosenthal, President
Board of Podiatry Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Podiatry Examiners. This report is in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Board of Podiatry Examiners is found on the yellow pages.

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

Douglas R. Norton
Auditor General

Enclosure

Staff: William Thomson
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OFFICE OF THE AUDITOR GENERAL

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REPORT 83-17

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	5
FINDINGS	
FINDING I	11
Despite improvements in timeliness, complaint-handling procedures can be further strengthened.	
CONCLUSION	17
RECOMMENDATIONS	17
FINDING II	19
Board statutes unnecessarily restrict the practice of podiatry.	
CONCLUSION	22
RECOMMENDATIONS	22
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT	23

LIST OF TABLES

TABLE 1 - Board Work Load Indicators for Fiscal Years 1979-80 through 1983-84	2
TABLE 2 - Board Actual Revenues and Expenditures for Fiscal Years 1979-80 through 1982-83 and Estimated Revenues and Expenditures for Fiscal Year 1983-84	3

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Board of Podiatry Examiners in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379 and is a follow-up to the 1981 Sunset Review of the Board.

The Board was created as the Board of Chiropody in 1941 and renamed the Board of Podiatry Examiners in 1964. Originally consisting of three professional members, the Board now has five members, two of which are laymen. Board members are appointed by the Governor for five-year terms. Board duties include conducting examinations, evaluating applications for licensure, renewing licenses, promulgating rules and regulations, and resolving complaints.

The Board has made improvements in two specific areas of legislative interest. First, the Board has reduced its complaint resolution time from an average of eight months per complaint to two months. Second, the Board minutes now record all legal actions, and Board files are generally complete. Also, the Board's Attorney General representative is now providing satisfactory and timely assistance to the Board. Our 1981 Sunset Review found that previous Attorney General representatives did not provide timely investigative services and formal hearing assistance. Since the last Sunset Review, however, the Attorney General's Office has not been involved in complaint investigations.

Complaint Investigations Can Be Further Strengthened (See page 11)

Although now more timely, complaint-handling procedures require further improvement. The Board should contract for the services of an independent professional medical investigator to free Board members from investigating

complaints. Board members may lack the time and expertise to conduct thorough complaint investigations. Additionally, both the Attorney General's Office and the Legislative Council caution against Board members investigating and adjudicating complaints.

The Board should, as a matter of course, require that complainants be contacted and doctors' medical records reviewed during complaint investigations. These actions help to ensure thorough investigations and impartiality in the Board's decision-making process.

Finally, the Board has not complied with statutory provisions designed to protect the confidentiality of complainants and patients. Names of complainants have been improperly disclosed to doctors involved in the complaint. Also, complainant and patient names have been improperly disclosed in Board minutes. The Board should comply with statutory provisions on confidentiality by withholding names of complainants from doctors involved in the case and keeping complainant and patient names from appearing in minutes available to the public.

Some Statutes Are
Unnecessary (See page 19)

Some Board statutes governing the practice of Podiatry do not serve a valid public purpose and could be eliminated. Statutory restrictions on the offering of gifts (such as advertising free examinations) are unnecessary and could be eliminated. The Board has never received a patient complaint regarding gifts and has other statutory authority to control fraudulent or misleading advertising. The United States Department of Justice considers the Board's gift restrictions anticompetitive and recommends their removal from the statutes.

Restrictions on where podiatrists may practice are also unnecessary to protect public health, safety and welfare. No other health regulatory Board in Arizona has a similar provision and Board members state there is no need to retain the statutory language which prohibits podiatrists from practicing

". . . in connection with a beauty parlor, barbershop, turkish bath, shoe store, department store, massage parlor, or other such commercial establishment."

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Board of Podiatry Examiners in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379 and is a follow-up to the 1981 Sunset Review of the Board.

Podiatry is the specialty of medicine which Arizona law defines as the

". . . diagnosis of medical, surgical, mechanical, manipulative or electrical treatment of ailments of the human foot and leg but does not include amputation of foot, toe or leg nor administration of anesthetic other than local."

There are 181 podiatrists licensed to practice in Arizona. Of those, 101 reside within the State.

The Board was created as the Board of Chiropody in 1941 and renamed the Board of Podiatry Examiners in 1964. Originally consisting of three professional members, the Board now has five members, two of which are laymen. Board members are appointed by the Governor for five-year terms.

The Legislature in 1982 enacted several changes in the Board's statutes. These changes provided the Board authority to accept the results of a written examination administered by the National Board of Podiatry Examiners in lieu of a written examination prepared by the Board. In addition, podiatrists were granted hospital privileges. Finally, various unprofessional conduct restrictions were added including the charging of excessive fees.

Board duties include conducting examinations, evaluating applications for licensure and license renewal, promulgating rules and regulations and resolving complaints. Table 1 gives a summary of the Board's activities for the last five years.

TABLE 1
BOARD WORK LOAD INDICATORS FOR
FISCAL YEARS 1979-80 THROUGH 1983-84*

	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>Estimated 1983-84</u>
<u>Licensing</u>					
Exam applications	13	17	20	20	35
New licenses issued	12	19	9	24	30
License renewals	120	129	138	157	176
<u>Complaint Actions</u>					
Complaints	15	18	5	10	N/A
Investigations undertaken	N/A	N/A	5	10	N/A
Informal hearings/ interviews	8	N/A	2	9	N/A
Formal hearings	1	5	1	1	N/A
Discipline actions taken	9	4	1	2	N/A

* Source: budget requests for fiscal years 1979-80 through 1983-84 and Board records

Staffing and Funding

The Board has no full-time support staff. All support functions are provided by the Department of Administration through the Arizona State Boards' Administrative Office (ASBAO). The Office was established in 1976 and administers support functions to 10 boards.

The Board derives its revenues from examination and license fees. Currently, fees are \$150 for examinations, \$75 per license and \$100 for renewals. Revenues and expenditures for fiscal years 1979-80 through 1982-83 and the Board's budget and anticipated revenues for fiscal year 1983-84 are shown in Table 2.

TABLE 2

BOARD ACTUAL REVENUES AND EXPENDITURES FOR
FISCAL YEARS 1979-80 THROUGH 1982-83 AND
ESTIMATED REVENUES AND EXPENDITURES FOR FISCAL YEAR 1983-84*

	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>1982-83</u>	<u>Estimated 1983-84</u>
Revenues:					
Balance from prior year	4,100	2,200	6,000**	5,500	11,200
90 percent of receipts	<u>7,300</u>	<u>14,500</u>	<u>12,800</u>	<u>23,200***</u>	<u>23,000</u>
Total revenues	<u>11,400</u>	<u>16,700</u>	<u>18,800</u>	<u>28,700</u>	<u>34,200</u>
Expenditures:					
Personal services/ERE	1,300	1,100	1,100	2,300	2,900
Professional and outside services	6,600	8,000	9,800	11,500	14,400
Travel:					
In-State	500	1,000	1,100	1,200	1,900
Out-of-State	-0-	-0-	-0-	-0-	-0-
Other operating expenditures	800	700	1,300	2,200	-0-
Equipment	-0-	-0-	-0-	300	-0-
Total expenditures	<u>9,200</u>	<u>10,800</u>	<u>13,300</u>	<u>17,500</u>	<u>21,000</u>
Balance forward to next year	<u>2,200</u>	<u>5,900**</u>	<u>5,500</u>	<u>11,200</u>	<u>13,200</u>

* Source: budget requests for fiscal years 1979-80 through 1983-84

** Budget documents show a discrepancy of \$100 between the amount carried forward in fiscal year 1980-81 and the balance from prior year for fiscal 1981-82.

*** \$4,600 of 1982-83 90% figure is 1981-82 renewal revenue received in 1981-82 fiscal year but not deposited until (July) 1982-83 fiscal year.

Audit Scope

The audit addressed the 11 Sunset factors in A.R.S. §41-2354 and 3 specific legislative concerns found in House Bill 2325, Second Regular Session, 1982:

"The sunset review of the state board of podiatry examiners shall consider in particular whether the board has:

1. Received the information and assistance it needs from the attorney general's office to comply with the laws of this state and to resolve complaints in a timely and thorough manner.
2. Resolved complaints in a timely and thorough manner.
3. Improved the documentation of its decision making process to allow for a thorough, independent qualitative evaluation of the process.

Additionally, we reviewed Board statutes and rules to determine if any were unnecessary or anticompetitive.

The Auditor General and staff express appreciation to the Board of Podiatry Examiners and the staff of the Arizona State Boards' Administrative Office for their cooperation and assistance.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 11 factors in determining whether the Board of Podiatry Examiners should be continued or terminated.

1. Objective and purpose in establishing the Board

In 1982, the Legislature enacted HB 2325 which included a goals and objectives statement for the Board:

"The goals and objectives of the state board of podiatry examiners are to help assure the competency of podiatrists and prevent conduct on their part which would tend to do harm to the health and well-being of the public."

The Board assures the competency of podiatrists through its qualification requirements, examinations of license applicants, continuing education requirements, complaint investigations and review of malpractice actions.

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

The Board has improved in two areas found deficient in the previous Sunset Review. First, the Board has reduced the time it takes to resolve complaints from an average of eight months per complaint to two months. Second, the Board has developed and implemented an improved examination grading procedure which is consistent and fair.

Also, the Board's Attorney General representative is now providing satisfactory and timely assistance to the Board. Our 1981 Sunset Review found that previous Attorney General representatives did not

provide timely investigative services and formal hearing assistance. Since the last Sunset Review, however, the Attorney General's Office has not been involved in complaint investigations.

Although the Board of Podiatry Examiners has improved the timeliness of its complaint investigations, complaint-handling procedures can be further strengthened. The Board should contract for the services of an independent medical investigator. Also, complainants should be contacted and doctors' medical records reviewed in every case. In addition, the Board has not complied with statutory provisions designed to safeguard the confidentiality of complainants and patients (see page 11).

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

The Board's functions of licensing applicants and investigating complaints, if done effectively, serve to protect the public from incompetent or unscrupulous practitioners. However, statutory provisions prohibiting podiatrists from offering gifts and restricting where podiatrists may practice are unnecessary and do not benefit the public (see page 19).

4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

The Board's rules and regulations were reviewed for consistency with statutes and were approved by the Attorney General. The Board is presently drafting new rules and regulations in accordance with the new statutes that went into effect July 24, 1982.

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

The Board has not promulgated any rules and regulations since the 1981 Sunset Review. The Board has retained a law clerk to develop and amend rules and regulations based on the Board's 1982 legislation.

The Board appears to have complied with the Open Meeting Law. Minutes of Board meetings now record all legal actions and transcripts of formal hearings are available for public inspection at the Board office.

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

The Board investigates consumer complaints. The Board on advice from its Attorney General representative has discontinued acting on doctors' complaints against other doctors' advertising on the premise that the Board should pursue only cases 1) demonstrating that a complainant has been misled or 2) involving fraudulent practices.

Although timeliness has improved, the Board's complaint-handling procedures can be further strengthened. The Board should contract for the services of an independent professional medical investigator to provide more time and expertise required for thorough investigations. In addition, the Board should require that complainants be contacted and doctors' medical records reviewed in every case.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

The Board's enabling legislation lists acts which are classified as misdemeanors and may be enforced by the county attorney. In addition, the Attorney General has authority to seek injunctive relief against violations of the Board's statutory provisions.

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

Legislation enacted in 1982 made several changes in Board and related statutes:

- HB 2325 continued the Board and made changes in application and examination procedures, relicensure and fee provisions and other areas; and
- HB 2175 granted hospital privileges to podiatrists.

Legislation amending the insurance code to require insurance companies to report malpractice actions against podiatrists, and providing penalties for noncompliance was supported by the Board but failed to pass.

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

The Legislature should consider the following additional statutory changes:

- Deleting statutory provisions and the corresponding rule which restrict podiatrists from offering gifts to attract patients and limiting where podiatrists may practice (see page 19), and
- Amending insurance statutes to require insurers to report malpractice claims or settlements to the appropriate Arizona regulatory boards and provide a penalty for noncompliance (previously recommended in Auditor General report 81-19).

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

Termination of regulation of podiatrists could significantly harm public health, safety and welfare. Improper podiatric services could result in serious physical harm to patients.

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 level of regulation could be reduced by eliminating statutory restrictions on offering gifts (A.R.S. §32-854.01.1), and the locations where podiatrists may practice (A.R.S. §32-854.01.6) (see page 19).

FINDING I

DESPITE IMPROVEMENTS IN TIMELINESS, COMPLAINT-HANDLING PROCEDURES CAN BE FURTHER STRENGTHENED.

Although the Board of Podiatry Examiners resolves complaints in a more timely manner, complaint-handling procedures need further improvement. The Board should contract for the services of an independent professional medical investigator, review medical records and contact complainants more frequently. In addition, the Board has not complied with statutory provisions designed to safeguard the confidentiality of complainants and patients.

Timeliness Has Improved

The Board has improved the timeliness of its complaint investigations since the previous audit. Auditor General report Number 81-19 noted that the Board had not investigated and resolved complaints in a timely manner. The Board averaged 8 months to resolve 19 closed complaints received between January 1, 1978, and October 1, 1981. Nine additional open complaints had been pending an average of 11 months. By contrast, the Board took less than two months to resolve nine complaints investigated between January 1, 1982, and July 15, 1983.* As of July 15, 1983, six other complaints still open have been pending an average of less than three months.

* Complaint timeliness was measured from the date the formal complaint form was received to the date the Board resolved the complaint. The Board only accepts complaints submitted on its formal complaint form. The Board generally mails a formal complaint form to the complainant within a few days after the complainant's initial contact with the Board.

Some of the improvement in timeliness can be attributed to revised complaint procedures adopted by the Board in September 1982. Prior to September 1982, the Board did not have standard written procedures for investigating and resolving complaints. The new procedures detail each step in the investigative process and guide the Board's actions. According to Board members, the procedures have speeded complaint handling.

Complaint Investigations
Need Further Improvement

Although now more timely, Board complaint-handling procedures need further improvement. Specifically, the Board should contract for the services of an independent professional medical investigator. In addition, complainants should be contacted and doctors' medical records reviewed in every case.

Independent Medical Investigator Needed - The Board should contract for the services of an independent professional medical investigator. Currently, Board members investigate complaints either collectively or individually. Since Board members cannot devote much time to investigations and lack proper training and expertise in gathering evidence, complaints may not always be thoroughly investigated. An example of this occurred earlier this year when the Board, overlooking critical pieces of evidence, prematurely dismissed the following complaint:

Case Example

In March 1983, the Board received a complaint alleging that a podiatrist billed the complainant for lab tests and surgery never performed and, in addition, performed poor surgery. In April 1983, the Board reviewed the case and discussed whether the Board had jurisdiction over the matter, concluding it was a fee dispute. The

Board decided to invite the complainant to the next Board meeting to examine the surgical sites. Instead, however, the Board secretary wrote a letter to the complainant a week later stating the Board could not determine if a violation occurred because it did not have jurisdiction over fees at the time of occurrence.

The Complainant subsequently refiled the complaint six weeks later. This complaint is now open and an investigation is underway.

Comment

Although the complaint involved the quality of care and possible fraud, it was originally treated as a fee matter and not acted on. The Board did not initially pursue the complaint despite the fact that the doctor had seven other complaints on file regarding unnecessary services, excessive fees and insurance overcharges.

Using an independent medical investigator to investigate complaints rather than Board members would also separate the investigative and decision-making aspects of the complaint-resolution process. The Attorney General's Office and the legislative council caution against having Board members both investigate and adjudicate complaints. In its Arizona Agency Handbook, the Attorney General's Office notes that challenges have been raised in recent years to agencies investigating, prosecuting and adjudicating charges against persons regulated by the agencies. The National Association of Attorneys General similarly recommends that the functions of investigator and decision maker be separated.

Board members who have been involved in investigating a complaint may later have to serve as impartial decision maker in a formal hearing. If the Board members have developed a preconceived view, bias or prejudice, they may not be able to maintain the appearance of impartiality of proceedings without disqualifying themselves. In an opinion dated May 14, 1981, the Legislative Council stated:

". . . It is fundamental that a quasi-judicial tribunal, similar to a court, must not only be fair, it must appear to be fair. Only thus can the proceeding meet the basic requirement of due process. . . ."

The Board generates adequate additional revenue to fund an independent medical investigator. The Board's surplus revenue (revenue generated in excess of appropriation) is estimated at \$11,200 for fiscal year 1982-83, with a surplus of \$13,200 expected in fiscal year 1983-84. The Board of Medical Examiners currently pays \$100-150 per day for professional medical investigative services. BOMEX complaints usually require two paid days for the investigator to complete the investigation. Since the Podiatry Board has few complaints per year* its additional surplus revenue could cover investigation expenses.

Contact Complainant/Review Medical Records - The case cited above and other cases we reviewed also indicate that the complainant should be contacted and doctors' medical records reviewed during the course of the investigation of every complaint. Routinely performing these steps during the investigative process would ensure thoroughness of complaint investigations and impartiality in the Board's decision-making process, particularly if a complaint involves a Board member.** Both the Board of Medical Examiners and the Veterinary Medical Examining Board review medical records in every case, even those involving fee disputes.

* The Podiatry Board received 4 complaints in calendar year 1982 and, as of July 15, received 11 complaints in 1983.

** Podiatry Board members were directly or indirectly involved in four of the nine complaints investigated between January 1, 1982, and July 15, 1983. In two cases the complaint was against a Board member; in the other two cases, a Board member was the second doctor consulted by the complainant.

Board Does Not Ensure
Patient Confidentiality

The Board should adopt procedures to ensure confidentiality of complainants and patients. Although it appears to be unintentional, names of complainants have been improperly disclosed to doctors involved in the complaints, and complainant and patient names have been improperly disclosed in Board minutes.

A.R.S. §32-852.01 prohibits the Board from disclosing names of complainants except when necessary as part of a disciplinary proceeding:

" . . . Any podiatrist, association, health care institution or other person who reports or provides information to the board in good faith shall not be subject to civil damages as a result thereof, and the name of the reporter shall not be disclosed unless the information is essential to the disciplinary proceedings conducted pursuant to this section. . . ."

The Board has not complied with this provision.* When a complaint is received, the Board notifies the doctor involved in the complaint and requests a response. In its correspondence with the doctor, the Board routinely discloses the name of the complaining party. In an opinion dated August 4, 1981, the Legislative Council addressed this matter as it relates to another health regulatory board with similar statutory provisions:**

* Both the Board and its Attorney General representative expressed concern over the difficulty of complying with these restrictions. They recommend that complainants sign a waiver exempting the Board from these provisions or that statutory revisions be considered.

** The board referred to is the Board of Osteopathic Examiners in Medicine and Surgery. The Osteopathic Board, BOMEX and the Podiatry Board are all prohibited from disclosing names of complainants except when necessary as part of a disciplinary proceeding.

". . . the meaning of the (statutory) language . . . is clear. The name of any person who reports or provides information to the Board in good faith shall not be disclosed unless such person's testimony is essential to a disciplinary proceeding. . . . Giving the language of this statute its plain meaning does not result in impossible or absurd consequence."

The Board can correct this problem by requesting patient records, without identifying the name of the complainant. Although the patient often is the complainant, this is not always the case; and the identity of the complainant need not be made known to the doctor involved.

Names in Minutes - The Board has also improperly disclosed names of complainants and patients in Board minutes. The Board has regularly included names of complainants in its minutes which are available to the public. We reviewed minutes of 16 Board meetings in which complaints were discussed held between June 5, 1981, and June 17, 1983. In 12 meeting minutes, names of complainants are improperly disclosed.

Because the complainant is often the patient involved in the case, disclosure of complainant names in minutes violates statutory provisions designed to protect the identity of the patient. A.R.S. §32-852.01 states that

"L. . . . any information from which a patient or his family might be identified or information received and records kept by the board as a result of the investigation procedure outlined in this chapter shall not be available to the public."

The statute further states that

"N. The Board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter."

In addition, disclosing the names of complainants, both to doctors involved in the complaints and in minutes, could discourage individuals from filing complaints. Disclosing names may also strain the patient's relationship with his doctor and result in friction, ill feeling and subsequent problems for the patient.

CONCLUSION

Although now more timely, Board complaint-handling procedures require further improvement. An independent professional medical investigator should be used instead of Board members for complaint investigations. In addition, the complainants should be contacted and medical records obtained during complaint investigations. Finally, the Board has not complied with statutory restrictions designed to ensure patient and complainant confidentiality.

RECOMMENDATIONS

1. The Legislature should consider increasing the Podiatry Board's appropriation to allow the Board to contract for the services of an independent professional medical investigator.
2. The Board should contact complainants and review medical records during complaint investigations.
3. The Board should comply with statutory provisions on confidentiality by withholding names of complainants from doctors involved in the cases and keeping complainant and patient names from appearing in minutes available to the public.

FINDING II

BOARD STATUTES UNNECESSARILY RESTRICT THE PRACTICE OF PODIATRY.

Some Board statutes governing the practice of podiatry do not serve a valid public purpose and could be eliminated. Restrictions on the offering of gifts to attract patients are not necessary to protect the public and are anticompetitive. Statutory restrictions governing where podiatrists may practice also are not necessary to protect public health, safety and welfare.

Statutory Restrictions

Current Podiatry Board statutes and regulations do not allow podiatrists to provide gifts such as coupons, free examinations or monies to procure patients. A.R.S. §32-854.01 states that

"Unprofessional conduct, under the provisions of this chapter, includes:

1. offering, giving, or promising, either directly or indirectly, any gift in return for the procurement of a patient or patients for podiatric treatment."

Board regulation R4-25-01.B, defines the term gift:

"The term gift as used under A.R.S. §32-854.01 shall include the following:

1. Monies, reimbursements and discounts
2. Prizes, merchandise, coupons
3. Free podiatric services, including free examinations, treatments and x-rays as inducements to procure a patient."

In addition, A.R.S. §32-854.01 restricts the location where podiatrists may practice:

""Unprofessional conduct, under the provisions of this chapter, includes:

.

6. Conducting the practice of podiatry in connection with a beauty parlor, barbershop, turkish bath, shoe store, department store, massage parlor, or other such commercial establishment."

Podiatrists found in violation of these restrictions are subject to disciplinary action by the Board.

Gift Restrictions Unnecessary

Statutory restrictions on the offering of gifts are unnecessary and could be eliminated. The Board has never received a patient complaint regarding gifts and has other statutory authority to control fraudulent or misleading advertising. The United States Department of Justice considers the Board's gift restrictions anticompetitive and recommends their removal from the statutes.

Although the gift restrictions have been in the statutes for many years, the Board has never received a related patient complaint. Some podiatrists in the past few years have complained to the Board about other podiatrists advertising free examinations. However, the Board on advice from its Attorney General representative has discontinued acting on these doctors' complaints on the premise that the Board should pursue only cases 1) demonstrating that a complainant has been misled or 2) involving fraudulent practices.

This restriction is not necessary to protect the public from potentially false or misleading advertising. The Board has authority to act on these violations under a separate statutory provision. A.R.S. §32-854.01.7., establishes false, deceptive or misleading advertising as unprofessional conduct subject to Board disciplinary action.

The United States Department of Justice, Antitrust Division, began investigating the podiatry Board's restrictions on gifts in 1981 and now recommends that the related statute and regulations be rescinded. In a letter to our Office, the Justice Department concluded that the gift restrictions are anticompetitive:

"These provisions, if enforced or followed, would inhibit the manner in which podiatrists are able to compete with one another since many podiatrists offer discounts and free first office visits. It is the Antitrust Division's position that the statute and regulation should be rescinded."

Additionally, the courts have ruled that there is a consumer relationship between doctor and patient. Doctors should be able to provide and consumers receive discounts, free services and gifts.

Site Restrictions Are Unnecessary

Restrictions on where podiatrists may practice are also unnecessary to protect public health, safety and welfare. No other health regulatory Board in Arizona has a similar provision.

According to Board members, restrictions on locations of podiatry practices are not necessary to protect public health and safety. Board members speculate that these restrictions were originally intended to promote the status and dignity of the profession, rather than to benefit the public.

No other health regulatory board in the State of Arizona restricts the site of practice. We examined the statutes and regulations of 12 health regulatory boards. Only the Podiatry Board restricts location of practice.

Removing site restriction could potentially benefit consumers. Podiatrists practicing in shared facilities may provide more convenient and accessible services to the public.

CONCLUSION

Statutory provisions which prohibit podiatrists from offering gifts to attract patients are unnecessary and anticompetitive. Restrictions on where podiatrists may practice are also unnecessary and could be eliminated.

RECOMMENDATIONS

1. The Legislature should consider deleting statutory provisions which restrict podiatrists from offering gifts to attract patients and limiting where podiatrists may practice.
2. The Board should rescind regulation R4-25.01.B. relating to gifts.



State of Arizona
Board of Podiatry Examiners

1645 W. Jefferson Room 418
Phoenix, AZ 85007

September 14, 1983

Mr. Douglas R. Norton
Auditor General
111 W. Monroe, Suite 600
Phoenix, Arizona 85003

Re: Performance Audit - Sunset Review

Dear Mr. Norton:

The Arizona State Board of Podiatry Examiners wishes to express its appreciation to your staff for its handling of the sunset review of the Board's activities. The Board has worked very hard in the last two years to improve its performance. We were pleased you found that complaint investigations are timely, that our minutes and files are complete and that we have developed and implemented an examination grading procedure which is consistent and fair.

The Board agrees generally with the sunset factors delineated in the report. We recognize that improvements always can be made and assure you that we will endeavor to continue our positive strides.

The Board agrees that the statutory provisions regarding patient and complainant confidentiality need to be modified. As you noted in your report, we believe current statutory restrictions make compliance difficult. In most cases, the complainant is the patient; consequently, it is impossible to request the patient's records from his podiatrist without revealing the complainant's name. The Board believes your conclusion that minutes "regularly" include confidential names mistakenly gives the impression that such information is routinely made public. It is not.

We endorse wholeheartedly your recommendation that the Legislature increase our appropriation to allow us to contract for the services of an independent professional investigator.

Mr. Douglas R. Norton
Page Two.
September 14, 1983

Thank you again for your courtesy and cooperation during
the course of this audit.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Barry Rosenthal".

M. Barry Rosenthal, D.P.M.
President
Arizona State Board of Podiatry Examiners

MBR:vlc