



State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

BOARD OF PODIATRY EXAMINERS

**Report to the Arizona Legislature
By Douglas R. Norton
Auditor General**

**September 1998
Report Number 98-15**



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AUDITOR GENERAL

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

DEBRA K. DAVENPORT, CPA
DEPUTY AUDITOR GENERAL

September 9, 1998

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Linda A. Wells, Executive Director
Board of Podiatry Examiners
1400 W. Washington, Ste 230
Phoenix, AZ 85007

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Podiatry Examiners. This report is in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

The report addresses ways the Board can improve how it handles complaints against licensed podiatrists and improve the quality of information provided to the public. The Board generally investigates and resolves complaints in a timely manner. However, it needs to begin using different people to investigate complaints and decide on complaints' resolutions. Additionally, to better ensure it deals appropriately with podiatrists who repeatedly violate state statutes, it should explicitly consider a podiatrist's disciplinary history when deciding on new complaints against them. The Board also needs to better document the rationale behind its decisions to resolve complaints. Finally, the report also explains how the Board can provide more complete information to consumers.

As outlined in its response, the Board of Podiatry Examiners agrees with the findings and recommendations.

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

This report will be released to the public on September 10, 1998.

Sincerely,

Douglas R. Norton
Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Podiatry Examiners pursuant to a May 27, 1997, 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.

The American Medical Association defines “podiatry” as “the branch of medicine that deals with the examination, diagnosis, treatment, and prevention of diseases and malfunctions of the foot and its related structures.” The Board of Podiatry Examiners’ mission is “to protect the health, safety, and welfare of the citizens of Arizona by regulating and maintaining standards of practice in the field of podiatric medicine.” The Board accomplishes this purpose in a variety of ways. First, it issues licenses to practice podiatry in Arizona. Licensed podiatrists must complete an additional annual registration with the Board if they intend to dispense prescription drugs or medical devices from their offices. Currently, there are 297 podiatrists licensed to practice in the State. Second, the Board protects the public by conducting investigations and hearings concerning allegations of unprofessional conduct and other problems with licensed podiatrists.

Although Timely, the Board Could Improve Its Complaint- Handling Process (See pages 5 through 9)

The Board generally investigates and resolves complaints in a timely manner. The Board spent an average of 116 days resolving the 30 cases it closed in 1997. In comparison, past Auditor General reports have found that regulatory boards should be expected to resolve complaints within 180 days. Timely resolution of complaints allows disciplined podiatrists to correct inappropriate policies and practices quickly, thus lessening the potential that consumers will be exposed to substandard medical care.

Although the Board generally handles complaints in a timely manner, it can improve its complaint-handling process.

- First, the Board needs to separate its investigative and adjudicative functions, as advised by the Attorney General’s *Agency Handbook*. The Board currently investigates and decides all complaints, with only limited assistance from a contracted investigator. As a result, its appearance as a fair and impartial decision-maker is compromised. The Board has several options to address this problem. For example, the Board could assign one of its members to investigate each complaint. The investigating board member would need

to recuse him or herself from the Board's deliberations and final disposition of the case. Alternatively, it could employ a panel including professionals to investigate each complaint and report their results to the Board. A third option could be to use its fund balance to hire a staff investigator or deploy its contract private investigator on more cases, leaving the Board free to independently review the results and decide the case.

- Second, the Board should consider podiatrists' prior disciplinary history when deliberating new complaints against them. Nine cases resolved by the Board in 1997 involved podiatrists who had previously received letters of concern or had been disciplined by the Board; however, there is no evidence in the complaint files or related Board meeting minutes that the Board considered this information. Although it is difficult to predict whether considering such information could have affected the outcome of these cases, it could be important because a podiatrist who shows a pattern of repeatedly committing the same violation may warrant a more severe penalty than if the violation had been committed only once.
- Finally, the Board needs to better document the rationale behind most of its decisions to resolve complaints. Auditors reviewed complaint files and Board meeting minutes regarding all 27 cases the Board resolved in 1997 by dismissal or letter of concern, but found no summaries or other documents adequately explaining the Board's rationale for its decisions. Although Board members were able to adequately explain their decisions when interviewed, the files do not contain sufficient information as to why the Board took the action it did.

The Board Should Provide More Complete Information to the Public (See page 11)

Although the Board of Podiatry Examiners provides helpful information to consumers concerning complaints against podiatrists, the information is sometimes incomplete. Auditors who called the Board to inquire about podiatrists found the Board staff to be helpful and willing to provide information about specific podiatrists. However, the Board provided incomplete information on three of the six podiatrists that auditors inquired about. This primarily occurred because Board staff rely on a list of manually compiled complaints, thus increasing the likelihood that some past complaints could be inadvertently overlooked. The Board already has the hardware and software needed to develop a computerized database of complaints, which could enable the Board to provide more complete information to the public. In response to the auditors' findings, the Board's Executive Director has developed and begun to implement a plan to enter data on past and pending complaints into the database.

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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 Podiatry Examiners pursuant to a May 27, 1997, 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.

Field of Podiatry

The American Medical Association defines “podiatry” as “the branch of medicine that deals with the examination, diagnosis, treatment, and prevention of diseases and malfunctions of the foot and its related structures.” Under Arizona State Statute, podiatrists are allowed to work on any part of the leg below the knee. However, they are not allowed to administer general anesthesia or perform amputations. Typical foot problems treated by podiatrists include walking disorders in children, ankle injuries, fractures, bunions, hammer toes, and a variety of diabetes-related problems. Podiatrists generally hold bachelor’s degrees before entering a four-year Doctor of Podiatric Medicine program.

Board Responsibilities

The Board’s mission is “to protect the health, safety, and welfare of the citizens of Arizona by regulating and maintaining standards of practice in the field of podiatric medicine.” The Board accomplishes this purpose in a variety of ways. First, the Board issues licenses to practice podiatry in Arizona. Twice each year, the Board administers a national written test and a state-administered oral examination to applicants for initial licensure. Those who receive a passing grade and meet other requirements, including graduation from an accredited school and a one-year internship program, are eligible to be licensed. Applicants for initial licensure pay \$350 to take a national written examination, \$250 to take a state oral exam, and \$100 to activate their license. Currently, there are 297 podiatrists licensed to practice in Arizona. For annual license renewal, each licensed podiatrist must complete at least 25 hours of Board-approved continuing medical education and pay a \$200 fee. In addition, any licensed podiatrist who dispenses prescription drugs or medical devices from their office is also required to complete an additional registration at an initial cost of \$200 with \$100 to renew annually.

The Board also helps to protect the public health by conducting investigations and hearings concerning allegations of unprofessional conduct and other problems with licensed podiatrists. For violations such as malpractice, over-billing, or unauthorized practice, the Board can impose a civil penalty of up to \$2,000 per violation. In addition, the Board can take other formal actions, including issuing a letter of concern, censure, probation, suspension, or revo-

cation. Of the 30 complaints resolved during 1997, 25 were dismissed; 2 resulted in letters of concern; and the remaining three, all against one podiatrist, were resolved by the podiatrist voluntarily suspending his license.

Board Organization

The Board was created as the Board of Chiropody in 1941 and renamed the Board of Podiatry Examiners in 1964. There are three professional members and two public members, each appointed by the Governor for five-year terms. The Board employs a full-time Executive Director who is responsible for most of the Board's administrative functions, including licensing, complaints, and Board meeting activities. In addition to the Executive Director, the Board contracts with the Department of Administration for the joint use of certain support services and staff, such as telephone answering, accounting services, and financial reporting and recordkeeping.

Budget

The Board derives its revenues from examination and license fees, fines and penalties, and fees for registration to dispense drugs and medical devices. The Board deposits 90 percent of its revenues into the Podiatry Examiners Fund, and the remaining 10 percent of revenues into the State General Fund. Table 1 (see page 3) illustrates the Board's actual and estimated revenues and expenditures for fiscal years 1996 through 1998.

Follow-Up to Prior Sunset Review

During the 1993 Sunset review by the Committees of Reference, some legislators expressed concern as to why the dispensing rules required by A.R.S. §32-871(E), which took effect in September 1989, had not yet been adopted. This and similar statutes required several health regulatory boards to "establish rules regarding labeling, record keeping, storage and packaging of drugs." The Board did not adopt the rules until July 1995 for several reasons. Until 1992, the Board did not employ any staff who could start the rulemaking process. The Board initiated the process in 1992 when an Executive Director was hired for the first time. Additionally, the Governor's Regulatory Review Council required three reviews before approving the rules, thus further lengthening the process.

Table 1
Podiatry Examiners Board
Statement of Revenues, Expenditures,
and Other Changes in Fund Balance
Years Ended June 30, 1996, 1997, and 1998
(Unaudited)

	1996 (Actual)	1997 (Actual)	1998 (Estimated)
Revenues:			
Licenses and fees ¹	\$48,990	\$87,309	\$75,200
Fines and forfeits	2,400	2,300	2,300
Sales and charges for services	292	434	
Other	<u>107</u>	<u>284</u>	
Total revenues	<u>51,789</u>	<u>90,327</u>	<u>77,500</u>
Expenditures:			
Personal services	31,400	32,569	40,200
Employee related	5,739	5,810	6,700
Professional and outside services ²	12,631	14,222	17,500
Travel, in-state	369		1,800
Other operating	<u>5,544</u>	<u>4,633</u>	<u>3,500</u>
Total expenditures	55,683	57,234	69,700
Remittance to the State General Fund ³	<u>5,178</u>	<u>10,833</u>	<u>7,800</u>
Total expenditures and remittances to the State General Fund	<u>60,861</u>	<u>68,067</u>	<u>77,500</u>
Excess of revenues over (under) expenditures and remittances to the State General Fund	(9,072)	22,260	
Fund balance, beginning of year	<u>63,615</u>	<u>54,543</u>	<u>76,803</u>
Fund balance, end of year	<u>\$54,543</u>	<u>\$76,803</u>	<u>\$76,803</u>

¹ In accordance with A.R.S. §32-830, the Board must establish and collect initial and annual registration renewal fees for podiatrists who dispense drugs and medical devices from their offices. The \$200 initial registration fee was collected for the first time in fiscal year 1997; consequently, amounts reported for that revenue line item increased substantially over fiscal year 1996. However, those amounts are expected to decline in fiscal year 1998 because registration renewal fees are only \$100.

² Includes expenditures for Department of Administration clerical and accounting support, court reporter services, and investigation services.

³ As a 90/10 agency, the Board remits 10 percent of its gross revenues to the State General Fund.

Source: The Uniform Statewide Accounting System *Revenues and Expenditures by Fund, Program, Organization, and Object and Trial Balance by Fund* reports for the years ended June 30, 1996 and 1997; the *State of Arizona Appropriations Report* and Board-estimated revenues for the year ending June 30, 1998.

Audit Scope and Methodology

Audit work focused on the Board's ability to meet its statutory mission and how it protects the general public. This performance audit and Sunset review presents findings and recommendations in two areas:

- The need for the Board to improve its complaint-handling process; and
- The need for the Board to release complete information to the public.

Information was obtained from a variety of sources. Interviews were conducted with current and former Board members, the Executive Director, and representatives of professional associations. Four Board meetings were attended, and minutes and associated documentation were reviewed for the last three years. All 30 complaints against licensed podiatrists resolved during 1997 were reviewed and analyzed, as were the 3 complaints opened prior to 1997 but not yet resolved by the end of 1997. In addition to complaint files, individual licensee files were also reviewed. Nine other health-related regulatory licensing agencies in Arizona were contacted for information regarding complaint investigations and adjudication, and podiatry regulatory agencies from five other states were contacted for information to help assess the Board's responsibilities, processes, and operations.¹ Finally, to determine whether the Board releases appropriate information to the public, auditors made six telephone calls to the Board to request information about licensed podiatrists.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Board of Podiatry Examiners and the Executive Director for their cooperation and assistance throughout the audit.

¹ Other Arizona boards contacted include the Board of Dental Examiners, the Osteopathic Examiners Board, the Board of Nursing, the Board of Behavioral Health Examiners, the Board of Homeopathic Medical Examiners, the Board of Occupational Therapy Examiners, the Veterinary Medical Examining Board, the Board of Chiropractic Examiners, and the Board of Psychologist Examiners. In addition, Podiatry Boards from Iowa, Missouri, New Mexico, New York, and Pennsylvania were contacted.

FINDING I

ALTHOUGH TIMELY, THE BOARD COULD IMPROVE ITS COMPLAINT-HANDLING PROCESS

While the Board resolves complaints against podiatrists in a timely manner, it could improve several aspects of its complaint-handling process. The Board generally resolves complaints within a reasonable number of days. However, it does not separate its investigative and adjudicative functions as recommended by the Attorney General's Office. Further, it does not routinely consider accused podiatrists' disciplinary histories, even when relevant to current complaints. Finally, it does not adequately document its decision-making process. The Board can address these problems by separating its investigative and adjudicative functions, routinely considering podiatrists' prior history when deliberating new complaints, and developing a new process to document decisions made.

In response to complaints and notices of civil suits and settlements involving podiatrists, the Board automatically requests patient or other relevant records. After the records are obtained, the complaint is placed on the next monthly Board meeting agenda for an initial review. Following this initial review, complaints are generally tabled while other relevant records are obtained and the accused podiatrist and complainants are invited as needed to future Board meetings for informal interviews. If the Board feels it needs additional information not otherwise available, the complaint is tabled again and a private contract investigator is directed to answer specific questions. Once the Board believes it has obtained and reviewed all necessary information, it deliberates and decides how to resolve each complaint.

Board Decisions Are Timely

The Board generally investigates and resolves complaints in a timely manner. Based on an in-depth file review, the Board spent an average of 116 days, ranging between 22 and 312 days, resolving the 30 cases that were closed in 1997. In comparison, past Auditor General reports have found that regulatory boards should be expected to resolve complaints within approximately 180 days (Report No. 94-10). Timely resolution of complaints allows disciplined podiatrists to correct inappropriate policies and practices quickly, thus lessening the potential that consumers will be exposed to substandard medical care.

The Board Needs to Separate Its Investigation and Adjudication Process

Although the Board generally handles complaints in a timely manner, it needs to separate its investigative and adjudicative processes in order to ensure that it appears fair and impartial. The Board currently conducts virtually all investigative activities and decides all complaints' outcomes, which can compromise its ability to act as a neutral decision-maker. Other state boards use a variety of processes to address this problem.

Board serves as both investigator and adjudicator—The Board investigates all complaints itself as a part of its regular meetings. Because the Board historically has not employed a podiatrist or an investigator, the Board members must review and discuss medical records and interview accused podiatrists and complainants (when appropriate) during Board meetings. A contracted investigator is used only when the Board determines that it needs additional information, which happens infrequently. The Board requested the investigator's services on only three complaints during fiscal year 1997 for an approximate cost of \$663. Although the investigator is a licensed private investigator and podiatrist, his work is generally limited to answering specific questions or performing specific tasks requested by the Board.

After conducting the investigation, the Board deliberates and votes how to resolve the case. Likewise, the Board determines any disciplinary terms. Even when cases are referred to the Office of Administrative Hearings for formal hearings, the Board makes the final determination.

Current process inconsistent with Attorney General advice—The Attorney General's *Arizona Agency Handbook* advises that “decision-makers should not actively participate in the investigative process unless they will be recusing themselves from the decision-making process.” Otherwise, the lack of separation between the investigative and adjudicative process can give the appearance that the Board members do not have clear and objective mindsets when considering the facts of a case. For example, several licensed podiatrists who have been the subject of complaints assert that the Board's current complaint-handling process is unfair because the Board can formally discipline an accused podiatrist at the conclusion of an informal interview.

The Board has several options to separate its functions—Occupational regulatory boards in Arizona use a variety of approaches to separate their investigative function. For example:

- A Board member could be designated to investigate each complaint and report the results to the Board. For example, the Board of Occupational Therapy Examiners sometimes uses Board members to investigate complaints. The investigating Board member may make recommendations to the Board and recuse him or herself from the Board's fi-

nal decision. Similarly, the State Board of Psychology Examiners employs a full-time staff person who works with a designated Board member to investigate each complaint. The consulting Board member is recused from the Board's consideration of the case. The primary advantage of designating a Board member to investigate complaints is that the Board will not incur new personnel costs. However, Board members would be required to spend additional time outside of Board meetings.

- Alternatively, the Board could use a panel, which includes professionals who do not sit on the Board, to conduct investigations. For example, the State Board of Dental Examiners has a panel of two dentists and one layperson, none of whom are Board members, to conduct investigative interviews and make recommendations for action to the Board. While this option has the advantage of avoiding new personnel costs, volunteers may not consistently be as dependable as paid staff.
- A more expensive option could be for the Board to hire a part-time staff investigator. Some boards, such as the Board of Medical Examiners, the State Board of Nursing, and the Board of Chiropractic Examiners, employ professional investigators. Because the Podiatry Board handles only approximately 30 complaints per year, other boards' experiences suggest that it would need to hire only a part-time investigator at an estimated cost of less than \$20,000 per year. This could be accomplished within the Board's existing resources, including its June 30, 1998, fund balance of almost \$77,000. Alternatively, the Board could use its current contracted private investigator on all cases. The primary advantage of hiring an investigator or using the contracted investigator is that additional burdens are not placed on Board members. However, the Board would incur new costs.

Under any of these arrangements, the Podiatry Board would remain free to review records and conduct informal interviews after the investigation is completed.

Board Does Not Routinely Consider Podiatrists' Disciplinary History

The Board does not always explicitly consider accused podiatrists' disciplinary histories when deliberating new complaints against them. Of the 29 cases the Board resolved in 1997 that did not accuse podiatrists of violating past disciplinary orders, 9 complaints involved podiatrists who had received letters of concern or had been disciplined by the Board in the past, sometimes for similar problems. However, there is no evidence in the complaint files or Board meeting minutes that the Board considered these podiatrists' histories. Although it is difficult to predict whether considering such information could have affected the outcome of these cases, it could be important because a pattern of the podiatrist committing the same violation may warrant a more severe penalty than any one violation alone.

The Board can and should consider accused podiatrists' disciplinary history. Arizona Revised Statutes §32-852.01(Q) specify that letters of concern can be considered in future Board disciplinary actions. Similarly, the Board's current Attorney General Representative advises that although each case should be decided on its own merit, a podiatrist's past disciplinary history should be considered when determining punishments. In order to do so, the Board will need to develop a process to inform Board members of an accused podiatrist's disciplinary history, including the nature and terms of any previous Board actions.

Board Does Not Adequately Document the Rationale for Most of Its Decisions

In addition to clearly discussing accused podiatrists' disciplinary history, the Board needs to adequately document the rationale for its decisions in order to show they are acting fairly. Currently, neither Board meeting minutes nor complaint files contain enough information to explain the Board's decisions to dismiss complaints or issue letters of concern. Auditors reviewed the complaint files and Board meeting minutes regarding all 27 cases the Board resolved in 1997 by dismissal or letters of concern, but found no summaries or other documents explaining the Board's rationale for its decisions. Although Board members were able to adequately explain their decisions when interviewed, the files do not contain adequate information as to why the Board took the action it did. Often the file and related minutes indicate only that a complaint was dismissed.

The Board needs to develop a method for recording the reasons behind its decisions. For example, the Board could explicitly articulate its reasoning during Board meetings and ensure that the Board minutes fully capture this information. Alternatively, the Board could write a summary for each complaint file, including a statement about the violation's nature, an outline of the Board's investigative actions, and other information supporting the Board's actions.

Recommendations

1. The Board should separate its investigative and adjudicative processes by:
 - a. Designating a Board member to investigate each complaint. The investigating Board member could not participate in making the final decision; or
 - b. Designating a panel of non-Board members to investigate all complaints; or
 - c. Hiring a part-time staff investigator or using the contracted investigator on all cases.
2. The Board should develop a process to explicitly identify and consider whether accused podiatrists had previously received a letter of concern or been disciplined by the Board for similar offenses.
3. The Board should adequately document the rationale behind all of its disciplinary decisions by:
 - a. Explicitly articulating its reasoning during Board meetings and ensuring that the Board minutes fully capture this information; or
 - b. Writing a summary for each complaint file, including a statement about the violation's nature, an outline of the Board's investigative actions, and other information supporting the Board's actions.

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FINDING II

THE BOARD SHOULD PROVIDE MORE COMPLETE INFORMATION TO THE PUBLIC

Although the Board of Podiatry Examiners is willing to provide the public with important information concerning complaints against podiatrists, the information is sometimes incomplete. The Board readily provides helpful information to consumers concerning podiatrists' histories. Auditors who called the Board to request information about licensed podiatrists found the Board staff to be helpful and willing to provide information about licensed podiatrists. Similarly, auditors reported in a prior special study of Arizona's health regulatory system (Report No. 95-13) that the Board of Podiatry Examiners released more types of information to the public than many other regulatory boards. The Board has further improved its practices since this study by releasing information about complaints currently pending against podiatrists.

Although the Board demonstrates a willingness to answer public inquiries, it sometimes provides incomplete information. Auditors called the Board to request information concerning six podiatrists. The Board provided incomplete information for three of these six. For example, one of these podiatrists had a prior dismissed complaint and another an open complaint, neither of which was mentioned by the Board staff. This primarily occurred because the staff relies on a manually compiled list of complaints to answer public inquiries, thus increasing the likelihood that some past complaints against a particular podiatrist will be inadvertently overlooked.

The Board already has the hardware and software necessary for a computerized complaint tracking database, which should help to increase the completeness of information provided to the public. The Board could complete the database by entering prior and current complaints. After completion the Board would also need to develop a process to confirm that the data entry was accurate and that the database remained up to date. In response to auditors' findings, the Board's Executive Director has developed and begun to implement a plan to input the needed information. The Board projects the database will be completed and in use by December 30, 1998.

Recommendations

1. The Board should continue to develop and validate a complaint tracking database.
2. The Board should adopt procedures to ensure the continuing accuracy and completeness of its database.

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SUNSET FACTORS

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

1. The objective and purpose in establishing the Board.

In 1964, the State Board of Podiatry Examiners was renamed from the original Board of Chiropody (Laws 1964, Ch. 106. §2). The Board's mission is to "protect the health, safety, and welfare of the citizens of Arizona by regulating and maintaining standards of practice in the field of podiatric medicine." To achieve this mission, the Board has developed the following goals: (1) To ensure that licenses are granted only to competent professionals; (2) To investigate complaints in a timely manner and provide enforcement to protect the public from incompetent, unprofessional, and unethical conduct; and (3) To periodically inspect prescribing practices of podiatrists to ensure statutory compliance.

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

Although the Board has generally met some of its prescribed purposes and objectives, it could improve its effectiveness and efficiency in some areas. First, the Board could separate its investigative and adjudicative functions, explicitly consider podiatrists' disciplinary histories when deciding new cases, and adequately document the reasons for its decisions (see Finding I, pages 5 through 9). Additionally, the Board could increase the accuracy of information provided to consumers by developing a computerized database of complaints (see Finding II, page 11).

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

Generally, the Board has operated within the public interest by licensing and regulating the medical practice of podiatry. Professional licensing allows the Board to properly evaluate the qualifications of podiatric physicians and surgeons to ensure competence. In addition, through its annual licensure renewal process and evaluation of continuing medical education requirements, the Board continues to provide the public with effective oversight of podiatric physicians.

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

According to the Governor's Regulatory Review Council (GRRC), the Board has adopted rules dealing specifically with the examination process required for podiatrists, as well as rules involving supervision of provisional licensees. In addition, rules have been adopted for the rehearing of Board decisions, and annual requirements of continuing medical education for licensees. Also, rules are now in place involving the dispensing of drugs and medical devices by podiatrists (see Introduction, pages 1 through 4).

Currently, the Board is in the process of reviewing its rules and has hired a contract rules consultant to assist it in adopting licensing time frames, as statutorily required by A.R.S. §41-1073 and which are due by December 31, 1998. The Board anticipates completion of this process by November 1998.

Although the Board has adopted some specific rules, other rules need to be considered or revised. In fact, GRRC noted that many rules are not clear, concise, and understandable. Moreover, there are rules in addition to those already adopted that GRRC believes the Board should develop. Specifically, the Board should clarify some of the definitions appearing in rules dealing with an applicant's qualifications, including rules granting a license to applicants licensed to practice podiatry in another state or country. In addition, rules should be developed to explain the criteria the Board will use to decide when to suspend, revoke, or refuse licensure; whether to impose a civil monetary penalty; and when a violation has occurred. Also, criteria should be developed to guide the Board in deciding which investigative action to take, and whether an inspection of a dispensing podiatrist is warranted and the procedure that will be used.

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 meets monthly to discuss licensing and disciplinary matters. The Board encourages public participation and provides the opportunity for podiatrists and consumers to comment at Board meetings. However, the Board has not fully complied with the Open Meeting Law. Pursuant to A.R.S. §38-431.02(A)(1), the Board needs to file a notice with the Secretary of State's Office specifying the location where all public notices of their meetings will be posted.

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

Statutes provide the Board authority to investigate and resolve complaints concerning Arizona licensed doctors of podiatry. However, because the Board usually performs investigations informally and during Board meetings, there is not a clear enough delineation between the investigation and disciplinary decision-making processes. Additionally, the Board needs to consider the accused podiatrists' disciplinary history when deliberating new complaints against them. (see Finding I, pages 5 through 9).

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.

The Board's Attorney General representative indicated that the Board has sufficient authority to prosecute actions under the Board's enabling legislation. Additionally, statutes provide for the superior court to review actions the Board initiated against licensees who violate rules.

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

At the Board's request, legislation was enacted in 1993 enabling it to impose a civil penalty as a disciplinary sanction and to contract with a national podiatric testing service. As a result of the latter, podiatrists must pass the national "Podiatric Medical Licensing Examination" for states (PMLexis) before receiving their Arizona license.

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

Based on our audit work, no statutory changes related to the Board's laws are recommended.

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

Termination of the Board could harm the public welfare because podiatrists would no longer be permitted to practice. Under Arizona statutes, it is illegal to practice medicine without a license. If the Podiatry Board terminated, podiatrists could not be licensed. Many services now performed by podiatrists could then be performed only by physicians. This could decrease consumer access to services by reducing the number of practitioners and thus increasing the cost of those services.

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

Licensure, the current level of regulation exercised by the Board, is appropriate for the profession of podiatry because of the risk of harm to patients.

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 currently contracts with a licensed private investigator, who is also a licensed podiatrist, to assist in performing certain complaint investigation functions for the Board. The contractor agrees to investigate complaints against podiatrists, prepare detailed and comprehensive reports, and provide testimony and other assistance at public hearings, depositions, and any legal proceedings. The Board may need to use the investigator on more cases in order to separate its investigative and adjudicative functions (see Finding I, pages 5 through 9). The Board also hired a rules consultant to assist it in developing licensing time frames.

Agency Response

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September 4, 1998

Mr. Douglas R. Norton
Auditor General
2910 N. 44th St., #410
Phoenix, Arizona 85018

Dear Mr. Norton:

Enclosed is the State Board of Podiatry Examiner's response to the performance audit that was conducted in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

We have reviewed the audit report and have responded accordingly. We appreciate the professional meetings we have had with your performance managers, and we will be modifying areas that we agreed need to be improved upon.

Sincerely,

Joseph Dobrusin, D.P.M.
Board President

AGENCY RESPONSE

SUMMARY RESPONSE

The Board agrees with most of the recommendations set forth in the Audit Performance and will work diligently to improve their performance by implementing the recommendations in all areas of concern.

The Board has proven that it takes proper procedural measures in its performance to protect the public by investigating complaints justly and swiftly. The Board has proven its ability to be fair and impartial in resolving complaints, and has been remarkable as a professional licensing and regulatory agency of the State.

In light of the performance audit concerning the Board's complaint handling process, the Board will implement a combined recommendation to separate its investigative and adjudicative functions as advised by the Attorney General's office. The Board believes that the new implementation will improve its ability to provide competent service to the public and the profession and will strive to maintain timeliness when investigating complaints.

FINDING I

ALTHOUGH TIMELY, THE BOARD COULD IMPROVE ITS COMPLAINT-HANDLING PROCESS

The Board agrees that a process needs to be implemented to adjudicate complaints. However, there is a concern that the recommendation for an improved process may result in the Board being less timely in resolving complaints.

The Board currently uses the process whereby all members review complaints, takes testimony from licensees, complainants and witnesses at informal interviews. After conducting the investigation, the Board deliberates, votes and determines any disciplinary action.

The Board contracts with an investigator who is a licensed, bonded and insured podiatrist. The investigator is used when difficult complaint cases arise and is then needed to obtain testimony from witnesses and obtain medical information from various sources needed for the Board to make a more informed decision.

The Board recognizes that steps must be added to the current process to separate its investigative and adjudicative responsibilities. A plan to designate a rotating Board member to investigate complaints will be implemented in combination with the contracted investigator when needed.

BOARD DOES NOT ROUTINELY CONSIDER PODIATRIST'S DISCIPLINARY HISTORY

The Board is sensitive to the concerns raised by the auditors and is committed to establishing procedures to ensure that the prior disciplinary history of a licensee is routinely considered prior to rendering discipline for subsequent offenses. For example: After a violation of the practice act has been determined, Board staff will advise the Board as to the licensee's prior disciplinary history or record.

A notation that the Board considered prior disciplinary action will be added to the minutes.

BOARD DOES NOT ADEQUATELY DOCUMENT THE RATIONALE FOR MOST OF ITS DECISIONS

The Board believes the minutes from meetings and investigation files reflect accurate and adequate information. Complaint files always contain either a dismissal letter, letter of concern, or a disciplinary action. No clarification requests from the public who come to the office to review a file or the minutes, have ever communicated a problem in understanding a complaint and its history of investigation, and the outcome.

In the future, the Board will explicitly articulate its reasoning for decisions made at Board meetings and ensure that Board minutes fully capture the information. A copy of the minutes regarding complaint investigations will be transferred to the complaint files.

FINDING II

THE BOARD SHOULD PROVIDE MORE COMPLETE INFORMATION TO THE PUBLIC

The executive director questions the auditor's finding in their performance report that "incomplete information" is sometimes relayed to the public. The auditor was provided the same hard copy complaint log as what the executive director refers to on a daily basis. The auditor's report does not reference names or complaint numbers so that a cross check could be conducted, therefore, the executive director is still unsure of what alleged misinformation was communicated.

A hard copy complaint log is currently relied upon on a daily basis. The executive director will continue to use the log until complaint data is entered into the tracking data base. It is estimated that the project will be completed by December 30, 1998.

The executive director will strive to continue providing the public with accurate and complete complaint information and any other public information.