



AUDITOR GENERAL LETTER REPORT

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AUDITOR GENERAL

February 10, 1997

Letter Report No. 97-L1

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Dr. Jacqueline Chadwick, Chair
Joint Board on the Regulation of Physician Assistants

**Subject: Joint Board on the Regulation of Physician Assistants
 Sunset Review**

Transmitted herewith is a letter report of the Auditor General, Sunset review of the Joint Board on the Regulation of Physician Assistants. This letter is in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee. This review was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

Summary

Our review found the Legislature should consider increasing the percentage of public members on the Joint Board on the Regulation of Physician Assistants (Board) to approximately 50 percent to improve its ability to protect consumers. In addition, provisions governing temporary certification should be limited and biennial certification implemented to reduce paperwork. Use of a recertification examination could help ensure physician assistants' continued competency.

Background

The physician assistant is a health care professional who performs various medical tasks, including prescribing and dispensing drugs, performing physical examinations, assisting in surgery, and developing and implementing a treatment plan. These tasks are delegated to a physician assistant by a Board-approved supervising physician. To practice in Arizona, a physician assistant must graduate from an approved physician assistant educational program and pass a Board-approved examination.

The physician assistants regulatory program was established in 1977 under the joint control of the Board of Medical Examiners (BOMEX) and the Board of Osteopathic Examiners in Medicine and Surgery. In 1984, the Board's name was changed to the Joint Board on the Regulation of Physician Assistants. Statutes authorize the Board to examine and certify physician assistants, renew certificates annually, investigate and resolve complaints, and discipline and rehabilitate physician assistants. BOMEX staff investigate complaints against physician assistants, but the Board adjudicates these complaints. During fiscal year 1996, the Board regulated 413 physician assistants.

The Board does not receive its own appropriation but is funded through BOMEX. This funding covers the costs for the Board's 1.5 FTEs and staff training and development. Rent, supplies, and communications expenses are also paid for by BOMEX and are not specifically appropriated to the Board. Although BOMEX does not separately account for Board expenditures, BOMEX staff estimate Board expenditures were approximately \$65,000 in fiscal year 1996. During this same year, BOMEX collected \$45,250 in physician assistants' regulation revenues. These revenues are primarily from physician assistants' certification fees, and are deposited with the State Treasurer, who deposits 10 percent of these monies into the State's General Fund and 90 percent into the BOMEX Fund.

Board Needs Additional Public Members

The Legislature should consider expanding the number of public members on the Board to improve its ability to protect consumers. While current statutes limit public representation on the Board, a recent Auditor General study cited the importance of increased public membership to consumer protection.

Public representation limited—Despite the Legislature's intent to include some public representation on the Board, members with ties to the health care professions presently dominate Board actions. Currently, statutes require eight of the Board's nine members to represent the health care industry. Those eight members include two physician assistants, two osteopathic physicians, three allopathic physicians, and the dean (or designee) of the University of Arizona's College of Medicine. Statutes designate one additional member to represent the public at large.

However, the Board currently lacks true non-industry representation. The individual appointed to the Board's public member position vacated the office in October 1994. This vacancy has not been filled, despite two separate Board requests and a letter the Board sent to the Governor's Office requesting an appointment.

Increased public membership important to consumer protection—Consumer advocates and experts indicate that increased public membership on regulatory boards can better protect consumers. After reviewing several national studies, and interviewing noted experts on regulation, the Auditor General, in a 1995 report, (*Special Study of Arizona's Health Regulatory*

System Report 95-13), recommended increasing public membership to 50 percent on all health regulatory boards. According to one study, increasing public membership would result in stronger board disciplinary actions. In particular, the Auditor General noted that past audits of industry-dominated boards found insufficient investigation of consumer complaints, untimely resolution of consumer complaints, and a general disregard for consumers in the regulatory and disciplinary process.

To better protect the public, the Legislature should consider increasing the percentage of public members on the Board to approximately 50 percent. This change in board composition could be achieved without necessarily increasing its size. For example, the Legislature could eliminate some duplicative positions, such as one of the three allopathic physicians, one of the two osteopathic physicians, and one of the two physician's assistants now required by statute. Additionally, the Legislature could eliminate the University of Arizona's Dean (or designee) of the College of Medicine or replace this position with a public representative. According to Board staff, this position was originally established because the former dean played an active role in establishing the Board.

Biennial Certification Will Streamline Renewal Process

Biennial certificate renewals for physician assistants could improve efficiency by reducing paperwork. Currently, A.R.S. §32-2523(B) requires physician assistants to annually renew their certificates on or before June 1. The Legislature should consider biennial certificate renewal for physician assistants, as is done for other Arizona health professionals and physician assistants in other states. Osteopathic physicians, physical therapists, professional and practical nurses, and pharmacists in Arizona all renew their licenses every two years. Board representatives in these health professions state that biennial licensure greatly reduces the amount of paperwork required each year for renewals, yet does not jeopardize the public's health or well-being. Moreover, four of the six other states that regulate physician assistants with their own board, as Arizona does, renew certificates or licenses biennially.¹

Temporary Certification Duration Is Too Long

Temporary certificates issued to physician assistants should have a shorter duration. Currently, Arizona physician assistants who have completed their formal medical training, but have not yet passed a certifying examination approved by the Board, may be issued

¹ Iowa, Massachusetts, Michigan, Rhode Island, Texas, and Utah regulate physician's assistants with their own board. Of these states, Iowa, Massachusetts, Michigan, and Utah certify licenses biennially.

a temporary certificate. A.R.S. §32-2524(B) limits a temporary certificate to 16 months in length, and the temporary certificate automatically expires once the physician assistant obtains a regular certificate, or fails the certifying examination.

In Arizona, as well as 45 other states and the District of Columbia, the Physician Assistant National Certifying Examination (PANCE), a nationally standardized examination in primary care medicine, is used for certification. The PANCE, administered annually each October by the National Commission on Certification of Physician Assistants (NCCPA), comprises both written and practical components, and its content and standards are developed in cooperation with the National Board of Medical Examiners. The Board requires those who apply for temporary certification to submit a letter directly from the NCCPA indicating they have applied and have been scheduled to sit for the PANCE.

The Legislature should consider amending A.R.S. §32-2524(B) to eliminate the 16-month temporary certification time limit and require physician assistants to sit for the next scheduled examination. Currently, physician assistant temporary certificates are already issued for significantly less time than the 16-month limit. In fact, the average duration of a temporary certificate issued between August 1993 and December 1995 was less than 7 months. Other states, such as California and New Mexico, do not specify a maximum duration for temporary or interim certification. They require that the physician assistant must sit for the next scheduled PANCE. Moreover, beginning in 1997, the PANCE will be administered twice a year, in April and October, instead of once a year.

A Recertification Examination Should Be Required to Help Ensure Competency

To promote continuing medical competency for physician assistants, a Board-approved recertification examination should be required as a condition for renewal. The Board could develop its own competency examination or use NCCPA recertification procedures that require physician assistants to pass a recertifying examination every 6 years and complete required continuing medical education.¹ Currently, after initial certification, Arizona physician assistants are not required to take any further competency examinations; however, annual certificate renewals do require at least 20 hours of CME.

Practicing physician assistants should be required to take competency examinations to help demonstrate their continued professional proficiency. A recent national study suggested that states consider requiring regulated health professionals to periodically demonstrate their professional ability through appropriate testing procedures, since public protection

¹ According to the Board, 5 to 7 percent of all physician assistants were "grandfathered" in when the Board was established in 1977. The Board will need to decide how these licensees should be treated with regard to meeting recertification requirements.

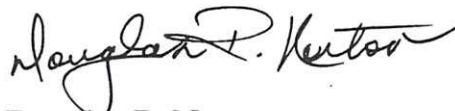
is not assured solely by initial licensure.¹ This study questions whether CME alone is sufficient to ensure competency. For example, most continuing education courses do not consider whether the health professionals enrolled can apply new knowledge appropriately. Recertification examinations are already used in medical specialty areas. According to the study, the American Board of Family Practice requires that Board-certified family physicians demonstrate competence every seventh year through formal testing and office records review.

To encourage and promote continued professional medical competency, the Legislature should consider requiring physician assistants to pass a Board-approved recertification examination. The Board could then develop or contract for the development of an examination, or use an existing examination the NCCPA offers. Nineteen states currently require physician assistants to pass a recertification examination using NCCPA requirements. According to the American Academy of Physician Assistants, all states requiring a recertification examination use the NCCPA examination.

The Auditor General and staff express appreciation to the Chair and members of the Joint Board on the Regulation of Physician Assistants for their cooperation and assistance during the review. A copy of the sunset factors and the Board's response to this letter report are attached.

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

Sincerely,



Douglas R. Norton
Auditor General

Attachments

¹ PEW Health Professions Commission, Report of the Taskforce on Health Care Workforce Regulation, *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century*. December 1995.

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SUNSET FACTORS

Joint Board on the Regulation of Physician Assistants

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Joint Board on the Regulation of Physician Assistants should be continued or terminated.

1. The objective and purpose in establishing the board.

The purpose of the Joint Board on the Regulation of Physician Assistants is to certify and regulate the performance of physician assistants' health care tasks. The objective is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional physician assistants by enforcing the laws as set forth in Title 32, Chapter 25, Arizona Revised Statutes.

To carry out this responsibility, a nine-member board is statutorily empowered to examine candidates for certification as physician assistants; initiate and conduct investigations to determine whether a physician assistant has engaged in unprofessional conduct or performed health care tasks incompetently; and discipline and rehabilitate physician assistants.

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. The Board resolves complaints in approximately 180 days. However, the Board could increase its effectiveness by further limiting the time period for which it grants temporary certificates, and by requiring physician assistants to pass a recertification examination to demonstrate continued competence.

The efficiency of the Board's certification operations could be improved by instituting biennial certification. This would reduce the amount of paperwork required without affecting the public's well-being (see page 3).

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 to protect the public from incompetent and potentially dangerous physician assistants. In addition, Board staff educate students in physician assistants' programs about rules and statutes that govern the performance of health care tasks required of physician assistants.

However, the Board can do more to operate in the public interest by having better public representation. The Board has not had a public member appointment since October 1994, which limits public review and input during review of complaints. In addition to filling this vacancy, the Legislature should consider increasing public membership on the Board to improve its ability to protect consumers (see pages 2 through 3).

The Board also provides little information to a consumer who has filed a complaint. In most cases, the complainant is sent a letter acknowledging receipt of the complaint. However, no further information is provided until after the complaint has been resolved. A 1995 Auditor General report, A Special Study of the Health Regulatory System (Auditor General Report 95-13), recommended complainants be regularly notified regarding the status of the investigation.

Moreover, the Board does not have its own newsletter; however, Board issues are included in the BOMEX newsletter. Agency actions, including Board disciplinary actions, are in this newsletter. However, physician assistants' names involved with these disciplinary actions are not included in the newsletter.

Finally, the Board and staff are working on obtaining a fully automated computer system that will make information more easily accessible to the public.

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

According to the Board's Attorney General representative, all required rules have been promulgated. The Board has assessed its rules as part of the statutorily mandated five-year rules review process. In addition, rule changes have been proposed for additional definitions and clarification of certification requirements. The Proposed Rule Package is not ready for final submission, but the Board has reviewed it.

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.

The Board holds quarterly meetings to discuss disciplinary and licensing matters and adopt rules. As required by statute, the Board's statement regarding open meetings is filed with the Secretary of State and is current.

As part of its rule-making review process, the Board has conducted meetings with the Directors of the Arizona State Association for Physician Assistants and has held two Rules Committee meetings, open to the public, for comments on the Proposed Rule Package.

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

The Board has the authority, in accordance with A.R.S. §32-2551, to investigate and resolve complaints from physician assistants, physicians, health care entities, and any other persons. Currently, about 30 complaints are filed each year against physician assistants. Complaints concerning physician assistants are investigated by BOMEX investigators and medical consultants. The process for investigating physician assistant complaints is essentially the same process BOMEX uses to investigate complaints about physicians.

A 1994 performance audit and Sunset review of BOMEX (Auditor General Report 94-10), identified a large complaint backlog, untimely case resolution, limited complaint investigation, and little disciplinary action. A 1996 follow-up review found BOMEX had implemented several changes that appeared to address these concerns. However, for physician assistant complaints, some steps in the complaint resolution process could still be improved. For example, a review of complaint files found the complainant is rarely interviewed concerning the complaint.

Despite these problems, improvements have been made in the investigative process. No significant complaint backlog exists, and complaints are resolved in about 180 days, close to the time frame recommended in the 1994 BOMEX audit. Moreover, disciplinary actions imposed generally appear appropriate. Many complaints against physician assistants tend to be minor and often involve procedural errors. For example, one complaint involved placing a controlled substance on the same prescription as a non-controlled substance. Such complaints generally result in a letter of concern. For complaints resolved in fiscal year 1996, the Board issued 15 letters of concern and 1 decree of censure, entered into 3 stipulations and orders, and revoked 1 license. Twenty-two other complaints were dismissed.

In many instances, the Board is unable to provide information concerning the nature of dismissed complaints older than four years because records containing this information have been destroyed. According to Board staff, the computer tracking system should allow them to better track the nature of dismissed complaints.

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. BOMEX retains two Assistant Attorneys General in-house who represent and provide counsel to the Board at their meetings, and prosecute 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.

The Board has attempted to conform its enabling legislation to the current practice of physician assistants. In 1992, enabling legislation was changed to include a statutory list of tasks that could be delegated to physician assistants by the approved supervising physician, rather than having each task delegated to the physician assistant being approved by the Board. In 1993, additional changes to enabling legislation were made defining "minor surgery" as certain tasks approved by the Board to be performed under supervising physician approval prior to 1993.

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 the following statutory changes to improve physician assistant regulation:

- Increase the number of public members on the Board to approximately 50 percent.
- Streamline recertification requirements by requiring biennial certificate renewal.
- Eliminate the 16-month temporary certification time limit and require physician assistants to sit for the next scheduled examination.
- Require physician assistants to pass a Board-approved recertification examination.

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

Terminating the certification of physician assistants would prevent the public's use of a trained and economical resource for medical care. In addition, an advisory group to the Council on Graduate Medical Education believes demand for physician assistants in the medical marketplace is strong and likely to increase.

- 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 physician assistants appears to be generally appropriate, and major changes in this regulation are not necessary.

- 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.**

The Board uses private contractors provided by BOMEX for services it cannot provide in-house, in accordance with state procurement codes. Currently, BOMEX contracts for the aftercare monitoring and treatment of substance-abusing physician assistants, outside consultants, and transcription.

Agency Response

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Governor Fife Symington

**JOINT BOARD ON THE REGULATION OF
PHYSICIAN ASSISTANTS**

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February 5, 1997

Douglas R. Norton
Auditor General
2910 North 44th Street, Suite 410
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Dear Mr. Norton:

The Joint Board on the Regulation of Physician Assistants appreciates the time spent on the Audit of the Joint Board by the staff of the Auditor General, and generally agree with the findings made. The Joint Board is gratified by the finding that it effectively and efficiently protects the public, and the staff of the Board of Medical Examiners (BOMEX) appreciates the findings of improvement and timeliness since the Auditor General's 1994 BOMEX Audit.

We respond to the Auditor General's specific recommendations below:

Increasing Public Membership to 50%

The Joint Board disagrees that public membership of the Joint Board should be increased to 50%, but agrees that the composition of the Joint Board should change. The Joint Board has discussed, but not taken a final vote on, recommending the Joint Board consist of four certified Physician Assistants, two public members, two M.D.'s and two D.O.'s

The Auditor General acknowledges that the Joint Board has been without a public member since 1994. If we had four of our seven members as public members, the Board would have been singularly ineffective at the current length of time required for public member appointment.

BOMEX staff has previously informed the Auditor General's Office that making the recommendation of 50% public membership for all Health Boards without recommending statutory requirements be established outlining the qualifications, recruiting, training, or timing of appointments for public members, does not adequately protect the public. The Joint Board shares this opinion.

Biennial Certification

BOMEX staff performs the physician assistant renewals. Because BOMEX requires annual renewals, it would be more efficient for the Joint Board to continue annual renewals.

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Temporary Certification

The Joint Board agrees that the duration of the Temporary Certification is too long at this time. When the Physician Assistant National Certification Examination is offered twice yearly, the duration of the Temporary Certification should be reduced to eight months.

Recertification Examination

The Joint Board has found that the re-certification examination is not a completely effective tool for measuring the competence of physician assistants. For example, the Joint Board has ordered two physician assistants to take the examination based on concerns over their competence. Although both passed the exam, one physician assistant was later disciplined based on additional evidence of incompetence.

If NCCPA recertification is used as a requirement for renewal of certificate, there will be a number of physician assistants who will not be able to be recertified. The Board strongly recommends against "grand fathering" physician assistants who cannot meet a competency requirement. Based on our initial review, we believe 5-7 percent of all physician assistants currently certified will not meet this requirement.

Once again, we appreciate this opportunity to provide you this important information about physician assistants and thank you for your work on the audit.

Sincerely

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA



MARK R. SPEICHER
Executive Director

MRS/mjh