

PERFORMANCE AUDIT

**BOARD OF
HOMEOPATHIC MEDICAL EXAMINERS**

A Report to the Arizona Legislature
By the Auditor General
May 1985
85-7



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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

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Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. Harvey Bigelsen, President
Board of Homeopathic Medical Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Homeopathic Medical Examiners. This report is in response to an April 27, 1983, 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.

This performance audit report is submitted to the Arizona State Legislature for use in determining whether to continue the Board of Homeopathic Medical Examiners beyond its scheduled termination date of July 1, 1986. The report addresses the need for independent regulation of Arizona's homeopathic physicians and the impact of the Board on medical regulation within the State. The report recommends terminating the Board and regulating homeopathic medical practices through the Board of Medical Examiners and the Board of Osteopathic Examiners in Medicine and Surgery.

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

Respectfully submitted,

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Homeopathic Medical Examiners in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

Homeopathy, established in the early 1800s, is a branch of medicine based on the philosophy that "like cures like." Its premise is that a substance which causes a particular set of symptoms in a healthy person will cure those symptoms in a sick person. Homeopaths view symptoms as attempts by the body to heal itself. Homeopathic remedies given in minute doses are used to stimulate the body's own defensive and curative processes.

In Arizona, the Board of Homeopathic Medical Examiners was organized in 1981. It consists of five members and has the responsibility to protect public health, safety and welfare by licensing and regulating homeopathic physicians. Before the Homeopathic Board was established, homeopaths were regulated by the Board of Medical Examiners (BOMEX) or the Board of Osteopathic Examiners in Medicine and Surgery (OBEX), depending on their medical training. To become a licensed homeopathic physician in Arizona, one must be licensed in any state as a medical doctor or an osteopathic physician, and exhibit knowledge of homeopathy by passing a written examination. The statutory definition of homeopathy allows homeopathic physicians a broad scope of practice. In addition to using homeopathic treatments, they may prescribe allopathic drugs and perform surgery. Such procedures exceed the commonly accepted scope of homeopathy.

The Legislature should consider terminating the Homeopathic Board because it weakens medical regulation and is not needed. Legislation creating

the Board gives homeopathic physicians a broad scope of practice. Because homeopathic physicians may engage in medical activities that were previously regulated only by BOMEX and OBEX, the enforcement ability of BOMEX and OBEX is reduced, and Arizona's standards of medical practice may be weakened. In at least two cases physicians have been able to continue practicing medicine under their homeopathic licenses following the loss or surrender of their medical licenses based on disciplinary actions by BOMEX.

Although proponents of the Homeopathic Board cite antagonism within the medical community as the reason the Homeopathic Board was created, a review of cases involving homeopathic physicians with BOMEX and OBEX does not indicate that an independent board is warranted. BOMEX and OBEX could regulate homeopathic physicians more effectively than the Homeopathic Board if the two boards would initiate peer review in cases involving homeopaths. In addition, both boards provide necessary services and protection for the public that the Homeopathic Board cannot finance.

Should the Homeopathic Board not be terminated on July 1, 1986, changes are needed in the scope of homeopathic practice and Board funding. The Homeopathic Board should only be allowed to sanction medical practices related to the commonly accepted scope of homeopathic practice. In addition, Board fees should be raised or General Fund money appropriated, or both, to provide adequate resources for public protection.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Homeopathic Medical Examiners in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona Legislature passed legislation creating the Homeopathic Board in 1980. The Board was organized in 1981. Before the Board was established, physicians practicing homeopathy were under the jurisdiction of the Board of Medical Examiners (BOMEX) or the Board of Osteopathic Examiners in Medicine and Surgery (OBEX), depending on their medical training. However, alleged antagonism between the traditional, allopathic medical community and those desiring to offer alternative medical treatments such as homeopathy, resulted in legislation creating the Board. Arizona is one of only three states that regulate homeopathic physicians through an independent board.

Homeopathy: Definition and Background

Homeopathy was established by a German physician, Samuel Hahnemann, in the early nineteenth century. It is based on the principle that "like cures like" and asserts that a substance which causes a particular set of symptoms in a healthy person will cure those symptoms in a sick person. For example, the drug Gelsemium produces in healthy people symptoms similar to those common to influenza. Homeopaths maintain that Gelsemium has an excellent record for treating influenza in some patients. The concept of "like cures like" can be compared to such conventional methods as vaccinations.

Homeopathy is one aspect of holistic medicine. Homeopathic physicians treat the body as an integrated whole and view symptoms as attempts by the body to heal itself. Therefore, homeopathic drugs administered in microdosages stimulate the symptoms of a disease and help the body to heal.

The homeopathic movement grew steadily in the United States from 1826 through the end of the century. By 1900 this system of practice accounted for about 15,000 of the 100,000 medical doctors (M.D.) in the country. During the twentieth century, however, the popularity of homeopathy decreased in the United States. Currently, only a few hundred M.D.s practice homeopathy exclusively. However, there is still a significant number of allopathic and osteopathic physicians who practice homeopathy as a portion of their practice, and it is practiced in other countries such as Great Britain, Mexico, Greece and India.

Currently, there are only three states that recognize homeopathy by offering a license separate from the M.D. or osteopathic (D.O.) license. Arizona, Connecticut and Nevada license homeopathic physicians and regulate them through an independent board. All three boards require their licensees to be graduates of osteopathic or medical colleges.* Connecticut requires a degree from an accredited college, whereas Arizona and Nevada require an applicant to hold a current M.D. or D.O. license from any state in the United States. In addition, all three states test applicants through a written exam on the practice of homeopathy.

Arizona Homeopathic Board Activities

A.R.S. §§32-2902 and 32-2904 specify the Board's composition, powers and duties. The Board consists of five members, including one lay member, appointed for 3-year terms. The duties of the Board include evaluating applications for examinations and licensure, administering examinations, issuing licenses, and resolving complaints against licensed homeopaths. The Board may also enact rules and regulations. Table 1 summarizes Board licensing activities for fiscal years 1981-82 through 1983-84.

* There are currently no homeopathic colleges in this country.

TABLE 1

BOARD OF HOMEOPATHIC MEDICAL EXAMINERS
LICENSING ACTIVITY SUMMARY
FISCAL YEARS 1981-82 THROUGH 1983-84

	Actual		
	1981-82	1982-83	1983-84
Applications	10	17	2
Licenses Granted			
New licenses	5	7	1
Renewals	5	12	13

Source: Board of Homeopathic Medical Examiners' budget requests for fiscal years 1985-86, and Board licensing files and accounting records.

The Board also hears and resolves complaints. Board files indicate that the Board has received only five formal complaints since 1982. The Board determined that none of the cases required investigative or disciplinary action.

Budget and Personnel

The Board of Homeopathic Medical Examiners is a 90/10 board funded by fees for license applications (\$100), licenses (\$75) and annual renewals (\$50 per year). The current funding method is insufficient to pay for all the Board's operating expenses. Board members have voluntarily contributed to pay those additional costs. Table 2 summarizes revenues and expenditures for fiscal years 1981-82 through 1984-85.

TABLE 2

BOARD OF HOMEOPATHIC MEDICAL EXAMINERS
REVENUES AND EXPENDITURES
FISCAL YEARS 1981-82 THROUGH 1984-85

	<u>Actual</u>			<u>Estimated</u>
	<u>1981-82</u>	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>
Revenues:				
Revenue Collected	\$ 1,325 ⁽¹⁾	\$ 2,325 ⁽¹⁾	\$ 925	\$ 3,000
Less 10% To General Fund	132	232	92	300
Carry-Forward From Previous Year	<u>0</u>	<u>1,193</u>	<u>3,186</u>	<u>3,069</u>
Total In Board Fund ⁽²⁾	<u>\$ 1,193</u>	<u>\$ 3,286</u>	<u>\$ 4,019</u>	<u>\$ 5,769</u>
Expenditures:				
Professional Services	\$ 0	\$ 0	\$ 150	\$ 200
Other Operating Expenditures	<u>0</u>	<u>100</u>	<u>800</u>	<u>800</u>
Total ⁽³⁾	<u>0</u>	<u>100</u>	<u>950</u>	<u>1,000</u>
End Of Year Fund Balance	<u>\$ 1,193</u>	<u>\$ 3,186</u>	<u>\$ 3,069</u>	<u>\$ 4,769</u>

- (1) The Board's budget documents contain an internal discrepancy; the number of applications, licenses and renewals shown in the activity summary do not produce the revenue figures shown in Table 2. The discrepancy equals \$50 in fiscal year 1981-82 and \$200 in fiscal year 1982-83.
- (2) Although monies were available in the Board's fund, the Legislature has appropriated only \$2,100 since fiscal year 1981-82 for Board expenditures: for fiscal year 1981-82, \$0; fiscal year 1982-83, \$100; fiscal year 1983-84, \$1,000; and fiscal year 1984-85, \$1,000.
- (3) Funds appropriated are insufficient to cover Board expenses. Board members have paid approximately \$16,000 of Board expenses in fiscal years 1981-82 through 1984-85. They have received no reimbursement for these expenditures.

Source: Board of Homeopathic Medical Examiners' budget requests for fiscal years 1983-84 through 1985-86

The Board has no full-time staff, and operates from the Board president's private medical offices. The president's personal secretary provides secretarial services primarily at the Board president's expense.

Audit Scope and Purpose

This audit was conducted to evaluate the need for and the adequacy of regulation by the Board of Homeopathic Medical Examiners. Specifically we examined:

- The need for an independent board regulating homeopathy,
- The Board's effectiveness and efficiency, and
- The appropriateness of the current scope of practice.

The Auditor General and staff express appreciation to the members of the Board of Homeopathic Medical Examiners and to the Board president's office staff for their cooperation and assistance during the course of our audit.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2354, the Legislature should consider the following 12 factors in determining whether the Arizona Board of Homeopathic Medical Examiners should be continued or terminated.

1. The objective and purpose in establishing the Board

The enabling statutes for the Board of Homeopathic Medical Examiners state that the purpose of the legislation is ". . . to promote the health, safety and welfare of the people of this state by providing for the licensing and regulation of homeopathic physicians." The statutes establish the means to ensure competence and quality in the homeopathic profession by authorizing the Board to examine, license and discipline homeopathic physicians.

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

The Board lacks the necessary resources to effectively protect public health and safety. Current funding levels do not allow the Board to hire professional staff, rent a facility accessible to the public or contract for investigative services. In addition, the Board may not be able to ensure competency based upon its licensing examination (see page 17). Although prepared by experts in homeopathy, the exam was not prepared according to standards ensuring validity and reliability.

In addition, limited funding may hamper the Board's ability to sufficiently enforce its statutes in cases that require considerable investigation and legal action. During its 4 years, Board records show that only five formal complaints have been filed. According to the Board president, none of the five warranted investigative or disciplinary action. To date the Board has not heard or investigated

a complaint posing serious harm to the public. However, the Board lacks the resources to contract for extensive investigative services should a major complaint come before the Board (see page 19).

Although the current finding level is limited, the Board has made efforts to promote public health and safety. According to the Board president, the Board has investigated and assisted in investigations of two "diploma mills" operating in Arizona. In addition, the Board performs background checks on applicants for licensure in an attempt to ensure that only qualified and reputable physicians receive homeopathic licenses.

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

Although regulating homeopathic physicians is in the public interest, because the Board's statutes allow homeopaths a broad scope of practice its funding level may not provide adequate protection to the public. A.R.S. §32-2901 allows a scope of practice which equals that of doctors licensed by the Board of Medical Examiners (BOMEX) and the Board of Osteopathic Examiners in Medicine and Surgery (OBEX). Therefore, the level of regulation for homeopathic physicians should be comparable to that of medical doctors (M.D.) and osteopathic doctors (D.O.). However, as described in Sunset Factor 2, the Board's funding capacity does not provide for adequate or comparable regulation (see page 19).

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

The Homeopathic Board has not promulgated any rules and regulations to date. Board minutes indicate that the Board began work on rules and regulations in 1981. Informal drafts have been submitted to the Board's Attorney General representative; however, none have been submitted to the Attorney General's Office for official review to determine consistency with the statutes.

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

Because the rules and regulations are still being drafted, public hearings have not been held. The Board has complied with the open meeting law on public meetings. The Board has submitted a listing of the locations of published or posted notices to the Secretary of State.

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

The Board has received few complaints and appears to have resolved them in a timely manner. However, the Board has conducted no major investigations on any complaints. According to the Board's president, the nature of the complaints and queries submitted did not merit investigative activity.

The Board has limited investigative resources because it lacks adequate funds. According to the Board's Attorney General representative, if a case comes before the Board that poses significant public harm, the Board may receive investigative assistance from the Attorney General's Office. However, she added that the Attorney General's Office cannot assume full responsibility for investigations. Because its staff is limited, it could not be the Board's sole investigative resource.

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 statutes appear to be adequate. According to the Board's former Attorney General representative, the statutes are similar to

those of other health professions, which are considered adequate. However, as the Board has not prosecuted or taken any disciplinary action, the adequacy of the homeopathic statutes has not been tested.

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

According to Legislative Council staff, the Board submitted a proposal for statutory changes in 1983. The proposal called for changes in licensing qualifications and exemptions for those assisting homeopathic physicians in their practices. The proposal did not pass. The Board has no proposals for the 1985 legislative session according to the Board president.

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

Based on our audit work, we recommend that the Legislature consider deleting A.R.S. §32-2901 et. seq., thereby terminating the Arizona Board of Homeopathic Medical Examiners. This action would return regulation of homeopathic physicians to BOMEX and OBEX. If the Board is not terminated, the Legislature should consider amending the definition of homeopathy set forth in A.R.S. §32-2901. It should limit the scope of practice to allow only homeopathic diagnoses and treatments (see page 20).

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

No harm would occur to the public health, safety or welfare if regulation of homeopathy were returned to BOMEX or OBEX. As medical practitioners with a scope of practice equivalent to that of M.D.s and D.O.s, homeopathic physicians should be regulated. However, BOMEX and OBEX could better regulate homeopathic physicians due to

the Homeopathic Board's limited funding. If homeopathic physicians were placed under the jurisdiction of BOMEX or OBEX, public health and safety would be adequately protected because of these boards' greater enforcement capabilities and resources.

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

Although the level of regulation is appropriate, the Homeopathic Board's ability to adequately regulate is limited. Due to greater investigative and staff capabilities, BOMEX and OBEX could provide more effective regulation. The Homeopathic Board should be terminated and homeopathic physicians should be regulated by BOMEX or OBEX. However, if this does not occur, the scope of homeopathic practice should be limited to allow only homeopathic diagnoses and treatments.

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

According to the Board president, the Board has not contracted for any services.

FINDING I

THE HOMEOPATHIC BOARD SHOULD BE TERMINATED

The Homeopathic Board should be terminated. Although the Homeopathic Board was created as a result of alleged antagonism within the medical community, the legally allowed scope of practice for homeopathic physicians weakens medical regulation in Arizona. Moreover, homeopathic physicians could be more effectively regulated by the Board of Medical Examiners (BOMEX) and the Board of Osteopathic Examiners in Medicine and Surgery (OBEX) if the two boards would initiate peer review in cases involving homeopaths. Should the Legislature not allow the Homeopathic Board to terminate on July 1, 1986, Arizona's medical regulation would be improved if licensed homeopaths' medical activities conformed to the accepted scope of practice and the Board had more revenue.

The Board Was Created Because of Alleged Antagonism Within The Medical Community

Antagonism as perceived by homeopathic practitioners, resulted in lobbying efforts for an independent board. Prior to the Homeopathic Board's creation in 1981, physicians who practiced homeopathy were licensed by either BOMEX or OBEX. The lobbyist working for the Board's enabling legislation stated that BOMEX's intolerance of homeopathic practices necessitated an independent board. Three Homeopathic Board members reported that differences in medical philosophy tend to polarize homeopathic physicians and other medical doctors. The Board's president stated that ideally, homeopathy should be treated as a medical specialty, and regulated through either BOMEX or OBEX. He stated, however, that while homeopathic physicians had not experienced problems with the osteopathic community, he did not believe that homeopathic physicians would be fairly regulated by BOMEX. The Board's president and the lobbyist both concluded that the Board was necessary to ensure that medical doctors could practice a full range of medicine, including homeopathy, without fear of losing their medical licenses.

The Scope Of Practice Allowed For Homeopathic Physicians Weakens Arizona's Medical Regulation

Although the Board's statutes allow licensed homeopaths to practice a wide range of medical activities, the authorized scope of practice is too broad and reduces the effectiveness of medical regulation in Arizona. The Homeopathic Board may sanction medical activities that exceed the accepted scope of homeopathy. As a result, the ability of BOMEX and OBEX to regulate physicians is reduced and Arizona's standards of medical practice are weakened.

Current Scope Of Practice Exceeds Homeopathy - Licensed homeopathic physicians in Arizona are authorized to engage in medical activities that exceed the accepted scope of homeopathic practice. The Board's enabling legislation allows it to sanction medical practices previously regulated only through BOMEX or OBEX. The statute, however, incorrectly defines homeopathy by including a wide range of medical treatments within its scope of practice.

The Board's enabling legislation allows it to regulate a wide range of medical practices. Arizona Revised Statutes (A.R.S.) §32-2901.2 defines homeopathy as:

" . . . a system of medicine employing substances of animal, vegetable or mineral origin which are given in microdosage, prepared according to homeopathic pharmacology, in accordance with the principle that a substance which produces symptoms in a healthy person can cure those symptoms in an ill person, and managing the cure and prevention of illness holistically."
(emphasis added)

The reference to holistic medicine gives the Board extensive regulatory powers. In a memorandum dated December 19, 1984, the Legislative Council stated that:

"Holistic health focuses on the whole person and the development of general well-being. Allopathic and osteopathic identification and treatment of disease are part of curing the whole person and developing general well-being."

Using this definition of holistic medicine, the Legislative Council concluded that A.R.S. §32-2901.2 gives licensed homeopaths the authority to practice allopathic or osteopathic medicine irrespective of other licenses held.*

The Homeopathic Board, therefore, may sanction the kinds of broad medical activities previously regulated only through BOMEX and OBEX, because holistic medicine is not limited to any particular type of medical specialty. It is a philosophy of treatment that emphasizes the whole person instead of just the disease, and encompasses all allopathic and osteopathic treatments including the use of medication and surgery. Consequently, Arizona now has three medical boards that may regulate a wide range of medical practices.

The statute incorrectly defines homeopathy as including all holistic treatments, and therefore, all allopathic and osteopathic treatments within its scope of practice. Homeopathy, however, is a limited medical practice. While holistic in nature, experts in the field agree that homeopathy does not include the use of allopathic or osteopathic treatments such as surgery. The Homeopathic Pharmacopoeia of the United States (HPUS)** sets up parameters for the practice of homeopathy. The publication describes two basic features of homeopathic treatment: 1) a comprehensive examination to uncover the complete symptom picture for a particular individual; and 2) the administration of a homeopathic drug or drugs, as delineated in the HPUS, to stimulate the healing process.

Negative Effect On Arizona Regulation - The broad scope of practice allowed licensed homeopaths limits the regulatory ability of other medical boards and lowers Arizona's standards for medical practice. The scope of practice allowed licensed homeopaths weakens BOMEX and OBEX because it

* See Appendix for complete text of Legislative Council Opinion.

** The HPUS is a listing of homeopathic drugs and procedural guidelines for homeopathic drug preparation. It is published by the Homeopathic Pharmacopoeia Convention of the United States. The most recent edition was revised and published in 1981 with a supplement printed in 1982.

allows the Homeopathic Board to nullify disciplinary actions taken by those boards. Further, the Board's standards for evaluating medical competency are less stringent than those of BOMEX and OBEX.

Homeopathic physicians' current scope of practice reduces the effectiveness of BOMEX and OBEX. The following cases illustrate how this can occur.

Case 1

- A licensed medical doctor (M.D.) had a history of problems with BOMEX, unrelated to homeopathy. Between 1969 and 1979 the physician was placed on probation by BOMEX three times. During each probationary period BOMEX placed restrictions on the doctor's right to prescribe and dispense drugs. Finally, in September 1982 BOMEX revoked the physician's license for unprofessional conduct and medical incompetency. The physician appealed the ruling, but a county superior court upheld the decision. This physician retained a current out-of-State medical license, which allowed him to receive a homeopathic license in November 1983.

Comment

Despite BOMEX's ruling, this physician was licensed as a homeopath. The licensee agreed not to prescribe controlled substances or class II drugs. In addition he was asked to submit a record of his prescriptions. A Board review of the record indicated that the doctor had not prescribed controlled substances or class II drugs; however, Board members expressed concern over the quantity of other allopathic drugs he had prescribed. One Board member questioned if the doctor was using his homeopathic license to practice allopathic medicine. The doctor's extensive use of allopathic medicines under a homeopathic license has, in effect, nullified the BOMEX ruling.

Case 2

- A second physician used his current Arizona M.D. license to obtain his homeopathic license in February 1982. At that time he was being investigated by BOMEX. Although the president of the Homeopathic Board maintains the doctor was treating the patient homeopathically, BOMEX claimed it was a case involving misdiagnosis and the unnecessary prescription of medication. BOMEX records do not indicate homeopathic methods were discussed. In June 1982, this physician surrendered his M.D. license and signed a stipulation stating that his conduct may have constituted a danger to the patient's health.

Comment

This physician surrendered his M.D. license rather than face possible disciplinary action by BOMEX. However, because he retained a homeopathic license, he could do this and still retain all medical privileges.

Further, although the Homeopathic Board may allow its licensees to practice allopathic and osteopathic medicine, the Board's standards for evaluating competency in these areas are not equal to the requirements of BOMEX and OBEX. Licensed homeopaths are considered competent to practice these medicines because A.R.S. §32-2912 C.I.B. requires that license applicants hold:

". . . a current unsuspended and unrevoked license to practice homeopathic medicine . . . [from] another state of the United States or the District of Columbia. . . ."

The Homeopathic Board, however, is not required to determine if the states that licensed the applicants have licensing standards comparable to Arizona's. The Board generally assumes that an applicant with an out-of-State license is qualified to practice allopathic and osteopathic medicine regardless of comparability. BOMEX and OBEX may also license applicants by endorsement. However, these boards grant licenses only if applicants have an M.D. or osteopathic (D.O.) license from another state with standards comparable to Arizona's. OBEX has determined that all other states meet its standards. However, in the case of M.D.s, if standards are not comparable, BOMEX may require license applicants to take a nationally approved written exam covering a wide range of medical knowledge. While the Homeopathic Board may also require applicants to take a written exam, its exam tests only for an applicant's competency in homeopathy. The Board's licensing standards, designed to determine a physician's ability to practice homeopathy, are insufficient to evaluate competency in allopathic and osteopathic medicine.

BOMEX And OBEX Could Regulate Homeopathic Physicians Effectively

BOMEX and OBEX could regulate homeopathic physicians more effectively than the Homeopathic Board. Although proponents of an independent board cited antagonism within the medical community as the reason for creating the Homeopathic Board, a review of cases involving homeopathic physicians with BOMEX and OBEX show that the retention of an independent board is unwarranted. Both of these boards provide necessary services and protection for the public that the Homeopathic Board cannot finance.

An Independent Board Is Unwarranted - A review of cases involving BOMEX and homeopathic physicians indicates that peer review would be sufficient to ensure that BOMEX regulates the practice of homeopathy fairly.* There are seven licensed homeopaths who were or are licensed Arizona M.D.s. A review of the BOMEX files on each of these physicians did not reveal problems severe enough to warrant an independent board. One BOMEX investigation involving a homeopathic physician, however, does illustrate the need for peer review. During this investigation some members of BOMEX and its staff were skeptical of the doctor's method of diagnosis and treatments that included homeopathic preparations. In this case, during an investigative interview a BOMEX investigator called into question homeopathic examination procedures and the scientific basis of treatments.

Although BOMEX members expressed skepticism of the doctor's methods, such a position does not appear to warrant a separate medical board. BOMEX also had questions about homeopathic practice in a case involving another physician. Rather than a separate board, however, what BOMEX seems to need is greater input regarding homeopathic practices. In the past BOMEX has used peer review to resolve cases for which board members needed authoritative advice regarding medical specialties. In cases involving acupuncture for example, BOMEX has retained physicians to provide expert review and advice according to BOMEX staff. These cases indicate that peer review would be appropriate in cases involving homeopathic physicians.

Moreover, BOMEX's statute contains a provision that would help resolve a second area of conflict between BOMEX and homeopathic physicians. The dispute involves the utility of experimental electrodiagnostic machines. Nevada's Homeopathic Board recognizes electrodiagnosis as a legitimate homeopathic modality. BOMEX has resisted sanctioning the use of the machines, and has closely scrutinized two homeopathic physicians regarding the effectiveness of the device. In informal hearings BOMEX has questioned both physicians concerning the machine. However, this dispute can be resolved without an independent regulatory board. BOMEX statutes

* OBEX files on the one homeopathic physician licensed by OBEX showed no antagonism related to homeopathic practices.

include provisions for the use of experimental devices. These statutory guidelines require the user to obtain patient consent, and conform to accepted experimental criteria such as a periodic analysis and review by a peer review committee.

BOMEX And OBEX Have Adequate Resources - Regulating homeopathic physicians through BOMEX and OBEX would also ensure that adequate resources are available for needed activities. BOMEX and OBEX each have adequate resources to provide service and protection to the public. The Homeopathic Board, however, cannot adequately serve or protect the public on its present budget.

Both BOMEX and OBEX have sufficient resources and can provide far greater service and protection to the public than the Homeopathic Board. Like other Arizona medical boards including the Homeopathic Board, BOMEX and OBEX are funded through the State's 90/10 funding formula. Under this method, a board funds its own operations by assessing application and licensing fees. Both BOMEX and OBEX have sufficient licensees to support needed functions including enforcement activities. BOMEX retains a staff of 25 full-time equivalent employees, including five full-time investigators. OBEX, a smaller agency than BOMEX, retains three full-time employees, including one full-time investigator.

The Homeopathic Board, however, cannot independently finance operations needed to serve or protect the public. In its first 3 years, the Board licensed a total of 15 physicians and collected a total of \$4,575. Appropriations during this period, fiscal years 1981-82 through 1983-84, totaled \$1,100. Because of its inadequate funding, the Board cannot afford to rent office space, hire staff or pay Board members' expenses.*

* In the absence of adequate funding, activities conducted by the Board are largely financed by Board members themselves. Since fiscal year 1982, Board members have incurred approximately \$16,000 in uncompensated expenses. These personal contributions paid for Board members' travel expenses to and from Board meetings, the occasional services of the Board president's private secretary, and office supplies. The Board's files are kept at the private office of the Board president. The Board paid the president's private secretary a total of \$220 in fiscal years 1982-83 and 1983-84 for secretarial services.

As a result, the Board lacks visibility, and its accessibility to the public is limited. Most significantly, with its present resources the Board has very limited investigative capability, and may therefore be unable to adequately handle major complaints.

According to the executive director of the Arizona State Boards Administrative Office, which maintains files and provides secretarial and administrative support for Arizona boards with small budgets, the cost of such services for the Homeopathic Board would be approximately \$11,000 annually. Investigating complaints would require additional expense beyond the basic and administrative services. The cost of part-time investigators for other small boards ranges from \$15 to \$35 an hour.

If The Homeopathic Board Is
Continued, Changes Are Needed

If the Legislature does not allow the Homeopathic Board to terminate on July 1, 1986, changes are needed in the scope of homeopathic practice and Board funding.

Arizona's medical regulation would be more effective if the medical activities of licensed homeopaths conformed to the accepted scope of homeopathic practice as outlined in the HPUS. The current scope is the result of the statutory definition of homeopathy that includes all holistic practices. Reducing the scope of practice would eliminate the problems of jurisdiction and licensing described above by returning the responsibility for regulating allopathic and osteopathic medical practices to BOMEX and OBEX. If the scope of homeopathic practice is reduced, however, licensed homeopaths should not be precluded from holding M.D. or D.O. licenses as currently provided for by A.R.S. §32-2933.20. If the scope of practice for licensed homeopaths is limited, this provision would unfairly restrict the practice of physicians qualified for licensure as a homeopath, and as an M. D. or D.O.* While the Homeopathic Board should

* Moreover, in a memorandum to the Auditor General, the Legislative Council concluded that a court could find that A.R.S. §32-2933.20 is unconstitutional.

not be the body that determines competency in allopathic and osteopathic medicine, licensed homeopaths should have the option to be licensed in whatever field of medicine for which they are qualified.

In addition, the Homeopathic Board will need additional funds if it is continued beyond its termination date. To fund necessary services, the Legislature could substantially raise the Board's fees, appropriate State General Fund monies, or implement a combination of both. Under the 90/10 funding formula, the 15 presently licensed homeopathic physicians would each need to pay almost \$750 a year in renewal fees to finance minimal Board operations without an additional General Fund appropriation.* A General Fund appropriation is another alternative. The Board collected less than \$1,000 in fees during fiscal year 1983-84. Without raising fees, the Board would need to keep that revenue and receive a General Fund appropriation of approximately \$11,000 to minimally finance operations. A third alternative would be to increase fees and appropriate additional General Fund monies.

CONCLUSION

Retaining the Board of Homeopathic Medical Examiners is unnecessary. Although homeopathic physicians claim conflict within the medical community resulted in an independent board, the legally allowed scope of practice weakens medical regulation in Arizona. Homeopathic physicians could be regulated effectively by BOMEX and OBEX if the two boards would initiate peer review in cases involving homeopaths.

RECOMMENDATIONS

1. The Legislature should consider terminating the Homeopathic Board. Physicians practicing homeopathy would then be regulated by BOMEX or OBEX, according to the boards' licensing standards.
2. The Legislature should also consider directing BOMEX and OBEX to initiate peer review in cases involving disputes between the boards and homeopathic physicians.

* BOMEX and OBEX each charge an annual renewal fee of \$100 a year.

3. If the Legislature does not allow the Homeopathic Board to terminate on July 1, 1986, consideration should be given to the following.

- Amend the Homeopathic Board's statute so the Board may sanction only medical practices relating to homeopathy.
- Remove A.R.S. §32-2933.20 from the Board's enabling legislation so licensed homeopaths may obtain licenses in whatever field of medicine they are qualified for. Removing this statute would allow a licensed homeopath to also practice as a licensed M.D. or D.O. However, any medical practices falling outside the scope of homeopathy would then be regulated by BOMEX or OBEX.
- Raise the Board's fees, appropriate State General Fund monies to the Board, or some combination of both to ensure that the Board has resources needed to provide the public at least a minimal level of protection.



The office of the Auditor General has recently conducted a Performance Audit of the Arizona Board of Homeopathic Medical Examiners as part of the Sunset Review set forth in ARS 41-2351 through 41-2379. This draft was written in response to the Auditor General's Report.

BACKGROUND AND SUMMARY

To understand homeopathy and why the Homeopathic Board was created, it is necessary to analyze the history of medical philosophy and thought. The first recorded history of medical philosophy is documented in Greece by Hippocrates, the Father of Medicine. At that time, and up to the present, there have existed two opposing schools of medical philosophy. One school of thought stated that a patient's symptoms must be suppressed. For example, if a patient has a fever, lower it; if a patient has diarrhea, stop it. The other school of thought stated that the symptoms were created for a reason, and the body was attempting to normalize itself by creating these symptoms. For example, a fever raises the body's temperature and metabolic rate, which enables the body to fight infection.

These two philosophies have feuded for 5,000 years. In twentieth century health care, there is one system of medicine that treats the patient by using the method of symptom suppression. That system is termed "allopathy." (Allos is Greek for "other, and pathos is Greek for "suffering.") Allopathy is synonymous with traditional medicine today. All other health care systems, concepts, and theories of medicine are designed to help the body heal itself. Homeopathy is an example of such a system. (Homeos is Greek for "similar", and pathos is Greek for "suffering.") Homeopathy is a scientific medical practice which treats persons rather than diseases. Homeopathy treats the whole person. It

is this totality of the individual that homeopathy seeks to cure, rather than to focus only on the sickness or on a diseased part. It is homeopathy's treatment of the whole person, the totality, that makes it a holistic medical therapy. (The word "holistic" comes from the Greek word holos meaning "whole" or "complete.")

The originator of homeopathy was a German medical doctor of great genius, Dr. Samuel Hahnemann (1755-1843). As a result of his own dissatisfaction with allopathic medicine, during the 18th century, Dr. Hahnemann formalized the concept of homeopathy into a scientific system of medicine which survives today.

The physicians who practice homeopathy have completed their years of professional medical training and received their professional degrees. They are medical doctors, M.D.'s or D.O.'s. They then study homeopathy as a postgraduate medical specialty.

Homeopathy is a natural medicine. A homeopathic medicine or remedy is used to stimulate the individual to heal himself. Homeopathic remedies are made from natural sources, be they animal, vegetable or mineral. However, homeopathy is not herbal medicine. Those homeopathic medicines which are made from herbs are precisely manufactured to potentized substances far beyond their herbal origins according to standards and procedures set forth in the Homeopathic Pharmacopia of the United States.

Many of our modern pharmaceuticals have their origins in homeopathy. Two of many examples include vaccination and nitroglycerin. Modern vaccination techniques utilize homeopathic principles in that small doses of the disease-causing virus are used to build immunity against that same virus. Nitroglycerin

is a commonly prescribed medication for angina pectoris. Nitroglycerin was first introduced in the 1850's by homeopathic physician, Constantine Hering (1800-1880), who is known as the Father of American Homeopathy.

The Growth of Homeopathy in the United States.

"The homeopathic method made its first pronounced impact on American and European thought during the cholera epidemic of 1832, when, by the accounts of all observers, the homeopaths had a far higher recovery rate than regular physicians. (In Paris, for example, during the epidemic, the price of homeopathic medicine for cholera increased 100 fold.) Other epidemic diseases in which homeopathic practitioners distinguished themselves were scarlet fever, dysentery, meningitis, and yellow fever. The 19th century homeopathic records are full of cases of successful treatment of these diseases."¹

"Homeopathy enjoyed its greatest influence and success in the two decades following the Civil War. Its power was sufficient to sway not only local boards of health and city councils, but state legislatures and even, at times, the federal government. During these decades, the homeopaths and their system scored many successes, both medical and political, which served to depress still further the already low stock of the orthodox majority. While the overwhelming majority of physicians remained allopaths, the New School had much of the country's professional, cultural and business elite among its patrons and felt that homeopathy's complete triumph was only a matter of time."²

At the turn of the century, a majority of affluent members of society were under the care of homeopathic physicians in the

¹Coulter, Harris L., Ph.D., Homeopathic Science and Modern Medicine, American Institute of Homeopathy, 1980, Pg. 5.

²Coulter, Harris L., Ph.D., Divided Legacy: The Conflict Between Homeopathy and the American Medical Association, North Atlantic Books, 1973, Pg. 285.

United States. The Royal Family of England has historically been cared for by homeopaths. Queen Elizabeth always travels with a homeopathic first aid kit.

"In 1890, there were about 14,000 homeopaths in the country, as against about 85,000 "regular" physicians. In the areas of homeopathy's greatest popularity, however, the proportion of homeopathic physicians was higher, perhaps one to four or one to five. Furthermore, it was admitted on all sides that the social, intellectual, political and business elite of every community patronized the homeopaths. Hence, the power of the school was greater than its relatively small numbers of practitioners would indicate."³

"Some of these 'elite' of American society included Daniel Webster, William Seward, James Garfield, John D. Rockefeller, Edwin Booth, Chester A. Arthur, William Cullen Bryant, Harriet Beecher Stowe, Horace Greeley, Samuel F. B. Morse, Henry Ward Beecher, William Lloyd Garrison, Henry Wadsworth Longfellow, Nathaniel Hawthorne, Bronson and Louisa May Alcott, Phillips Brooks and many others."⁴

In the first decade of the 20th century, there were twenty-two colleges of Homeopathic Medicine in the United States. Homeopathic care was practiced in over 100 hospitals.

What happened to homeopathy since its flourishing in the 1800's and early 1900's? In Europe, and in many countries all over the world, it still flourishes. In the United States, however, it is a matter of historic record that the formation of the American Medical Association was in direct response to the formation of the American Institute of Homeopathy in 1844 and had much to do with the decline of homeopathy.

³Coulter, Harris L., Ph.D., Homeopathic Science and Modern Medicine, American Institute of Homeopathy, 1980, Pgs. 2-3.

⁴Coulter, Harris L., Ph.D., Divided Legacy: The Conflict Between Homeopathy and the American Medical Association, North Atlantic Books, 1973, Pg. 317.

"For sixty years, the A.M.A. was vehemently hostile to the homeopaths. Regardless of the fact that many of the latter had graduated from Harvard, Dartmouth, Pennsylvania and other leading medical schools, they were refused admittance to the orthodox medical societies. Professional consultation with a homeopath was punished by ostracism and expulsion from the same medical societies."⁵

During the 1960's and 1970's, many physicians and patients became disillusioned with the allopathic approach of only using drugs and surgery. Traditional medicine has typically treated symptoms and not treated fundamental causes of disease. On the other hand, homeopathy works at the most fundamental levels to stimulate the body's own healing capability. Since the 1960's, homeopathy has experienced a renaissance. Allopathic and homeopathy medicine have moved into the 20th century with increased knowledge.

The expansion of the homeopathic profession in the 20th century has included aspects of nutrition, preventive medicine, exercise, structural imbalances and electromagnetic imbalances.

Having provided some brief historical background and update on homeopathy in the 20th century, we will now deal, in general, with some of the conclusions mentioned in the Auditor General's Draft Report.

The Auditor General's Report constantly refers to homeopathy as it was practiced in the 18th century and not as it is practiced today in the 20th century. Stating that homeopaths should only treat according to 18th century medicine would be the same

⁵Coulter, Harris L., Ph.D., Homeopathic Science and Modern Medicine, American Institute of Homeopathy, 1980, Pg. 2.

as not allowing allopaths or osteopaths to choose any of the many pharmaceutical therapies available in the 20th century.

The Auditor General's Report stated that only a few hundred M.D.'s practice homeopathy exclusively. This is true if only 18th century homeopathy were the standard. The estimates by specific holistic organizations stated that approximately 10,000 physicians in the United States are working with some type of homeopathic or holistic philosophy.

The A.M.A. sees practitioners of homeopathy, acupuncture and holistic modalities as non-scientific approaches, not approved by the allopathic medical community. This A.M.A. position has created confusion and misunderstanding by medical boards around the country. These occurrences eventually created the Arizona Board of Homeopathic Medical Examiners.

It is clear, through the use of different terminologies and concepts utilized in the Auditor General's Report, that homeopathy is not understood by those who prepared the Report. This problem permeates not only the Auditor General's Report, but all historical dealings with the allopathic medical establishment. Homeopathy is an extremely complex art and science that in order to be dealt with fairly and judiciously, must be understood, if even on an elementary level. To begin to understand the science of homeopathy, however, begins the inevitable process of validation of this remarkable application of medicine by the allopathic medical establishment. There is nothing to be gained in the eyes of the allopathic medical establishment by validating the science of homeopathy, therefore, it is unlikely that an understanding of homeopathy will be sought.

It is by no fault of the Auditing Team that this lack of understanding exists. It is simply the complex nature of homeopathy. It is this basic misunderstanding of homeopathy that created the need for a separate, autonomous homeopathic medical board. If an understanding is desired, it is a simple matter to begin to attain it. Past experience and history demonstrate an unwillingness or lack of desire on the part of the allopathic medical establishment to understand homeopathy. There is no reason to think this will change and makes co-existence under the same regulatory board impossible.

In the Auditor General's Report, it is stated that the homeopathic physician could be more effectively regulated if BOMEX or OBEX would initiate peer review involving homeopaths. With the past antagonism by BOMEX, it would be very questionable if they would initiate peer review.

The Auditor General's Report cites two cases involving physicians who had disputes with BOMEX and eventually obtained homeopathic licenses. Four cases were actually involved. Careful analysis of these cases will show the hostility between the professions.

The criticism in the Auditor General's Report as to the effectiveness of the Homeopathic Board, relates to insufficient funding of the Board. The Homeopathic Board performed all of its duties without this funding through the dedication of the Board members and the staff. The Auditor General's Report only speculates about future funding for major investigations. At present, the Homeopathic Board has conducted several investiga-

tions and has resolved them satisfactorily with minimal funding. Therefore, the Auditor General's Report is only speculative. The Homeopathic Board has protected the public by helping to close down illegal practitioners and diploma mills. It has also benefited the public by giving them freedom of choice in health care: this is the right of every individual.

SUNSET FACTORS

In accordance with ARS 41-2354, the legislature should consider 12 factors in determining whether the Arizona Board of Homeopathic Medical Examiners should be continued or terminated.

1. The objective and purpose in establishing the Board.

The purpose for establishing the Board of Homeopathic Medical Examiners was to ensure that the people of this State would have the right of freedom of choice in medical care. The Board was established to promote the health, safety and welfare of the people by providing for the licensing and regulating of homeopathic physicians.

2. The Homeopathic Board has met its objective and purpose and has operated efficiently.

The Auditor General's Report states that the Board lacks the necessary resources to effectively protect public health and safety. The Auditor General's Report states that the Board has not heard any complaints that have posed serious harm to the public. They state that there have been only five formal complaints filed and these were minor. These statements are decidedly false. The Board has investigated two diploma mills and has worked in cooperation with the F.B.I. and the Arizona Republic, as well as an investigative staff from Ontario, Canada. (Enclosed is a copy of

a letter from the chief investigator from Canada thanking the Homeopathic Board for their cooperation in closing down diploma mills and illegal degrees.) In addition, there were two physicians with good credentials who applied for licensure with the Homeopathic Board. Upon investigating these individuals, the Board discovered that these physicians were using alias and phony documents. These two physicians have since fled the State of Arizona. There was also a physician with a very controversial and well known background who attempted to obtain licensure with the Board. Even though this physician passed all the examinations with very high grades, he was denied licensure on moral grounds. His denial was a result of extensive investigation by the Board. This physician then brought suit against the Board which was summarily dismissed in the Arizona courts. The Auditor General's Report makes a statement that the Board may not be able to ensure competency, based upon its licensing examination. The question raised is where does the Auditor General's Report receive its information in order to make such statements? These statements are invalid. In addition, Brigham Young University volunteered to prepare, grade and standardize our testing. They set up a similar program in the State of Nevada.

3. The Homeopathic Board has operated within the public interest.

The Auditor General's Report states that the Homeopathic Board may not provide adequate protection to the public because of its low funding level. This is highly speculative since the Board has handled everything, including investigations, with this low funding. It would appear that the Homeopathic Board is being placed in a "Catch-22" situation.

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

At present, the Board has several rules and regulations which will be offered in public hearing over the next several months.

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.

Not applicable at present.

6. The Homeopathic Board has been able to investigate and resolve complaints within its jurisdiction.

The Auditor General's Report states that the Board has only received a few complaints, and these had been resolved in a timely manner. The Auditor General's Report also states that no major investigations were done. These statements have been examined previously. In addition, since there have been only a few minor complaints, perhaps it is an indication of the satisfaction that the patients have received from these physicians. In fact, there were no complaints on the physicians, themselves, only questions raised by insurance companies and inquiries about what homeopathic therapy is.

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 statutes are adequate as far as the Board's authority is concerned. Again, the Auditor General's Report only brings up speculations. Thus far, the Board, with its limited resources, has handled everything efficiently.

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

The Board has no proposals for the 1985 legislative session,

but will make definite proposals during the course of the Sunset Review.

9. The laws of the Board are adequate in compliance with the factors listed in the Sunset laws.

The Auditor General's Report states that the Board should be terminated or the statute should limit "the scope of practice to allow only homeopathic diagnoses and treatments." This statement clearly shows the lack of understanding of twentieth century homeopathy. There are no homeopathic diagnoses. Diagnoses are allopathic terms used to categorize diseases. Homeopathy does not treat colitis. Instead, it treats the person who has an inflamed colon. If the legislature were to limit homeopathic physicians to practice only 18th century medicine, it would follow that the legislature should limit osteopaths to manipulation only without the use of such treatments as surgery or drugs. It would also follow that allopaths should be then limited to blood letting and leaching, and not the use of 20th century pharmaceuticals or surgery. It is obvious that this would be a giant step backwards for allopaths and osteopaths. It would be the same for homeopaths. Homeopathic physicians, according to statute, must be licensed as M.D.'s or D.O.'s prior to obtaining a homeopathic license. All homeopathic physicians must pass the allopathic proficiency testing, and their schooling and training cover pharmaceutical and surgical medicine; to limit the homeopath would effectively make them ineffective physicians.

10. The termination of the Board would significantly harm the public health, safety and welfare.

The Auditor General's Report states that the public health,

safety and welfare would be better served if homeopathic physicians were placed under the supervision of BOMEX or OBEX. The Auditor General's Report seems to have completely ignored the history of the feuding of the professions and the previous actions of BOMEX against homeopathic physicians. If the homeopathic physicians were placed under the jurisdiction of BOMEX, this would inevitably result in a death sentence of the homeopathic profession. There is no reason to believe now that BOMEX would change its views. Furthermore, by placing homeopathic physicians under BOMEX, it would significantly hamper the freedom of choice that the people in the State of Arizona have in choosing their health care. As a matter of record, several very prominent and wealthy citizens of this State have had to go to Europe and other countries in order to receive treatment by physicians using homeopathic philosophy. Since the enactment of this law, these citizens can now receive their treatments in the State of Arizona. If the law were to be "sunsetting," these citizens would again be forced outside of Arizona.

11. The level of regulation exercised by the Board is appropriate.

Again, the Auditor General's Report shows its lack of homeopathic orientation as it brings up only speculative answers as to what would happen if the Board needed more investigative power. The Auditor General's Report states that the Board should be terminated because it could be better regulated by BOMEX or OBEX.

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

Private contractors have not been used; however, as was previously stated, Brigham Young University has volunteered its services.

FINDING 1

THE HOMEOPATHIC BOARD SHOULD NOT BE TERMINATED

The Auditor General's Report states that homeopathic physicians could be more effectively regulated by BOMEX or OBEX "if the two Boards would initiate peer review in cases involving homeopaths." There have been two cases of homeopathic physicians brought in for informal hearings with BOMEX. BOMEX has rules and regulations and a peer review department regulating acupuncture. Yet in these two cases, BOMEX ignored the peer review process and referred to acupuncture as "gobbledegook." If BOMEX believes acupuncture is "gobbledegook, and not one member even understands basic terminology in acupuncture, how could they effectively regulate such a system? There is no reason to believe that BOMEX would change its philosophy in mid-stream. Also, the Auditor General's Report stated that licensed homeopaths should conform to the accepted scope of practice of homeopathy. Again, the Auditor General's Report erroneously suggests the limitation of homeopathic practice to 18th century medicine.

THE BOARD WAS CREATED BECAUSE OF ANTAGONISM WITHIN THE MEDICAL COMMUNITY

The Auditor General's Report states that the antagonism between the professions is alleged. If the transcriptions of BOMEX

were studied, it would be shown that in public hearing, BOMEX has consistently and arrogantly attempted to demean and humiliate homeopaths. In the past, BOMEX has consistently taken homeopaths through administrative proceedings that have been financially as well as emotionally draining. There is no reason to assume that this would not continue. The Assistant Executive Director of BOMEX has stated: "The Board represents orthodox medicine. They are not going to sit idly by and let another M.D., who they feel should know better, mistreat patients by practicing some type of crazy medicine." Homeopathy cannot and should not be judged by allopathic or orthodox standards. The limited understanding of homeopathy on the part of the traditional medical establishment does tremendous injustice to homeopathic physicians.

THE SCOPE OF PRACTICE ALLOWED FOR HOMEOPATHIC PHYSICIANS STRENGTHENS ARIZONA'S MEDICAL REGULATION

The legislature originally permitted homeopaths the use of holistic modalities. The legislature was also very clear, as was the Arizona Legislative Council, concerning the use of holistic concepts and the ability to use pharmaceutical prescriptions being within the scope of the homeopathic physician's license. For example, in London, there is a Royal Homeopathic Hospital which does major surgery and utilizes all of the modalities of 20th century medicine. There are four other prominent hospitals in Great Britain that employ homeopathic physicians, therapies and other modalities. The Auditor General's Report states that homeopathy is a limited medical practice and does not include the use of allopathic and osteopathic treatments such as surgery. The Auditor General's Report is, again, not clear with its information.

Classical osteopathy was founded in the 19th century by Andrew Taylor Still, as an art using manipulation only. Osteopaths today are allowed to use surgery and/or pharmaceutical medication which clearly are not in the scope of practice according to the theory of osteopathy. Osteopaths can use 20th century medicines. Therefore, homeopaths who have similar allopathic training must be able to utilize pharmaceuticals.

POSITIVE EFFECT ON ARIZONA REGULATION BY ALLOWING FREE CHOICE AND COMPETITION

The Auditor General's Report states that the Homeopathic Board has been allowed to nullify disciplinary actions on physicians previously taken by BOMEX. They site two cases in dispute between BOMEX and homeopathic physicians. In reality, there were four cases, but the Auditor General's Report, in order to justify their conclusions, barely touch the other two cases. We will now examine all four of these cases from the viewpoint of the Homeopathic Board.

CASE #1

The Auditor General's Report cites the case of a ten-year investigation of a physician whose license was finally revoked in September of 1982, for medical incompetency. Following this, the Homeopathic Board issued this physician a license, because he was qualified according to the law. This case was thoroughly reviewed by the Homeopathic Board. The physician in question did not lose his license for medical incompetency, but for questions of substance abuse. This physician was granted a homeopathic license with extensive restrictions placed on it. He has appeared before the Homeopathic Board every 3-6 months, and his prescriptions and charts are reviewed. He has been severely limited in writing pre-

scriptions for controlled substances. He has been followed so closely that his lawyer has brought up charges of harrassment by the Homeopathic Board. Since this physician has been licensed by the Homeopathic Board, he has had no complaints made against him by anyone.

CASE #2

The Auditor General's Report again shows its poor understanding by stating that the charges against this physician were primarily unrelated to homeopathy. This physician was using holistic and homeopathic modalities to treat his patients. He eventually signed a stipulation to give up his medical license because of the constant harrassment over several years. The physician was placed under such great emotional and financial stress, that at one point, he was forced to start bankruptcy action. Several years of harrassment completely drained this physician of all his financial, physical and emotional resources.

CASE #3

The Auditor General's Report briefly addresses this physician's case by stating that his examinations and procedures were questionable. In fact, this physician was told in public hearings that he needed psychological examinations and that his work had no scientific basis. These allegations were never substantiated. This physician has a one year waiting list for new patients. He is one of the busiest practitioners in the State of Arizona. In the reality of a free marketplace which encourages competition, this physician is very successful, and his services are in great demand. If this physician was incompetent, the demand for his services would not be so great.

CASE #4

This is the case of another very busy and prominent homeopathic physician that was ridiculed by BOMEX in public hearing. The transcripts will show that this physician was called a crank, a quack magician and a madman in public hearing, and his work with acupuncture was considered "gobbledegook." When this physician attempted to present documentation of his work from Stanford University, it was not admissible. The only complaint ever received on this physician was related to his fees and the use of electrodiagnosis. This physician has brought suit in Federal Court for civil rights conspiracy and violation of the Sherman Act. A Federal Judge has refused to summarily dismiss this case, and it is proceeding in the courts.

The Phoenix Gazette investigative report of March 30, 1983, concluded that, "An examination of the records of disciplinary actions taken by the Board during the past six years indicates a physician has more likelihood of surviving in the State practicing substandard medicine than fringe medicine." "A doctor can remove healthy appendixes, shoot junkies full of speed, botch operations, pop pills, kill patients through incompetence, overbill clients and, in many cases, continue to practice medicine", but, "The State Board of Medical Examiners has something to say about the claims of so-called fringe medicine: It disapproves and even hates such practice." Furthermore, it was stated in the Phoenix Gazette that BOMEX has allowed several physicians to maintain licenses who have:

"served time in prison for medically related convictions;"
"have been convicted of sexually molesting a 15 year old girl;"
"and have staggered drunk through the corridors of a hospital while on duty."

One BOMEX member stated, "A poor physician can practice bad medicine for a long time ... but fringe practitioners don't have such a good record with this Board."

The legislature showed wise foresight by creating the Homeopathic Board several years ago. This has had a positive effect by allowing free choice and competition in the health care market.

The Auditor General's Report states that the licensing standards of homeopathic physicians are not the same as BOMEX or OBEX. The Report also states that the Homeopathic Board "generally assumes that an applicant with an out-of-state license is qualified to practice allopathic and osteopathic medicine regardless of comparability." "However, these Boards grant licenses only if applicants have an M.D. or D.O. license from another state with standards comparable to Arizona's." BOMEX standards may require a licensed applicant to take a nationally approved written examination if the standards of another state are not the same as Arizona's. OBEX has determined that all other states meet its standards. The Homeopathic Board's standards and OBEX's standards are exactly the same. The only real difference in BOMEX's standards is regarding foreign graduates of medical schools.

ALLEGED ANTAGONISM

There is great concern about the continued reference in the Auditor General's Report to "alleged antagonism" between the professions. To deny the evidence presented in this written response and evidence that is a matter of public and historic record is a serious oversight.

AN INDEPENDENT BOARD IS WARRANTED

The Auditor General's Report states that peer review by BOMEX and OBEX would be sufficient to solve any problems with homeopathic physicians. Again, this is obviously ignoring the record of BOMEX in the past. Since BOMEX has stated its negative opinions regarding homeopathic physicians, how could they effectively regulate homeopathic physicians without prejudice?

THE HOMEOPATHIC BOARD HAS ADEQUATE RESOURCES

The Auditor General's Report states that the Homeopathic Board does not have adequate resources to provide service and protection for the public. Also, as a result of the lack of resources, the Board lacks visibility and its accessibility to the public is limited. This is another "Catch-22" situation. For example, the Board was granted \$100 appropriation for its first year in existence. The Board was also told by the State Budget Director that the State would not aid them financially, and that the Board would have to provide for its functions independently.

Interestingly, the Auditor General's Report made no disparaging comments on the performance of the Homeopathic Board. According to the Auditor General's Report, the Homeopathic Board has carried out its functions satisfactorily. It should be a credit to the members of the Homeopathic Board that they have done such a satisfactory job, in spite of the financial handicaps they have faced. To penalize the Board and the citizens who seek this care for lack of funds, seems unreasonable. We concur with the Auditor General that it is necessary to increase the fees for homeopathic licensure.

The State should remove the restriction that a homeopathic physician must be a resident of Arizona in order to get a license in Arizona. Neither BOMEX or OBEX have such restrictions. If out-of-state homeopathic physicians could be licensed, the number of licensees in the future would substantially increase.

IF THE HOMEOPATHIC BOARD IS CONTINUED, CHANGES ARE NEEDED

The Auditor General's Report states that if the Homeopathic Board is allowed to continue, the scope of their practice should be restricted in the area of prescription writing. Homeopathic physicians cannot accept any limitation on this scope of practice, which includes the use of pharmaceuticals and other holistic modalities. A homeopathic physician is a total physician. The homeopathic physicians listed in the State of Arizona are also listed as General Practitioners. They do complete out-patient care, using homeopathic and allopathic philosophy. If the holistic modalities were eliminated, these physicians would be unable to effectively practice 20th century medicine.

CONCLUSION

The Auditor General's Report lacks understanding about 20th century homeopathic physician practices, and their conclusions are erroneous. Far from weakening the practice of medicine in the State of Arizona, it encourages freedom of choice and open competition without harrassment or monopolies. The Auditor General's Report states, again, if BOMEX or OBEX would initiate peer review involving homeopaths, homeopathy could be regulated more effectively. According to the past history of BOMEX, it appears very doubtful that

this would ever be administered fairly. The citizens in the State of Arizona and the legislature responsibly initiated a new law to enable a revolutionary, new freedom of choice in health care.

RECOMMENDATIONS

1. The Homeopathic Board should be continued because it has satisfactorily served the public, and it has provided freedom of choice in health care.
2. The Homeopathic Board proposed several changes in the Homeopathic Statute:
 - (a) Removal of the restriction that a homeopathic physician must be a resident in the State of Arizona.
 - (b) Removal of the restriction that in order to become licensed as a homeopath, a physician must have three affidavits from physicians practicing in the State of Arizona. This should be changed to three physicians licensed in any state.
 - (c) There should be significant increases in the fees for applications and renewals of licenses for homeopathic physicians.
 - (d) Removal of ARS Section 32-2933, paragraph 20, which states that it is unprofessional conduct to renew a license in another profession as a health care provider in the State of Arizona. The Arizona Legislative Council believes this to be unconstitutional.

The
College of
Physicians and
Surgeons of
Ontario



* Names deleted on advice of Attorney General to preserve confidentiality.

In reply please quote:

C45-024-0520

December 18, 1984

Dr. Harvey Bigelsen
President
Arizona Board of Homeopathic Medical Examiners
Suite 15 - 7333 E. Monterey Way
Scottsdale, Arizona 85251

Dear Dr. Bigelsen:

Re: *

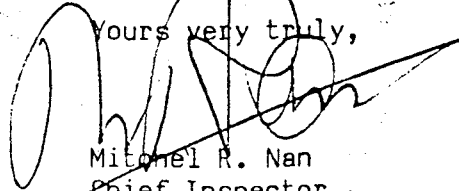
I wish to thank you and acknowledge receipt of your letter dated December 3, 1984.

I am assuming that your information suggests that the captioned university had no accreditation prior to the date of July 1983. Could you clarify this for me, please.

I would respectfully request that you consider sharing with me that information you may have touching on * particularly your reference to "Diploma Mills" and "questionable credentials". I believe * is a previous resident of Toronto, Ontario and any data provided would certainly be of assistance to us in the event he should some day choose to return.

Again, I want to thank you for all the assistance provided by your Board and particularly yourself during the course of my enquiries. I want to assure you that the information is being used to the best of its advantage and definite progress is being made in respect of our efforts to deal with individuals professing to have credentials and diplomas which obviously are of a bogus nature.

Yours very truly,


Mitchell R. Nan
Chief Inspector
Professional Assessment Department

MRN:jcs

APPENDIX

LEGISLATIVE COUNCIL OPINION ON
HOMEOPATHIC STATUTES

ARIZONA LEGISLATIVE COUNCIL

MEMO

December 19, 1984

TO: Douglas R. Norton, Auditor General
FROM: Arizona Legislative Council
RE: Request for Research and Statutory Interpretation (O-85-1)

This memo is sent in response to a request submitted on your behalf by William Thomson in a memorandum dated December 6, 1984.

FACT SITUATION A:

In 1980 the Legislature passed Arizona Revised Statutes (A.R.S.) section 32-2901 et seq. establishing the Board of Homeopathic Medical Examiners (Board) and gave it the authority to license homeopathic physicians. Homeopathy is defined as "a system of medicine employing substances of animal, vegetable or mineral origin which are given in microdosage, prepared according to homeopathic pharmacology, in accordance with the principle that a substance which produces symptoms in a healthy person can cure those symptoms in an ill person, and managing the cure and prevention of illness holistically." A.R.S. section 32-2901, paragraph 2.

To obtain a homeopathic license, an applicant must be an M.D. or D.O., either licensed in Arizona or another state. Based on interviews with Board members and others in the medical community, current opinion suggests that an Arizona licensed homeopath may use and prescribe the same treatments and drugs (allopathic) as physicians licensed by the Board of Medical Examiners and the Board of Osteopathic Examiners in Medicine and Surgery. An Attorney General's informal opinion states that as a licensed M.D. or D.O. "a homeopathic physician is a medical practitioner . . . therefore, there does not appear to be any legal impediment to a homeopathic physician's ability to prescribe drugs and devices for the treatment of the sick and injured." The present interpretation of homeopathic statutes allows a homeopathic physician, whether licensed as an M.D. or D.O. in Arizona or licensed as an M.D. or D.O. in another state, all privileges of an Arizona licensed M.D. or D.O. in addition to his privileges as a licensed homeopath.

QUESTIONS PRESENTED:

1. May a homeopathic physician licensed by the Board and also licensed in Arizona as an M.D. or D.O. prescribe allopathic or osteopathic drugs and treatments?
2. May a homeopathic physician licensed by the Board and licensed as an M.D. or D.O. in another state prescribe allopathic or osteopathic drugs and treatments?
3. Does the scope of homeopathy as defined by A.R.S. section 32-2901, paragraph 2 allow a homeopathic physician to use and prescribe allopathic or osteopathic drugs and treatments irrespective of other licenses held?

ANSWERS:

1. Yes. See discussion at 3.
2. Yes. See discussion at 3.
3. Homeopathic physicians licensed pursuant to A.R.S. title 32, chapter 29 may use and prescribe allopathic or osteopathic drugs and treatments irrespective of other licenses they hold.

The statutory definition of homeopathy includes "managing the cure or prevention of illness holistically." A.R.S. section 32-2901, paragraph 2. Holistic health focuses on the whole person and the development of general well-being. Allopathic and osteopathic identification and treatment of disease are part of curing the whole person and developing general well-being.

In order to be licensed as a homeopathic physician pursuant to A.R.S. title 32, chapter 29, an applicant is required to be a licensed M.D. or D.O. A.R.S. section 32-2912, subsection A, paragraph 2. A license to practice as an M.D. or D.O. shows that another licensing agency has deemed the M.D. or D.O. to be qualified by training to use and prescribe allopathic or osteopathic drugs and treatments. Licensed homeopathic physicians are qualified by training to use and prescribe allopathic or osteopathic drugs and treatments.

The ability of licensed homeopathic physicians to use and prescribe drugs is made even clearer by A.R.S. section 32-2933, paragraph 6. A.R.S. section 32-2933, paragraph 6 provides that unprofessional conduct includes "prescribing narcotic or hypnotic drugs, or both, for other than accepted therapeutic purposes." "What is necessarily implied in a statute is as much a part of it as what is expressed." Coggins v. Ely, 202 P. 391, 23 Ariz. 155, 162 (1921). Since it is unprofessional conduct to prescribe such drugs for other than therapeutic purposes, by implication, licensed homeopathic physicians can prescribe those drugs as well as other drugs for therapeutic purposes.

Since the statutory definition of homeopathy includes allopathic and osteopathic treatment of disease and licensed homeopathic physicians are qualified by training to use and prescribe allopathic or osteopathic drugs and treatment and specific statutory reference to prescribing drugs is present in the homeopathy statutes, licensed homeopathic physicians may use and prescribe allopathic or osteopathic drugs and treatment. They are not required to hold either current M.D. or D.O. licenses issued by this state or any other state in order to use or prescribe allopathic or osteopathic drugs or treatment.

FACT SITUATION B:

A.R.S. section 32-2912, subsection A, paragraph 2 requires an applicant for licensure as a homeopathic physician to be a licensed M.D. or D.O. but not specifically in Arizona. A.R.S. section 32-2933, paragraph 20 states that it is unprofessional conduct to obtain or renew an Arizona license as a health care provider. Although some licensees have complied with the provisions, others have retained their M.D. or D.O. Arizona licenses. The Board has chosen to take no action against those with multiple licenses. Its position is based in part on the Attorney General representative's advice that A.R.S. section 32-2933, paragraph 20 may be unconstitutional.

QUESTION PRESENTED:

Does the requirement to prohibit multiple licensing as stated in A.R.S. section 32-2933, paragraph 20 pose constitutional problems?

ANSWER:

The right to practice medicine is a valuable property right. 61 Am. Jur. 2d section 13. This right is subject to the state's police power to impose such regulations, within the limits of the Constitution, as may be required to protect the public health, safety and welfare. State v. Borah, 51 Ariz. 318, 322, 76 P. 2d 757 (1938). The right "may be divested only by procedure satisfying the requirements of the due process clause of the Federal Constitution." In re Buck's License, 192 Or. 66, 232 P. 2d 791, 796 (1951), 200 Or. 488, 258 P. 2d 124 (1953), appeal dismissed 346 U.S. 919, 74 S.Ct. 313, 98 L.Ed. 414 (1954). See also Williner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed. 2d 224 (1963). Revocation of licenses for good cause falls under the valid exercise of police power if the state complies with due process requirements. 61 Am. Jur. 2d section 75.

A.R.S. section 32-2933, paragraph 20 requires a licensed homeopathic physician to give up any other health care provider license he holds in order to avoid losing his homeopathic physician license. This statute requires an individual to give up his license to practice medicine without any due process protections. Our office was unable to locate any case law which dealt with a statute similar to A.R.S. section 32-2933, paragraph 20, but based on the above principles of law we conclude that a court could find that A.R.S. section 32-2933, paragraph 20 is unconstitutional. Not only are there no due process considerations involved in the loss of a health care provider license, but it is questionable whether the provision is even a valid exercise of police power.

cc: William Thomson, Director
Performance Audit Division