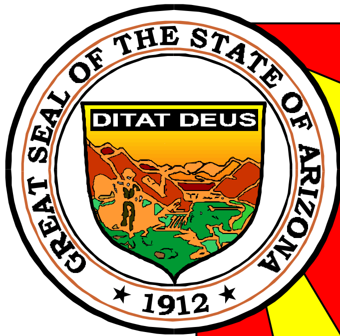
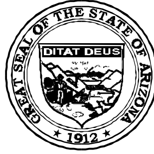


State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

BOARD OF BEHAVIORAL HEALTH EXAMINERS

Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
July 1997
Report #97-11



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AUDITOR GENERAL

STATE OF ARIZONA
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July 31, 1997

Members of the Arizona Legislature:

Enclosed is a summary of a report issued by the Office of the Auditor General, A Performance Audit of the Board of Behavioral Health Examiners. The report was prepared as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

If you would like a copy of the full report, please call me at 553-0333 or send a request to: 2910 North 44th Street, Suite 410, Phoenix, AZ 85018.

Sincerely,

Douglas R. Norton
Auditor General

Enclosure

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SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Behavioral Health Examiners (Board) pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

According to A.R.S. §§32-3251 through 32-3322, the Board is responsible for providing voluntary certification for social workers, counselors, marriage and family therapists, and substance abuse counselors. Each of these 4 professions is represented by a credentialing committee, composed of 1 public and 4 professional members, that recommends certification and disciplinary actions to the Board. The 12-member Board is composed of 8 professional members, 2 from each credentialing committee, and 4 additional public members, and reviews the committees recommendations and determines the final action. The Board is authorized to employ 7 staff, including an executive director. The Board is primarily funded through application and certification fees.

Current Level of Regulation Is Appropriate
(See pages 7 through 11)

As part of the Sunset review process, this audit addressed the question of whether the current level of regulation is appropriate. This audit found that voluntary certification, which is the current level of regulation, provides sufficient public protection. Using regulatory assessment criteria developed by the Council of State Governments, the audit found that increased regulation is not necessary. Specifically, there was no evidence of widespread harm caused by either certified or noncertified practitioners. However, voluntary certification does provide the public with information about certified professionals qualifications and complaint histories.

Further, mandatory regulation may unnecessarily restrict the availability of behavioral health care services and may be costly for state agencies. While the number of private behavioral health practitioners in Arizona is uncertain, the Department of Economic Security estimated that more than 18,300 individuals were employed in behavioral health professions in 1994. Most of these individuals are uncertified since the Board of Behavioral Health Examiners currently certifies only about 5,200 professionals. Uncertified professionals may not be able to meet potential educational or other regulatory requirements, and thus might not be allowed to practice if regulation is mandated. Furthermore, according to a December 1995 study by a Board of Behavioral Health Examiners subcommittee, mandatory regulation would affect an estimated 1,650

behavioral health practitioners employed by the State. At the time of the study, only about 115 of these positions were filled by certified professionals. If mandatory regulation were implemented, state agencies could face increased costs associated with replacing staff, or the State may need to reduce services.

The Board Needs to Improve Public Access to Information

(See pages 13 through 15)

The Board should improve the public s access to information about certified behavioral health practitioners. Specifically, the Board needs to establish a written public information policy for staff to follow. Board staff have inappropriately refused to release public information about dismissed complaints, yet in another instance inappropriately released confidential information. In addition, the Board can improve public access to information by maintaining a summary of all complaints and their resolutions in therapists certification files. Currently, staff and consumers cannot determine the number and nature of complaints against a certified practitioner when looking at the certification file.

The Public Is Not Adequately Represented on the Behavioral Health Board and Committees

(See pages 17 through 18)

The public is not adequately represented on the Board of Behavioral Health Examiners and its committees. Currently, five of the eight public members terms have expired or become vacant (two Board and three credentialing committee positions). One of these public member positions has been vacant for nearly two years.

In addition, more public representation is needed on the Board and on the 4 credentialing committees. A 1995 Auditor General report, *A Special Study of the Health Regulatory System* (Report No. 95-13), recommended that state health regulatory boards have at least 50 percent public membership to provide better protection for consumers. Currently, only 4 of the Board s 12 members represent the general public. Moreover, public representation on the 4 credentialing committees is limited to 1 public member each. The Legislature should consider reconfiguring the Board to provide for 50 percent public membership. In addition, because the Governor has statutory authority to configure the credentialing committees, the Governor should consider appointing 3 public and 3 professional members to each committee.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Behavioral Health Examiners (BHE) pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

Board Responsibilities

Laws 1988, Chapter 313, §1, established the Arizona Board of Behavioral Health Examiners as an omnibus board responsible for regulating four behavioral health professions through a voluntary certification process. The Board s mission is:

> *To protect the public by maintaining and enforcing certification standards for behavioral health professionals in the fields of social work, counseling, marriage and family therapy, and substance abuse counseling.*

The Board accomplishes this purpose by performing a variety of functions, including ensuring that professionals who desire certification possess minimum qualifications; certifying and renewing qualified applicants certifications; conducting investigations and hearings concerning unprofessional conduct; and disciplining violators. In carrying out its duties, the Board received 46 complaints against certified behavioral health professionals in fiscal year 1996, and it resolved these complaints appropriately and in a timely manner.

To assist the Board in performing its duties, A.R.S. §32-3261 establishes professional credentialing committees to represent each of the four professions. These committees review applications to ensure professionals who desire certification meet minimum education, examination, and experience standards. The committees also conduct investigations and hearings concerning alleged unprofessional conduct, then make recommendations to the Board regarding certification and disciplinary actions.

Voluntary Certification Requirements

BHE oversees certified professionals in four behavioral health disciplines: counseling, substance abuse counseling, marriage and family therapy, and social work. Although members of these professions may receive specialized training, many of the activities they perform are similar. For example, counselors assist clients to achieve optimal mental

health by using methods such as interviewing and consulting. Substance abuse counselors use similar methods to assist individuals recovering from substance abuse. Marriage and family therapists also use these techniques to diagnose and treat mental and emotional conditions in individuals, couples, and families. Social workers also diagnose and treat clients. In addition, social workers may be responsible for helping individuals receive assistance through social services organizations, or for planning and administering the delivery of social services. For instance, the case managers employed by the Arizona Department of Economic Security (DES) are considered social workers.

Certification is voluntary in Arizona and, although the number of state-certified professionals is growing, it appears that most practitioners are not certified. According to a DES study, *Arizona Occupational Employment Forecasts, 1994-2005,* an estimated 18,300 individuals provided behavioral health services similar to those overseen by the Board in 1994. As of March 1997, the Board certified approximately 5,200 professionals. These certified professionals have met minimum education, examination, and experience requirements as shown in Table 1 (see page 3). Certified professionals have also agreed to comply with A.R.S. §32-3251, which prohibits unprofessional practices.

Organization and Staffing

Board and committee members are appointed by the Governor and are each eligible to serve two consecutive three-year terms. The Board consists of two professional members from each credentialing committee and four public members appointed by the Governor. The four credentialing committees each consist of one public and four professional members (see Finding III, pages 17 through 18).

The Board is authorized seven FTEs who provide assistance and support to the Board and credentialing committees. An executive director oversees the staff, which is responsible for collecting application, renewal, and other fees; accepting and preparing application files for committee review; investigating complaints; and providing information to the public.

Table 1

**Board of Behavioral Health Examiners
Certification Requirements and
Number of Active Certificates
As of March 1997**

Profession	Education, Examination, and Experience Requirements for Certification	Number of Active Certificates
Social Work	Complete a bachelor s degree in social work and pass an approved examination. To practice independently, social workers must also complete a master s degree and two years of supervised work.	2,241
Counseling	Complete a master s degree in counseling and pass an approved examination. To practice independently, counselors must also complete two years of supervised work.	1,543
Marriage and Family Therapy	Complete a master s degree in a behavioral science with specialized coursework in marriage and family therapy and pass an approved examination. To practice independently, therapists must also complete two years of supervised work that includes at least 1,000 client-contact hours.	339
Substance Abuse Counseling	Complete a high school diploma or equivalent, pass an approved examination, and complete four years of supervised work counseling substance abusers; or complete an associate or bachelor s degree and two years of supervised work; or complete a master s degree.	1,016

Source: The certification requirements data was obtained from the *Arizona Administrative Code* R4-6-401 through R4-6-704, and the certificates data was obtained from the Board of Behavioral Health Examiners records.

Budget

The Legislature appropriates monies to the Board from the Board of Behavioral Health Examiners Fund. This fund contains revenues derived principally from the collection of certification application and renewal fees. The Board deposits 90 percent of its revenues

into the Behavioral Health Examiners Fund, and the remaining 10 percent of revenues into the General Fund. Table 2 illustrates the Board s actual and estimated revenues and expenditures for fiscal years 1995 through 1997.

Table 2

Board of Behavioral Health Examiners
Statement of Revenues, Expenditures,
and Changes in Fund Balances
Years Ended June 30, 1995 through 1997
(Unaudited)

	1995 (Actual)	1996 (Actual)	1997 (Estimated)
Revenues (90% of gross revenues) [1]	$480,066	$401,791	$414,000
Expenditures:			
Personal services	172,082	174,323	195,400
Employee related	39,777	37,589	44,500
Professional and outside services	29,498	12,454	14,500
Travel, in-state	6,929	9,035	7,500
Travel, out-of-state	5,847	4,944	5,800
Equipment	8,212		16,900
Other operating	106,186	85,989	73,100
Total expenditures	368,531	324,334	357,700
Excess of revenues over expenditures	111,535	77,456	56,300
Fund balance, beginning of year	226,302	337,837	415,294
Fund balance, end of year	$337,837	$415,294	$471,594

[1] As a 90/10 agency, the Board remits 10 percent of its gross revenues to the General Fund.

Source: The Uniform Statewide Accounting System *Revenues and Expenditures by Fund, Program, Organization, and Object* reports for the years ended June 30, 1995 and 1996. The estimated revenues for the year ended June 30, 1997, were obtained from the Board s proposed budget submitted to the Governor s Office, and the estimated expenditures were obtained from the *State of Arizona Appropriations Report* for the year ended June 30, 1997.

Audit Scope and Methodology

Audit work focused on whether increased regulation is necessary, and on the Board s responsibilities for certifying and regulating behavioral health professionals. This performance audit and Sunset review reports findings and recommendations in three areas:

- The need for the State to maintain its current level of regulation over behavioral health professionals;
- The need for the Board to release appropriate information to the public; and
- The need for additional public representation on the Board and credentialing committees.

To evaluate compliance with statutory requirements, and to assess the need for increased regulation, information was obtained from a variety of sources, including interviews with Board and committee members, the Executive Director, and staff. To, evaluate compliance with open meeting requirements, two Board, three credentialing committee, and three subcommittee meetings were attended. In addition, minutes and associated documentation were reviewed from Board meetings held between January 1993 and December 1996, and from subcommittee meetings held between April 1995 and January 1997. In addition, other states, professional associations, major malpractice and liability insurers, and Arizona state agencies were contacted for information to help assess whether increased regulation is necessary. Finally, to determine whether the Board releases appropriate information to the public, four telephone calls were made to request information about certified professionals.

This audit also assessed the Board s performance of its certification and disciplinary duties, and found that the Board was performing these functions efficiently and appropriately. To evaluate the timeliness of the Board s certification process, a random sample of 39 certification applications received in fiscal year 1996 was reviewed. In addition, auditors reviewed each of the 46 complaints that the Board received against certified professionals in fiscal year 1996 to determine the number of disciplinary actions taken, and the timeliness and appropriateness of those actions. Based on the review, disciplinary sanctions appeared generally appropriate and both disciplinary and certification actions were completed in a timely manner.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Board Chair, Board and credentialing committee members, Executive Director, and staff of the Board of Behavioral Health Examiners for their cooperation and assistance throughout the audit.

FINDING I

CURRENT LEVEL OF REGULATION IS APPROPRIATE

Voluntary certification of behavioral health professionals provides an adequate level of public protection and should be continued. Arizona does not need to increase regulation by mandating licensure for all practitioners because the risks posed to the public by behavioral health professionals are minimal. In fact, additional regulation could restrict the availability of services and increase their cost. The current level of regulation, however, does provide the public some assistance in identifying qualified professionals.

As required by the Sunset law, this audit addressed the extent to which the level of regulation the Board exercises is appropriate. The Board of Behavioral Health Examiners (BHE) has recently proposed increasing the level of regulation from voluntary certification to mandatory licensure for all practitioners.

To assist legislators in determining the appropriate level of occupational regulation, the Council of State Governments advises that three crucial questions must be answered. These are: 1) whether unlicensed practice of an occupation poses serious risk to consumers; 2) whether benefits of regulation clearly outweigh potential harmful effects, such as a decrease in service availability; and 3) whether consumers can evaluate the qualifications of those offering services. This finding addresses these three questions.

No Evidence of Widespread Harm

Behavioral health practitioners have not caused widespread harm to the public s health, safety, or welfare. Few complaints are received by BHE or by other state and national credentialing associations. Analysis of complaints against Arizona s certified practitioners and reports from malpractice insurance providers indicated little evidence of harm. In addition, the number of exemptions included in other states licensure laws suggests little need for increased regulation.

Few complaints are received State and national credentialing bodies receive relatively few complaints against behavioral health professionals. BHE certifies and regulates approximately 5,200 behavioral health professionals, but in fiscal year 1996 it received only 46 complaints against certified behavioral health professionals. In contrast, the State Board of Medical Examiners licensed approximately 13,050 physicians in fiscal year 1996, and received approximately 1,050 complaints. It also appears that uncertified behavioral

health practitioners have few complaints against them. Although the Board has no jurisdiction in these matters, it does receive complaints against uncertified practitioners and requires practitioners to resolve them before becoming certified. According to the Board s Executive Director, BHE has received approximately 95 such complaints since 1989.

Other state and national professional associations also report low numbers of complaints compared to the number of credentialed members. For example, the Arizona chapter of the National Association of Social Workers has approximately 825 professional members and receives approximately 3 complaints per year. Similarly, the American Counseling Association has approximately 26,000 professional members nationwide, and received 16 complaints in fiscal year 1996. Most of these complaints alleged unethical or unprofessional practice, such as failure to discontinue nonproductive therapy.

Behavioral health professions are considered low risk The few complaints that are filed against behavioral health professionals indicate that there is no evidence of widespread harm. The types of complaints, and the rates practitioners pay for liability and malpractice insurance, indicate that these professions pose limited risk to the public. In fiscal year 1996, BHE received 46 complaints against certified professionals. Of these, 32 were determined to be without merit. More than one-fourth of the dismissed complaints stemmed from disagreements concerning custody or foster care evaluations. The remaining complaints alleged such issues as unproductive therapy, inappropriate billing, breaches of confidentiality, and discourteous conduct. The 14 complaints resulting in disciplinary action included allegations that therapists acted unprofessionally, engaged in inappropriate relationships with clients, or abused drugs or alcohol.

In addition, major insurance companies indicate that harm is uncommon; consequently, counseling, social work, substance abuse counseling, and marriage and family therapy are considered low-risk professions. Professionals in these fields assess and treat behavioral and emotional problems using techniques such as interviewing and consultation. The limited risk associated with these activities is reflected in the number of claims filed against these professionals and the rates they pay for insurance. The nation s major insurer of behavioral health professionals provides liability and malpractice coverage for about 155,000 professionals, and receives approximately 1,100 claims per year. The company reports that approximately 40 percent of these claims involve custody disputes and other child-related issues. Because claims against counselors, social workers, substance abuse counselors, and marriage and family therapists are limited, insurance rates at this and other companies range from about $150 to $500 per year for $1 to $2 million worth of coverage.

In comparison, psychiatrists are associated with a higher level of risk since their training allows them to prescribe medications and perform activities such as electroshock therapy. Consequently, their insurance rates average about $5,000 per year for $1 million worth of coverage.

Common exemptions make the need for mandatory regulation questionable Although many states regulate behavioral health professionals, numerous exemptions to their laws raise further questions about the need for, and effectiveness of, increased regulation. Like Arizona, many states provide some form of regulation for the 4 professions regulated by BHE. Specifically, of 24 states surveyed, 17 require mandatory licensure for counselors, and 6 offer voluntary regulation similar to what BHE provides. For social workers, 19 of the 24 states require mandatory licensure, and 5 offer voluntary regulation. In addition, 14 of the 24 states require mandatory licensure for marriage and family therapists, and 4 offer voluntary regulation. Finally, 6 of the 24 states require substance abuse counselors to be licensed, and 6 offer voluntary regulation through behavioral health regulatory boards.

However, the impact of many of these regulatory laws is limited by numerous exemptions. Groups commonly exempted from licensure laws include federal, state, and local government employees, religious leaders, professionals who practice under supervision, and employees of educational institutions. These exemptions suggest little need for increased regulation since they enable many behavioral health professionals to continue to practice without meeting regulatory requirements. Further, similar broad exemptions are not in place when there is the potential for serious harm, such as in the practice of medicine.

Increased Regulation Could Unnecessarily Restrict Services

Unnecessarily increasing regulation may affect the public s ability to obtain behavioral health services. Since most behavioral health practitioners are not certified, an increase in regulation could limit the number of behavioral health providers and reduce service availability. An unnecessary increase in regulation could also raise service costs.

Availability of services may be reduced Increased regulation may reduce the availability of behavioral health services since many practitioners may not meet regulatory requirements. The nature and extent of private behavioral health practices in Arizona is largely unknown; however, the Department of Economic Security (DES) estimated that more than 18,300 individuals were providing behavioral health services in 1994. Currently BHE certifies approximately 5,200 behavioral health professionals. Although the majority of Board and credentialing committee members surveyed support moving to licensure, some have expressed concern that experienced practitioners may lose their livelihoods if they cannot meet standards for education or supervised work experience. In addition, 1 Board member indicated that increased regulation may harm consumers in rural areas where services are already limited.

Moreover, representatives from DES and the Arizona Department of Health Services (DHS) question whether there would be enough behavioral health professionals to fill the agencies needs if professionals must meet minimum education requirements. Currently, the minimum education requirements for BHE-certified counselors and marriage and family therapists is a master s degree, and for social workers the minimum requirement is a bachelor s degree. However, behavioral health employees of agencies such as DES are not typically required to meet these standards and may not qualify for certification. To help determine the impact of mandatory regulation on state agencies, a BHE subcommittee performed a review of state government positions. The review found that an estimated 1,650 positions may need to be filled by professionals who meet regulatory requirements if regulation becomes mandatory. At the time of the study, only about 115 of these positions were filled by certified professionals.

Increased regulation may increase the cost of services In addition, DES officials indicate that if mandatory regulation applies to all behavioral health professionals, the State may need to increase salaries to attract qualified personnel. DES typically pays social workers a starting salary of approximately $21,600. In comparison, the minimum starting salary for equivalent social workers at Phoenix-area hospitals is approximately $29,250. In addition to increased salaries, state agencies could also face costs associated with replacing staff or with assisting current staff to meet regulatory standards.

Current Level of Regulation Benefits the Public

According to the Council of State Governments, certification is an appropriate mechanism for regulating a profession when the public needs assistance identifying competent practitioners, but the risks to public health and safety are not severe enough to warrant licensure. The Board s certification process fulfills this criteria by ensuring that professionals meet minimum qualification standards and by making this information available to the public.

The Board uses several means to help the public become informed consumers of behavioral health services. For instance, the public and employers can verify that practitioners are certified via the Internet or a telephone call to the Board offices. If a practitioner is certified, he or she has met the Board s requirements for education, experience, and examination, and has agreed to adhere to professional practice standards. Consumers may also call or visit the Board office to check the disciplinary records of any certified professional. The Board also publishes brochures in Spanish and English that explain the benefits of certification as well as how to file a complaint. Finally, the Board has created public service announcements for television and newspapers to help consumers become more informed about behavioral health services.

Recommendation

The State should continue to provide voluntary certification for behavioral health professionals.

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FINDING II

THE BOARD NEEDS TO IMPROVE PUBLIC ACCESS TO INFORMATION

The Board of Behavioral Health Examiners can improve the public s access to information about certified behavioral health professionals. The Board needs to establish and implement a written public information policy to provide guidelines for staff to follow. Additionally, the Board should maintain a summary of complaints and their resolutions in therapists certification files to provide the public with easy access to all documented information about each therapist.

The Board Needs to Establish and Follow a Written Public Information Policy

The Board needs to establish and follow a written public information policy. Currently, the Board lacks a written policy for staff to follow. Consequently, staff have refused to release public information, yet in another instance inappropriately released confidential client information.

Information about dismissed complaints not released Board staff inappropriately refuse to release information about dismissed complaints. A 1995 report by the Office of the Auditor General, *A Special Study of the Health Regulatory System* (Report No. 95-13), found that the Board of Behavioral Health Examiners inappropriately limited public access to information by refusing to release information regarding dismissed and pending complaints. Subsequently the Board changed its rules so that dismissed and pending complaint information is no longer considered confidential and may be released to the public. However, the Board failed to establish a written public information policy to fully implement the rule changes.

Board staff still do not release all public information. Auditor General staff posing as members of the public placed four phone calls to the Board to test what type of information would be released. Board staff appropriately and completely informed callers about certification status and complaints that resulted in discipline. Staff, however, informed callers that information regarding dismissed complaints was confidential and refused to release any information.

Confidential information inappropriately released The lack of a written public information policy has also resulted in staff inappropriately releasing confidential client information and potentially endangering a behavioral health therapist s clients. Specifically:

- A man apparently became angry that his wife attended group counseling with the same therapist the man saw for individual counseling. The man interrupted his wife s group session, threatened his wife with physical harm, and then called the police to the therapist s office. The man later filed a complaint against the therapist. Several members of the group session, including the man s wife, wrote letters describing the man s disruptive and threatening behavior, which the therapist included in her response to the complaint. The wife specifically requested that her letter not be released to the man because she was afraid of his reaction. The Board s investigator, however, provided the therapist s response, including all letters, to the man when he requested a copy. Additionally, the therapist s response contained confidential client information such as group members names, addresses, and phone numbers.

Subsequently, the Board added a confidentiality section to its office procedures manual, but this section is inadequate. It does not provide staff with clear guidelines for releasing public information. The section states only that the number of complaints and information about disciplinary actions may be released over the phone, and that client information is not to be released. It does not define what client information is, nor does it tell staff what information is confidential and what is public record. Several other health regulatory boards in Arizona, such as the Board of Medical Examiners and the Board of Veterinary Medical Examiners, have written policies that clearly detail what information should and should not be released.

The Board Should Maintain a Summary of Complaint Information

The Board can improve public access to information by maintaining a summary of all complaints and their resolutions in therapists certification files. Currently, the Board maintains complaint information and certification information in separate files, and does not maintain a complete summary of complaint information. As a result, it is not possible when reviewing a therapist s certification file to determine if the therapist has received complaints. Additionally, to obtain complaint information, consumers and Board staff must review individual files. A complaint summary could provide the Board and consumers with a complete overview of the therapist s complaint and disciplinary history.

In addition, the Board s Attorney General representative stated that a factual complaint and disciplinary summary contained in therapists certification files could have several

other advantages. These include a decreased risk of releasing confidential information, since consumers may no longer need or want to review the entire complaint file, and a record of all complaints and how each was resolved in the event complaint files were lost. In addition, summary information would alert consumers or staff that additional information is available in a separate complaint file.

Recommendations

1. The Board should establish a written public information policy that clearly defines what type of information staff will release, as well as what is confidential and should not be released. The policy should cover the following types of information:

    a. Therapists names, certification number, and certification dates;

    b. Number of complaints and how each was resolved;

    c. Nature of complaint allegations; and

    d. Disciplinary actions.

2. The Board should release all public information, including information regarding dismissed complaints.

3. The Board should maintain a summary of all complaints and resolutions in therapists certification files.

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FINDING III

THE PUBLIC IS NOT ADEQUATELY REPRESENTED ON THE BEHAVIORAL HEALTH BOARD AND COMMITTEES

The Board of Behavioral Health Examiners and its committees need increased public representation. Five of eight public member positions on the Board and committees are currently vacant or expired, and need to be filled by the Governor. To further protect the public, the Legislature and Governor should consider increasing public membership on the Board and committees to 50 percent.

Currently, each of the four credentialing committees is composed of one public and four professional members. The Governor determines the size and composition of the credentialing committees, and appoints all committee and Board members. The Board, by statute, is composed of two professional members from each credentialing committee and four public members who are not on the credentialing committees.

Several Public Positions Are Vacant

Despite the statutory requirement for public membership on the credentialing committees and Board, five of the eight public member positions are vacant or expired. The Board has informed the Governor s Office of the vacancies but positions remain unfilled. Specifically, the public member position on the substance abuse credentialing committee has been vacant since August 1995. Two public member positions, one on the Board and one on the marriage and family therapy credentialing committee, have been vacant since January 1996. Further, as of January 20, 1997, two more public members appointments expired, one on the Board and one on the social work credentialing committee. However, both of these public members have remained in their positions and both are eligible for reappointment.

Increased Public Membership Is Important for Consumer Protection

Consumer advocates and experts indicate that increased public membership on regulatory boards can better protect consumers. The Auditor General, after reviewing several

national studies and interviewing noted experts on regulation, recommended increasing public membership to 50 percent on all state health regulatory boards (*A Special Study of Arizona s Health Regulatory System,* Report No. 95-13). According to one study cited in the Auditor General s report, increased public membership is associated with stronger board disciplinary actions.

To increase public representation, the Legislature and Governor should consider increasing public membership on the Board and committees to 50 percent. Increased public membership could be accomplished in several ways. For example, the Legislature could modify the Board s composition to include 1 professional and 1 public member from each credentialing committee for a total of 8 members. Alternatively, the Legislature could add 4 more public members to the Board, for a total of 16 members. Additionally, the Governor should consider increasing public membership on the credentialing committees to 50 percent. The Governor, as permitted by A.R.S. §32-3261(B), can change the committee s composition so that each committee consists of 3 professional and 3 public members.

Recommendations

1. The Governor should fill the current public member vacancies on the Board and credentialing committees.

2. The Legislature should consider changing the Board s statutory composition in one of the following ways:

   a. Change the Board s composition to include 1 professional and 1 public member from each credentialing committee for a total of 8 Board members; or,

   b. Add 4 more public members to the Board for a total of 16 Board members.

3. The Governor should consider changing the composition of the credentialing committees to 3 public members and 3 professional members.

SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Behavioral Health Examiners should be continued or terminated.

1. The objective and purpose in establishing the Board.

The purpose of the Arizona Board of Behavioral Health Examiners is to provide a voluntary certification process for counselors, social workers, substance abuse counselors, and marriage and family therapists, and to regulate the performance of those professionals who choose to become certified.

To carry out this responsibility, four 5-member credentialing committees assist the 12-member Board of Behavioral Health Examiners to examine candidates who are seeking certification; initiate and conduct investigations to determine whether a practitioner has engaged in unprofessional conduct; and discipline board-certified practitioners.

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

The Board has effectively and efficiently met its primary objectives and purposes. It has been generally effective in protecting the public by certifying qualified applicants and by addressing public complaints against practitioners. Certification files show appropriate documentation of applicants qualifications. Moreover, analysis of a random sample of 39 applications from fiscal year 1996 showed that the Board certified applicants within an average of 141 days.[1] This time period includes days that it takes the applicant to respond to requests for additional documentation and to complete the certification exam.

In addition, the Board resolves complaints in a timely manner and resolutions are appropriate. A review of the 46 complaints received in fiscal year 1996 determined that complaints are resolved in an average of 109 days, which is less than the 180-day time period recommended in the Office of the Auditor General s *Performance*

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[1] The 141-day average is based on the length of time for BHE to certify 32 of the 39 applicants. The remaining 7 applicants had not yet completed all certification requirements, such as coursework or examinations.

Audit of The Board of Medical Examiners (Report No. 94-10). Moreover, the resolutions for these complaints were generally appropriate.

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

The Board has operated within the public interest to protect the public health, safety, and welfare. For instance, the Board conducts timely investigations of complaints against certified practitioners. The Board also maintains a file of complaints submitted against noncertified practitioners. The Board does not have the authority to pursue these complaints, but it does require any complaints to be resolved before an applicant becomes certified. In addition, the Board publishes disciplinary actions taken against practitioners in its newsletter.

However, the Board can do more to operate in the public interest by improving public access to information. The Board needs to develop and implement a written public information policy to ensure all appropriate information is released to the public. Currently, Board staff do not provide the public with complete information regarding dismissed complaints. In addition, staff has inappropriately released information that should have been kept confidential. Finally, the Board could further improve access to public information by maintaining a summary of complaint resolutions in professionals certification files (see Finding II, pages 13 through 15).

The Board also needs increased public representation. Currently, two of the Board s four public member positions have expired or are vacant. In addition, three of the four credentialing committees have public member vacancies. These vacancies limit public review and input during complaint reviews. In addition to filling these vacancies, the Legislature and Governor should consider increasing public membership on the Board and credentialing committees to improve their ability to protect consumers (see Finding III, pages 17 through 18).

4. The extent to which rules adopted by the Board are consistent with the legislative mandate.

In compliance with A.R.S. Title 41, Chapter 6, the Board comprehensively revised its administrative rules, which became effective November 15, 1996. Prior to that time, the Board had received several exemptions from the rule-making requirements of Title 41, Chapter 6, and was allowed to promulgate rules in an expedited manner.

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

According to the Board s Executive Director, rules promulgated by the Board were completed through the Governor s Regulatory Review Committee (GRRC) process. In addition to the public meeting and hearing required by GRRC, Board and rules committee agendas were posted and were sent to all persons requesting copies. Public comment was allowed at these meetings. To further encourage public input, the Board announced the public hearing for its November 15, 1996, rules revisions in its newsletter.

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

The Board and credentialing committees have the authority, in accordance with A.R.S. §§32-3253 and 32-3262, to investigate and resolve complaints regarding unprofessional practice by any certified behavioral health professional. In fiscal year 1996, BHE received 46 complaints against certified behavioral health professionals. Complaints are investigated by Board staff and the credentialing committees. If violations are found, the credentialing committee makes disciplinary recommendations to the Board.

It appears that the Board takes appropriate disciplinary action. The Board took disciplinary action against 14 of the 46 complaints it received in fiscal year 1996, and the disciplinary actions appeared generally appropriate. For example, the Board required professionals who had acted unprofessionally to complete ethics and other classes, to practice only under supervision, to obtain counseling or other therapy, or to surrender their certificates.

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

A.R.S. §41-192 authorizes the Attorney General s Office to prosecute actions and represent the Board. One Assistant Attorney General represents and provides counsel to the Board and credentialing committees at their meetings, and prosecutes violators of Board statutes.

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

In 1997, the Board sought to increase the level of regulation over behavioral health professionals from voluntary certification to mandatory licensure. The proposed legislation was not heard since the Legislature determined that any such bill would need to be reviewed through the Sunrise process.

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

The Legislature should consider modifying A.R.S. §32-3252(A) to increase the number of public members on the Board to 50 percent (see Finding II, pages 13 through 15).

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

Termination of the Board would not significantly harm the public health, safety, or welfare, but the Board does provide the public with some benefits. The Board assists the public by providing information regarding certified practitioners qualifications, and enforcing professional standards of behavior. Specifically, the Board sets minimum education, examination, and experience requirements for certified practitioners. The Board also requires the professionals it certifies to maintain their continued competency by completing 40 hours of continuing education every 2 years. In addition, the Board helps to ensure that certified professionals conform to professional standards of conduct by investigating and resolving complaints. The public can obtain information regarding a certified practitioner s qualifications and complaint history by calling or visiting the Board office.

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.

The Board s level of regulation with regard to behavioral health professionals appears to be generally appropriate, and changes in this regulation are not necessary (see Finding I, pages 7 through 11).

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 s Executive Director, the Board uses private contractors to print its publications and to assist with computer information systems development. The Board also uses private contractors in its investigative process if special evaluations are needed.

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Agency Response

Audit Report Response

I. Finding: Current Level of Regulation Is Appropriate

Response

Addressing the appropriateness of the level of regulation is not seen as an issue, but the use of a reference which was published almost two decades ago (March 1978) by the Council of State Governments raises the issue of not using current reference information. The position of the Board is that to continue to assure and to enhance the protection of the public, the next step is mandatory licensure.

The report alleges "No Evidence of Widespread Harm" based upon the number of complaints that have been received by the Board. The accuracy of the data used to reach this conclusion is not in question. However, the following should be considered/addressed in any review of the level of harm: (1) comparisons should not be between groups that are not regulated the same, i.e. voluntary certification vs required licensure; (2) frequently complaints are not filed if the practitioner is not certified, because the public is aware that no action can be taken; (3) the public does not generally see the associations as having jurisdiction and therefore are not a source of remedy; (4) the data on the number of complaints filed with the nation's major malpractice and liability insurer of behavioral health professionals is consistent with the number of complaints received on Arizona certified behavioral health professionals; again complaints are initiated based upon known/perceived jurisdiction.

The potential that "Increased Regulation Could Unnecessarily Restrict Services" because of a decrease in service availability and an increase in service costs is acknowledged. However, the report lacks any reference to substantiate these potentials having occurred in other professions when licensure became mandatory or data that would define the likelihood of the potentials occurring. Thus making it difficult to define the certainty of the occurrence of the potentials.

There is no disagreement of the fact that the "Current Level of Regulation Benefits the Public." However, it is the position of the Board that the level of benefit to the public is not as high as it should be.

The need to further the level of protection for the public is not addressed if the State were to "continue to provide voluntary certification for behavioral health professionals" as recommended in the report. The level of protection can only be appropriately addressed through mandatory licensure.

II. Finding: The Board Needs To Improve Public Access To Information

Response

A written public information policy will be forwarded to the Board for review and approval at the September 1997 Board meeting. The release of all public information as well as the maintenance of summary information regarding complaints and resolutions will be addressed in the policy.

Staff training will be conducted to insure understanding of what information may be and what is confidential and may not be released. Implementation will occur following completion of staff training.

III. Finding: The Public Is Not Adequately Represented On The Behavioral Health Board And Committees

Response

We have been advised that the Governor has made appointments to fill all existing vacancies and that notifications have been forwarded to the appointed individuals and the Board.

Additional public representation on the Board would certainly be welcomed. It is suggested that if the Board were increased to 16 members by the addition of 4 public members, that these additional members also be appointed to serve on a credentialing committee. This would serve to increase public representation on both the Board and the committees.