

LG 62-R36/96-L
COPY 2



AUDITOR GENERAL LETTER REPORT

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

January 1996

Letter Report No. 96-L1

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Dr. Richard Zonis, Chair
Board of Medical Examiners

**Subject: Follow-up Review of the Auditor General's
1994 Audit of the Board of Medical Examiners**

Pursuant to a May 17, 1995, resolution of the Joint Legislative Audit Committee, our Office was directed to conduct a follow-up review of the findings and recommendations identified in our 1994 performance audit of the Board of Medical Examiners (BOMEX).¹ This letter report presents the results of our follow-up review.

BOMEX is taking steps to address the problems identified in our recent audit. BOMEX's problems at that time included a large complaint backlog, untimely case resolution, limited complaint investigation, little disciplinary action, improper registrations and permits, and inadequate management and board oversight. In the limited amount of time since the 1994 report was issued, BOMEX has implemented several changes that appear to address some of our previous concerns. More time will be needed, however, to judge the effects of many of its efforts.

Background

The Board of Medical Examiners' primary responsibility is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional medical practitioners. Statutes authorize the Board to exercise this responsibility through examining and licensing physicians, renewing licenses annually, investigating and resolving complaints, disciplining

¹ Our Office last reviewed BOMEX in 1994, issuing Report No. 94-10 on November 23, 1994.

and rehabilitating physicians, and developing and recommending standards governing the medical profession. During fiscal year 1995, the Board was appropriated more than \$2,800,000 to regulate approximately 12,700 doctors with active Arizona medical licenses.

**Efforts to Address
Backlog and Timeliness**

BOMEX has recently taken steps to reduce its significant backlog of complaints and to improve the timeliness of its complaint resolution process. Although still high, the complaint backlog has decreased since our previous audit. In addition, case resolution time has improved for some types of cases.

Case backlog reduced – For the first time in years BOMEX has reduced its case backlog. BOMEX resolved more cases in fiscal year 1995 than it received, achieving a 21 percent reduction in the case backlog. As illustrated in Table 1, the Board decreased the backlog from 1,643 cases at the end of fiscal year 1994 to 1,292 cases at the end of fiscal year 1995.

Table 1

**BOMEX Complaint-Handling Statistics
Fiscal Years 1991-92 through 1994-95**

Number of Complaints	Fiscal Year <u>1991-1992</u>	Fiscal Year <u>1992-1993</u>	Fiscal Year <u>1993-1994</u>	Fiscal Year <u>1994-1995</u>
Beginning of Year	1,146	1,374	1,528	1,643
Received	1,033	1,209	1,004	979
Resolved	805	1,055	889	1,330
End of Year	1,374	1,528	1,643	1,292

Source: Auditor General staff analysis of BOMEX complaint tracking database.

BOMEX has initiated several measures to reduce the complaint backlog. Because some of these changes were made recently, it is difficult to determine their full impact.

- Due to the large backlog of malpractice cases, the Board made a special effort in fiscal year 1995 to address these types of complaints, resolving 446 cases. As a result, the Board resolved almost as many malpractice cases in fiscal year 1995 as in the three previous years combined.

- In March 1995, the Board implemented a conference call consent-agenda designed to address complaints where both a medical consultant and a Board member recommend dismissal.¹ A 15-minute call in March eliminated 102 cases from consideration at the April 1995 board meeting.
- In July 1995, BOMEX hired an ombudsman to assist consumers with resolving minor grievances against doctors. For example, a patient with a fee dispute or objection about a doctor's bedside manner might be advised to talk to the doctor about the problem. This practice may help reduce the number of complaints filed.
- The Board divided into subcommittees for the first time at the October 1995 meeting. The Board is divided into two committees to hear complaints. This new procedure, authorized by Session Laws 1995, Ch. 212, §13 addresses the complaint backlog by allowing the Board to consider many more cases at each meeting. The Board addressed 247 cases in October 1995, an increase of 111 percent from the same meeting last year.

BOMEX addressing case resolution time – The Board has also taken steps to improve complaint resolution timeliness for all cases. The greatest improvements have occurred with malpractice cases. For example, the Board decreased the average resolution time for malpractice cases by over 250 days, from 1,173 days in fiscal year 1994 to 921 days in fiscal year 1995. Unfortunately, while concentrating on resolving the large malpractice case backlog, the average number of days to resolve all other cases increased from 364 days in fiscal year 1994 to 376 days in fiscal year 1995. However, the Board is working to improve case resolution timeliness. For example:

- BOMEX has developed a prioritization procedure for classifying complaints according to their potential to threaten public safety in an effort to resolve the most serious cases first. While this measure may not increase overall timeliness, the most serious cases should be addressed more quickly. According to the Executive Director, this policy will be implemented in January 1996.
- When possible, physicians' consent agreements (stipulations) are developed prior to the informal interview with the entire Board. If the Board agrees with the stipulation, they need only approve it. This frees up valuable Board meeting time previously spent developing stipulations.

Case monitoring and delays still a concern – Although BOMEX has taken steps to improve timeliness, some cases continue to be delayed. During the follow-up audit, eight cases were

¹ Only cases where both the BOMEX medical consultant and the reviewing board member recommend dismissal are placed on the teleconference agenda. If a board member believes a case on the teleconference agenda warrants further discussion, it is placed on the agenda of an upcoming board meeting.

brought to our attention that were delayed for various reasons. Some of these delays seem excessive and unnecessary. For example:

- In September 1993, a patient made sexual misconduct allegations against her doctor. Four- and a-half months passed before the complaint was given to a BOMEX medical consultant for review. Another 16 months elapsed before the case was assigned to an outside medical consultant for review. As of October 1995, over two years later, the Board has still not considered this case. According to the Executive Director, the initial four-month delay occurred because BOMEX did not yet have a psychiatric medical consultant on staff. The medical consultant then discovered he had a conflict of interest and could not review the case. However, the additional 16-month delay in sending the case to an outside consultant occurred because BOMEX did a poor job of monitoring it.
- In June 1994, a patient alleged that his doctor charged him twice for the same surgery. A board member directed agency staff to interview the doctor. However, more than 5 months elapsed before agency staff sent a letter to the doctor requesting him to come in for an interview. The Executive Director stated that before sending the letter, BOMEX staff spoke with the doctor by phone; however, there is no evidence of this in the investigation file.

Too Early to Fully Evaluate Efforts to Address Disciplinary Action and Complaint Investigation Deficiencies

Although BOMEX has initiated efforts to address investigation and disciplinary problems identified in last year's report, more time must pass before assessing the full impact of these changes. It is too early to tell if recent changes in investigative procedures may positively impact the Board's disciplinary actions. Last year's report noted one reason the Board may not take strong disciplinary action is because complaints were not adequately investigated. BOMEX did not assign investigators to investigate complaints, but used them to monitor doctors for substance abuse. While BOMEX no longer uses investigators to collect drug screening samples from doctors, investigations have not substantially changed. For example, investigators are now assigned to cases, and have more time to work on them. However, they still do not consistently perform interviews with complainants or witnesses as recommended in our last report. BOMEX generally conducts interviews only to obtain missing information, or to clarify existing information.

As recommended in our previous report, the Legislature recently amended A.R.S. §32-1402.A, increasing the number of public members who serve on the Board from two to three.¹ A 1990 study of the impact of public member representation on occupational licensing boards found that, "Increased proportions of public members are associated with

¹ BOMEX has been operating with only one public board member since October 1995, when one public board member resigned.

more serious disciplinary actions." The addition of one public member increases BOMEX's public membership to 25 percent of the Board. However, as of January 1996, this additional public member had not yet been appointed. Also, our recent study of Arizona's regulated health professions recommends going even further and increasing public membership to 50 percent.¹

Finally, as required by Session Laws 1995, Chapter 212, §17, BOMEX recently developed disciplinary guidelines that the Board adopted at their October 1995 meeting. These guidelines delineate the grounds for discipline, list aggravating and mitigating factors to determine penalties, and specify the typical ranges of penalties for each type of offense. Since these guidelines will not be implemented until January 1996, their impact on disciplinary action remains to be seen. However, these guidelines could assist the Board in imposing more uniform disciplinary action.

Newly Established Controls Should Address Registration and Permit Concerns

BOMEX has instituted various control measures that should prevent the improper issuance of registrations and permits. The last audit found that BOMEX staff inappropriately granted some locum tenens registrations.² Our follow-up audit work revealed no evidence of inappropriate issuance of locum tenens registrations. In fact, earlier this year, BOMEX's attorney general staff provided licensing staff with an overview of the requirements that must be met before a locum tenens registration can be issued. In addition, according to the Executive Director, all license applications are now reviewed and approved by one individual, and issued by a second individual.

BOMEX has also improved oversight of training permits issuance. In order to track the number of applicants granted permits to train in a program, each applicant is entered onto a computerized list. This should allow staff to recognize when there are more applicants than openings in a program, preventing approval of too many applicants for a particular program.

Management and Board Oversight is Improving

The Board of Medical Examiners has improved management and agency oversight in the 12 months since our previous audit report was issued. Many problems in procurement,

¹ See Report No. 95-13, "The Health Regulatory System."

² A locum tenens registration authorizes an out-of-state doctor to temporarily assist or substitute for an Arizona physician.

management, board oversight, and other areas have been addressed, or are in the process of being addressed.

- **Procurement Problems** — Our previous audit identified several areas in which BOMEX violated procurement code requirements, including contracting for lab services, improper payments to contractors, and exceeding expense allowances for an out-of-town board meeting. After last year's audit, BOMEX requested that the Department of Administration General Accounting Office (GAO) review the Agency's internal control structure. The GAO audit examined practices in effect from July 1, 1993, through December 31, 1994, and identified contracts totaling over \$229,000 that did not comply with state procurement laws. In response to GAO's findings, BOMEX requested that the State Procurement Office (SPO) evaluate the Agency's procurement function, and provide procurement training. The evaluation and procurement training were conducted in April 1995, and procurement procedures have since been implemented to address many of the identified problems. In fact, a SPO staff member recently characterized BOMEX's procurement activities as much improved. Furthermore, BOMEX has recovered the \$25,010 overpayment from the substance abuse monitoring program provider that was identified in our previous audit.
- **Internal Controls** — Prior Auditor General reports as well as the GAO audit identified significant problems with cash receipts and fixed assets. To address these deficiencies, BOMEX hired a new business office manager, created and filled a limited position to segregate cash handling, and inventoried its fixed assets.
- **Management Issues** — BOMEX has addressed several management practices, identified in our last report as impairing the Agency's ability to perform its duties. First, management is making an effort to delegate some responsibilities. Last year's report noted that while the Agency had grown to more than 40 employees, many decisions and duties were funneled through top management. Second, in preparing to assume more responsibility, many employees have received a wide variety of training, such as development in management and computer skills. Third, BOMEX has filled the licensing supervisor and ombudsman positions, which have been vacant for extended periods. Finally, the Agency hired a new Deputy Director in October 1994, and BOMEX staff comment favorably on changes she has made.

BOMEX has also addressed other aspects of agency operations. In accordance with open meeting law requirements, the Board notified the Secretary of State of the location where meeting notices will be posted, and appears to have lawfully posted the notices. Also, the Agency's required administrative rules have been revised, and were approved by the Governor's Regulatory Review Council in September 1995.

- **Board Oversight** — The Board has undertaken greater agency oversight, and members seem much more aware of agency operations. Three of the nine current Board members recently attended the State of Arizona Board and Commission Member Training Seminar coordinated by the Governor's Office for Excellence in Government. The training covered regulations pertaining to regulated professions, rulemaking and the legislative process,

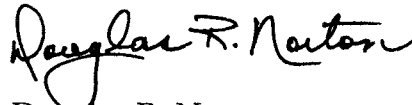
and common legal issues. Additionally, in response to requests from Board members, BOMEX staff now provide reports at the quarterly meetings about agency operations, including business office affairs and budgetary items, and complaint and disciplinary caseload statistics. The Board also evaluated the Executive Director's performance at the July meeting, and intends to conduct evaluations at each quarterly meeting.

- **EDP Issues** – The Agency's electronic data processing (EDP) system still needs improvements. Our previous report noted two concerns with BOMEX's EDP practices, and the Agency has yet to fully address either issue. The monitoring system designed to track complaint files is not yet fully adequate. For example, some cases still get lost in the system. Additionally, while employees are now required to log on and enter passwords, system access is still too broad, presenting security concerns. Also, quality control needs to be strengthened. For instance, we identified some cases that had been entered into the database with incorrect dates. BOMEX has also identified some duplicate cases in the system, and is taking steps to correct the situation.

The Auditor General and staff express appreciation to the Chairman and staff of the Board of Medical Examiners for their cooperation and assistance during the review. A copy of the Board's response to this letter report is attached.

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

Sincerely,



Douglas R. Norton
Auditor General

Attachment

Agency Response

ARIZONA BOARD OF MEDICAL EXAMINERS

FIFE SYMINGTON
GOVERNOR

RICHARD D. ZONIS, M.D.
CHAIRMAN

PHILIP E. KEEN, M.D.
VICE CHAIRMAN

PAMELA RANDOLPH, RN, MSN
SECRETARY

MARK R. SPEICHER
EXECUTIVE DIRECTOR

ELAINE HUGUNIN
DEPUTY DIRECTOR

January 22, 1996

The Honorable Fife Symington, Governor
Members of the Arizona Legislature

RE: Letter Report No. 96-L1

In November, 1994, the Auditor General's Office issued Report #94-10, outlining the results of their performance audit of the Board of Medical Examiners and giving findings and recommendations. The legislature reviewed this report and the Board's response, reviewed the progress made by the Board at that time and the many, complex recommendations made by the Auditor General's Office, and determined to continue the Board for two years to allow them to evaluate the results of the changes already underway, and to implement some of the recommendations in the Auditor General's Report #94-10.

Rather than having two years to evaluate these results, the legislature directed the representatives of the Auditor General's Office to return in June, 1995, seven months after the initial report was issued. The Findings in the letter report represent this agency's operations between seven and ten months after Report #94-10 was issued by the Auditor General's Office.

The Board agrees that it has taken effective steps which have reduced its back-log of complaints, and the back-log of complaints has continued to be reduced more than the Fiscal Year 1995 statistics presented by the Auditor General's Office would indicate. Information continuing through the first six months of Fiscal Year 1996 is presented below:

Open Cases July 1, 1995	1,292
Cases Received July 1 - December 31, 1995	767
Cases Closed July 1 - December 31, 1995	974
Open Cases as of December 31, 1995	1,085

In addition, more than 250 additional cases were scheduled to be closed during the board's January, 1996 meeting.

The Board agrees that it is addressing case resolution time. The Board concurs that it has reduced the average resolution time for malpractice cases by 20%



from fiscal year 1994 to fiscal year 1995. The Board continues to work to improve resolution timeliness. By implementing a number of the procedures provided to the legislature in October¹, and by continuing to explore creative solutions for the Board to review cases thoroughly but in less time, the average number of days required to investigate a case will continue to be reduced.

The Board believes that by using only cases closed in fiscal year 1995, rather than cases received in fiscal year 1995, the Auditor General's information includes a higher percentage of very old cases. The Board, as noted in Letter Report 96-L1, made a concerted effort to resolve old investigations, both complaints and malpractice cases, in fiscal year 1995. Once a case has become old, it can't help but increase the average days in resolution time. By basing the average number of days to resolve a case on just closed cases, the Auditor General "penalizes" the Board for closing these very old cases. Had those very old cases been left open, they would not have been added to the average resolution time for fiscal year 1995, and so the average number of days to resolve all of the cases would have decreased over fiscal year 1994.

The case examples cited as having the most excessive and unnecessary delays the auditors found in their review were received before the Auditor General issued his 1994 report. One case was received in September 1993, a full fourteen months before Report #94-10 was issued, and the second in June, 1994, six months before that report was issued. Clearly the changes made following the issuance of Report #94-10 cannot be measured by reviewing cases which were already old at the time the report was issued.

The Board disagrees that interviewing complainants in each case is either necessary, or contributes to the completeness of investigations. Procedures provided to the legislature in October, 1995 show that written information is received from complainants, and the Board's staff gathers additional information if that written information is incomplete. The Auditor General's Report indicates that, "BOMEX generally conducts interviews only to obtain missing information, or to clarify existing information." The Board now routinely interviews complainants in certain types of cases, such as cases alleging sexual misconduct. The Board believes these are exactly the times that interviews should be conducted. Written information is obtained from the physicians named in the complaint. The physicians are generally not interviewed for complaint investigations either. There is no empirical evidence to show that increasing interviews with complainants increases the number of Board actions.

The quality of an investigation is determined by the information documented in the investigative file. That information is complete when it contains the allegations of the patient, the response from the physician to the allegations, a review of the medical care provided by the physician to the patient, a review of

¹ Session Law, Sec. 17 House Bill 2045 Filed as Chapter 212, 1995 Laws.

the professional conduct of the physician, and documentation of the standards used to determine whether the care and conduct is appropriate or not.

The Arizona Board of Medical Examiners prides itself on conducting extensive, often time consuming investigations. In fact, one of the reasons the investigation time is lengthy, is because of the number of investigations, evaluations, etc. used by the Board to determine whether or not physicians are competent, mentally and physically able to safely engage in the practice of medicine, and abiding by the statutory requirements for professional conduct.

The only purpose the Board can see for conducting an interview with each and every complainant is to allow that complainant to vent his or her frustrations at the provider, or to encourage the complainant to make additional allegations against the physician. The Board finds that it would be inappropriate to engage in the second activity, and while the Board would like to have time to hear and counsel each complainant, it cannot do so while at the same time reducing its back-log of complaints and shortening its investigation time. However, BOMEX's ombudsman has assumed the role of providing patient information, and "lending an ear" when patients are angry or frustrated at the physician, the physician's office or the "health care system" that they feel has not treated them properly.

The Board agrees that the public members still have not been appointed by the Governor to the Board although the legislature did change its membership to 25% public membership. It is unfortunate that in its special study on the health regulatory system², the Auditor General's Office failed to suggest changes to the current appointment process, suggest qualifications for Board members, suggest criteria for Board member training and expertise, or suggest a timeframe for appointments. Those suggestions would have helped regulatory boards in the same situation as the Board of Medical Examiners to receive qualified appointments in a timely fashion.

Once again, the Auditor General's Office did not acknowledge the fact that the Federation of State Medical Boards published a list of all Boards and indexed disciplinary actions per thousand physicians in April, 1995. The Board of Medical Examiners of the State of Arizona had the highest index of disciplinary actions per thousand physicians of all the state medical regulatory Boards whose index was published.³

The Board agrees that its newly established controls address the registration and permit concerns based by the pervious Auditor General's Report, and that the Board's problems cited in the areas of procurement, management, Board oversight and other areas are being addressed or have been addressed.

² Auditor General Report #95-13

³ Federation of State Medical Boards of the United States, Inc., "Medical Boards discipline physicians in record numbers," April 5, 1995.

While the Board disagrees with the Auditor's conclusion that the electronic data processing system allows cases to "get lost in the system," the Board continues to work to improve the monitoring capabilities of its information system. The Board disagrees, however, that system access is too broad and presents a security concern. Employees are required to log-on for access to the system and enter unique passwords, and reducing access to information system functions will only serve to slow down the internal processes of the Board, and increase investigation time. There have been no actual security problems cited by the Auditor General or the Department of Administration Information Services Division.

The Board of Medical expresses its appreciation to the Auditor General and to his staff for recognizing the changes that have been made in this agency and for conducting their review in a professional fashion. The Board is committed to continuing to improve its operations and to continue its tradition of the highest level of public protection in this state.

Sincerely,

A handwritten signature in cursive script, reading "Mark R. Speicher". The signature is written in dark ink and is positioned above the printed name and title.

Mark R. Speicher
Executive Director