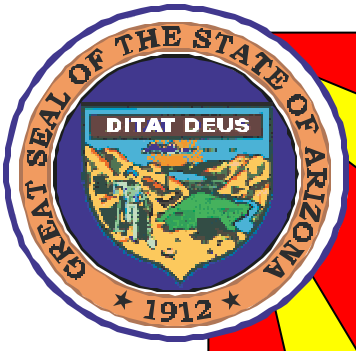

State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

ARIZONA BOARD OF DENTAL EXAMINERS

Report to the Arizona Legislature
By Debra K. Davenport
Acting Auditor General
August 1999
Report No. 99-15

The Auditor General is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. His mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, he provides financial audits and accounting services to the state and political subdivisions and performance audits of state agencies and the programs they administer.

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

DEBRA K. DAVENPORT, CPA
DEPUTY AUDITOR GENERAL

August 26, 1999

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Julie N. Chapko, Executive Director
Arizona Board of Dental Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Board of Dental 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.

We found the Board is generally effective in fulfilling its licensing and complaint duties. Nonetheless, we did find two areas where the Board could make improvements. First, the Board could do a better job of ensuring that licensees take required corrective action once the Board resolves complaints. In some instances, licensees ignore or delay taking corrective action requirements, and the Board fails to follow up. For example, in one instance, the Board ordered a licensee to pay restitution to a patient, but the licensee did not make the payment until after the Board contacted the dentist six months later. More timely monitoring may have resulted in quicker action. Second, the Board needs to improve its handling of consent agreements and malpractice cases to ensure that the public is better informed. If the Board resolves a statutory violation through the use of a consent agreement, the public is not informed about the violation. Also, the Board has not taken disciplinary action in a few malpractice complaints because of its unfounded concern that the incident would be double-reported in a national databank.

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As outlined in its response, the Board agrees with all of 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 August 27, 1999.

Sincerely,

Debbie Davenport
Acting Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Arizona Board of Dental 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 Board regulates approximately 5,000 dentists, dental hygienists, and denturists and is funded primarily through licensing fees.[1] To fulfill its regulatory responsibilities, the 11-member Board issues licenses and certificates, mediates complaints, conducts investigations, and imposes discipline. The Board's licensing and complaint processes appear to be generally efficient and appropriate. However, the Board needs to improve its procedures for ensuring that licensees take corrective action in response to Board actions resulting from complaints. In addition, when complaints are adjudicated with consent agreements, the Board needs to ensure that the public is made aware of the actions licensees are required to take.

The Board Should Improve Its Monitoring Efforts (See pages 9 through 12)

Once it resolves complaints, the Board does not ensure that licensees and certificate holders take required corrective actions. When the Board reviews a complaint and finds that corrective action is needed, it has the power to require the licensee to pay restitution, obtain more training, and improve dental procedures. However, the Board's files show instances in which licensees ignored corrective action requirements or delayed taking

[1] Denturists perform activities such as constructing, fitting, and repairing dentures.

them and the Board did not follow up to ensure timely compliance. For example, one patient did not receive $390 in board-ordered restitution until 6 months after it was due. To correct the problem, the Board needs to address problems with its monitoring information and its follow-up procedures. The Board does not consistently record all the information in its database that is necessary to facilitate compliance monitoring. The Board needs to correct problems with the data and use the resulting information as a monitoring tool to identify noncompliance and track follow-up enforcement activity to ensure timely action is taken.

The Board Could Better Serve the Public Through Improved Handling of Consent Agreements and Malpractice Cases (See pages 13 through 17)

In two areas, the Board's method of handling complaints does not ensure that the public has adequate knowledge of the extent to which actions are taken against dentists. The first area involves the Board's use of nondisciplinary consent agreements instead of more formal disciplinary actions. Such agreements typically involve a dentist agreeing to take specified action to correct an existing situation or prevent future problems. In a few cases the Board has, in lieu of imposing formal discipline, entered into consent agreements with dentists even though statutory violations may exist. When this occurs, the dentist avoids having a disciplinary action noted on his or her licensing record and consumers are informed only that the complaint was dismissed. This reporting standard can mislead consumers, because complaints are ordinarily dismissed only when there is no evidence of any statutory violation.

The second area involves the Board's dismissal of certain malpractice complaints out of concern that the incident would be double-reported in a national data bank used by medical organizations and state licensing boards. This data bank's information includes malpractice settlements reported by insurance companies and actions reported by state licensing boards. Auditor General staff identified a few instances in which the Board believed a complaint was valid, but voted against disci-

plinary action because of this concern about possible duplication in the data bank. A data bank representative said this concern was unfounded. More significantly for Arizona consumers, the Board's failure to take disciplinary action adversely impacts consumers' abilities to make informed decisions, because consumers are made aware of Board-ordered discipline only, and would not learn that malpractice had occurred.

Other Pertinent Information (See pages 19 through 22)

This audit also presents other pertinent information addressing legislative and public concerns relating to holistic dentistry in Arizona. Holistic dentistry, which is not a specialty recognized by the American Dental Association, purports to enhance overall health through dental procedures. The most common practice among dentists who refer to themselves as holistic is removal of amalgam fillings because of concerns about mercury toxicity. Some holistic dentists also perform more extensive and invasive procedures.

Some members of the public have expressed concerns that without specific protections for holistic dentistry, some procedures would no longer be available in Arizona. These concerns stem primarily from a formal hearing against one holistic dentist that was based on nine complaints alleging violations of board statutes. During the course of the complaint investigations and hearing process, allegations arose that the Board singled out this dentist because of his holistic philosophy. Although the formal complaints do not support these allegations, some members of the public sought to ensure protections for holistic dentistry by requesting the Board to define holistic dentistry in administrative rules. However, because dentistry is defined in Arizona statutes, it would not be appropriate for the Board to write rules defining any particular type of dentistry. Further, Arizona statutes currently do not recognize any dental specialty.

Sunset Factors
(See pages 23 through 31)

As part of the Sunset review process, this audit also recommends some additional changes to the Board's policies, rules, and statutes. For example, the Board needs to modify its public information policy to include releasing the nature of dismissed complaints and information about consent agreements by telephone. The Board also needs to adopt some additional rules relating to issues such as fees and applicant qualifications.

Finally, the Legislature should consider amending A.R.S. §32-1203(A) to increase public membership on the Board so that it is closer to 50 percent. Currently, the 11-member Board has 3 public members. Past Auditor General reports have recommended that regulatory boards have 50 percent public membership to increase the potential for public advocacy.

Table of Contents

Table of Contents (Concl'd)

Tables

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Dental 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.

Board Responsibilities

Laws 1935, Chapter 24, §2, established the Arizona Board of Dental Examiners, which is responsible for regulating dentists and dental hygienists through licensure. In addition, the Board has certification programs for denturists, and for dental assistants who take x-rays (see Table 1, page 2 for licensure and certification requirements). As part of its duties, the Board issues permits to dentists who administer general anesthesia and semi-conscious and conscious sedation, and to dentists whose practice is limited to volunteer work for charitable organizations. It also certifies hygienists who administer local anethesia and nitrous oxide. In Arizona there are no separate licensing requirements that officially recognize dental specialties, such as endodontics, oral surgery, and orthodontics. However, dentists may advertise as specialists if they are recognized by an American Dental Association (ADA)-accredited board that certifies specialists in one of eight areas.[1]

[1] The eight specialy areas are endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, dental public health, and oral pathology.

Table 1

Arizona State Board of Dental Examiners
Licensure and Certification Requirements and
Number of Licensed and Certified Professionals
As of June 30, 1998
(Unaudited)

Profession	Education and Experience Requirements for Licensure / Certification	Number of Licensed / Certified Professionals
Dentist	A diploma from a recognized dental school or completion of a two-year program in clinical dentistry at an ADA-accredited dental school, passing parts I and II of the national dental board examinations, passing the Western Regional Examining Board (WREB) examination within the past 5 years, and passing the Arizona dental jurisprudence examination are required for a license.	2,985
Dental Hygienist	A diploma or certificate from a recognized dental hygiene school, passing the WREB examination within the past 5 years, passing the national dental hygiene board examination, and passing Arizona dental jurisprudence examination are required for a license. In addition, licensed hygienists must work under a licensed dentist's supervision.	2,043
Denturist	A diploma from a Board-approved school, and passing a Board-approved examination are required for a certificate. In addition, certified denturists must work under a licensed dentist's supervision.	14
Dental Assistants certified to expose oral x-rays	Passing the Dental Assisting National Board Radiation Health & Safety examination is required for a certificate. All dental assistants must work under a licensed dentist's supervision.	2,705

Source: Licensure and certification data obtained from the Board of Dental Examiners and A.R.S. §§32-1232 through 32-1297.

The Board's mission is:

> *To provide professional, courteous service and information to the dental profession and the general public through the examination, licensing, and complaint adjudication and enforcement processes; to protect the oral health, safety, and welfare of Arizona citizens through a fair and impartial system.*

The Board accomplishes this mission by performing a variety of functions, including ensuring that individuals desiring licensure, certification, or permits possess required qualifications; issuing and renewing qualified applicants' licenses and certificates; mediating complaints; conducting investigations and hearings concerning unprofessional conduct or other statutory violations; disciplining violators; and providing consumer information to the public.

Board generally processes complaints timely.

On average, the Board receives approximately 450 complaints a year, which are mainly against dentists. The Board generally processes complaints in a timely manner and does not appear to have a complaint backlog. In addition to its licensing and regulation duties, the Board has also established a monitored aftercare program to assist professionals recovering from substance abuse problems. (For further information about complaint timeliness and the monitored aftercare treatment program, see Sunset Factor No. 2 on page 24.)

The Board has established several committees and panels to assist it in performing its duties. The committees, which typically consist of both board members and volunteers, advise the Board on issues relating to denturists and dental hygienists as well as assisting with activities such as writing rules. In addition, the Board relies on volunteers to conduct clinical evaluations of dental work, and to participate on investigative interview panels that review records, hear testimony, and make disciplinary recommendations to the Board. A 1993 audit of the Board (see Auditor General Report No. 93-1) noted concerns relating to the efficiency and thoroughness of complaint investigations performed by the panels. Although the Board has not changed this process, it has developed a training program for volunteer panel members and makes more efficient use of its staff investigators' time.

Organization and Staffing

The Board consists of 11 Governor-appointed members, who are eligible to serve two consecutive four-year terms. Two of the members must be licensed dental hygienists and six must be licensed dentists. Although statute allows the Arizona State Dental Association to submit names of dentists to the Governor's Office for appointment, the Governor can and does consider nominees from other sources. Board statute also requires three public members.

The Board is authorized 9 FTEs who provide assistance and support to the Board and its committees. An executive director oversees the staff, who are responsible for collecting application, renewal, and other fees; accepting and preparing application files for Board review; investigating complaints; monitoring compliance with Board orders; and providing information to the public.

Budget

The Legislature appropriates monies to the Board from the Board of Dental Examiners Fund. This fund contains revenues derived principally from the collection of licensure application and renewal fees. The Board deposits 90 percent of its revenues into the Board of Dental Examiners Fund and the remaining 10 percent of revenues into the General Fund. Table 2 (see page 5), illustrates the Board's actual and estimated revenues and expenditures for fiscal years 1997 through 1999.

Table 2

Arizona State Board of Dental Examiners
Statement of Revenues, Expenditures, and Changes in Fund Balance
Years Ended June 30, 1997, 1998, and 1999
(Unaudited)

	1997 (Actual)	1998 (Actual)	1999 (Estimated)
Revenues:			
Licenses and fees	$626,847	$678,562	$720,100
Fines and forfeits	14,981	31,582	34,900
Sales and charges for services	5,290	3,891	5,500
Other	24,227	29,163	16,800
Total revenues	671,345	743,198	777,300
Expenditures:			
Personal services	218,820	251,680	290,100
Employee related	41,375	43,929	52,100
Professional and outside services	198,514	203,501	168,800
Travel, in-state	7,454	2,866	3,700
Travel, out-of-state	3,484	4,710	6,600
Other operating	159,449	126,576	115,700
Capital outlay		3,311	2,400
Total expenditures	629,096	636,573	639,400
Excess of revenues over expenditures	42,249	106,625	137,900
Other financing uses:			
Net operating transfers out	3,855	5,545	
Remittances to the State General Fund [1]	69,850	94,269	94,300
Total other financing uses	73,705	99,814	94,300
Excess of revenues over (under) expenditures and other financing uses	(31,456)	6,811	43,600
Fund balance, beginning of year	408,263	376,807	383,618
Fund balance, end of year	$376,807	$383,618	$427,218

[1] As a 90/10 agency, the Board remits 100 percent of administrative penalties and 10 percent of its other gross revenues to the State General Fund.

Source: The Arizona Financial Information System *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 1997 and 1998; the Board's *Budget Request* for fiscal years 2000 and 2001; and the Board's *Variance from Budget* report for fiscal year 1999.

Audit Scope And Methodology

Audit work focused on the Board's licensure, enforcement, and administrative policies and procedures. This performance audit and Sunset review includes findings and recommendations as follows:

- The need for the Board to better ensure that licensees and certificate holders take corrective action in response to complaints (see Finding I, pages 9 through 12);

- The need for the Board to ensure that the public has adequate knowledge of the extent to which actions are taken against dentists (see Finding II, pages 13 through 17); and

- The need for additional policies and rules, release of additional information to the public, and additional public representation on the Board (see Sunset Factors, pages 23 through 31).

This report also contains other pertinent information (see pages 19 through 22) that addresses additional concerns raised by legislators and members of the public regarding holistic dentistry.

To evaluate the Board's monitoring and enforcement efforts and the appropriateness of adjudication, auditors obtained information from a variety of sources, including reviews of computerized licensing and complaint information, file reviews, and interviews with Board members, the Executive Director, and staff. Specifically, to determine the adequacy of the Board's monitoring efforts, computerized information relating to 165 complaints received between 1995 and 1998 that appeared to require compliance monitoring was reviewed to identify instances of potential noncompliance.[1] From those complaints where potential noncompliance was identified, a random sample of 30 complaints was selected and the case files were reviewed.

[1] These 165 complaints did not include those relating to the Monitored Aftercare Treatment Program.

In addition, to evaluate the Board's adjudication of complaints involving malpractice settlements, minutes of Board meetings held between February 1996 and April 1999 were reviewed. Finally, 30 files for complaints received in 1997 and 1998 that were adjudicated with consent agreements were identified and reviewed.[1]

To respond to public and legislative concerns relating to holistic dentistry in Arizona, auditors reviewed formal hearing documents, attorney motions, and other related documents. Information was also obtained from the Board's computerized complaint database and meeting minutes, as well as from interviews with Board staff and interested parties.

Auditors also assessed the Board's performance in a number of other areas, including such things as timeliness of processing complaints and licenses, and providing information to the public. Specifically, auditors analyzed computerized data pertaining to a total of 1,280 complaints received between 1996 and 1998. In addition, using the computerized database, auditors identified and analyzed information pertaining to all 111 nondisciplinary letters of concern issued in 1996, 1997, and 1998. Finally, auditors assessed whether the Board provides consumers with accessible, accurate information regarding licensees by making 6 telephone calls to request information and one visit to the Board's offices to review a file in person. (For further information about these issues, see Sunset Factors, pages 23 through 31.)

This audit was conducted in accordance with government auditing standards.

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[1] The review included all complaints received in 1997 and 1998 that were resolved with consent agreements, except for those that did not have investigators' recommendations for resolution and those involving substance-abuse related issues and the Monitored Aftercare Treatment Program.

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

FINDING I THE BOARD SHOULD IMPROVE ITS MONITORING EFFORTS

The Board does not ensure that licensees take corrective action once complaints are resolved. When resolving complaints, the Board has the power to require, among other things, that the licensee pay restitution, obtain more training, and improve dental procedures. However, the Board's files show instances in which licensees ignored corrective action requirements or delayed taking them. To correct the problem, the Board needs to keep its complaint database accurate and up-to-date and use it as a monitoring tool to identify noncompliance and track follow-up enforcement activity to ensure timely action is taken.

Increased Monitoring Is Needed

To help ensure that complainants' concerns are resolved and to lessen the likelihood that problems leading to complaints will reoccur, the Board can establish corrective action requirements in orders or in consent agreements. The Board sets such requirements in about 10 percent of the complaints it resolves. Once the Board sets these requirements, however, it does not adequately monitor licensees to ensure compliance. Auditors reviewed a random sample of 30 complaint files and identified 14 cases where dentists had failed to comply with board requirements.[1] Board staff had not monitored compliance in 7 of the 14 cases and failed to perform timely follow-up in 6 cases.[2]

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[1] The sample was selected from 165 cases received between 1995 and 1998 that were identified as possibly requiring compliance monitoring.

[2] In one case, board staff performed timely follow-up; however, the dentist's license has since expired and he did not comply with board requirements.

Failure to identify or follow up on noncompliance can adversely impact the public's health, safety, and welfare. For example:

- Staff failed to monitor a dentist's compliance with a disciplinary consent agreement even though the Board thought the dentist might be a danger to the public. Citing inadequate infection control procedures and possible physical and/or mental impairment, the Board restricted the dentist's practice to 4 hours per day including provisions to refer extensive or difficult treatment to other dentists. The Board also ordered the dentist to provide proof of upgraded infectious disease control procedures by October 1997 and to appear at the February 1998 meeting with a random sample of treatment records. The dentist did not comply either time and no enforcement action or follow-up occurred. In March 1999, auditors questioned Board staff about whether the dentist had complied with ordered restrictions; Board staff reported no monitoring of practice restrictions had occurred.

- One patient did not receive $390 in board-ordered restitution until 6 months after it was due. Restitution was due in September 1998, but the dentist did not pay until staff called him in March 1999.

Monitoring Tools Are Not Used Effectively

Inconsistent data entry makes using the database for compliance monitoring difficult.

The Board has a complaint database that could facilitate monitoring, but staff do not use it effectively. Staff do not enter data consistently into the database, reducing its effectiveness for monitoring compliance. In addition, staff do not use the database to regularly produce reports that would identify noncompliance and required follow-up action, further impacting the Board's ability to monitor compliance and perform timely follow-up.

Data not entered consistently—The Board needs to ensure that data is consistently entered into the complaint database to enable it to track monitoring and enforcement efforts. Currently, the Board's database includes fields to track compliance and enforcement activities, but data is not consistently entered into

these fields. Auditor General staff reviewed computerized data for 165 complaints received between 1995 and 1998 that involved requirements such as restitution, administrative penalties, or continuing education. Of these 165 cases, 48, or about 29 percent, did not have due dates recorded, making late compliance difficult to track. Additionally, auditors identified several cases where licensees had completed requirements, but the completion dates were not recorded, making it difficult to use the database to determine which cases were out of compliance.

Failure to consistently and accurately enter data negatively impacts the Board's ability to monitor compliance. For example, 4 of 10 noncompliance cases that auditors identified did not have due dates recorded in the database and 1 had an inaccurate date recorded. Board staff was unaware of the noncompliance in these 5 cases until auditors requested information about the status of compliance and enforcement efforts. In one case, a dentist was approximately 14 months overdue in paying a patient $363 in board-ordered restitution.

Management reports not produced on a timely basis—In addition to ensuring that data is entered consistently and accurately, the Board needs to regularly produce management reports to identify noncompliance and necessary follow-up action. The Board's database has the capability to generate reports that can identify noncompliance with restitution, administrative penalties, and continuing education requirements. The system will also generate reports that detail enforcement action, including planned follow-up activities. However, Board staff indicate that these reports are produced only about every six months, which is not often enough to facilitate timely monitoring and enforcement activity. If reports had been produced more often, the six cases auditors identified as requiring follow-up action may have been acted upon more quickly. For example:

- One dentist did not complete six hours of board-ordered continuing education until nearly two years after the due date. The Board found that the dentist had failed to adequately examine a patient and diagnose and plan treatment, and ordered him to complete six hours of continuing education by May 1997. In June 1997, the Board sent a letter informing the dentist he was out of compliance and requested

a response within 30 days. Following this letter, the dentist did complete three of the six hours, but the Board did not perform any further follow-up until November 1998, about 17 months later. The November letter requested a response within five days. Although the dentist did respond to this letter, he did not complete the remaining three hours of board-ordered training until February 1999.

Recommendations

1. The Board needs to ensure that data such as due dates and completion dates are consistently and accurately entered into tracking fields to facilitate monitoring and enforcement efforts.

2. The Board needs to establish and implement a schedule for running, reviewing, and acting on management reports to ensure instances of noncompliance are identified and necessary follow-up is performed in a timely manner.

FINDING II

THE BOARD COULD BETTER SERVE THE PUBLIC THROUGH IMPROVED HANDLING OF CONSENT AGREEMENTS AND MALPRACTICE CASES

In two areas, the Board's complaint-handling methods do not ensure that the public has adequate knowledge of the extent to which actions are taken against dentists. The first area involves the Board's use of nondisciplinary consent agreements instead of more formal disciplinary actions. In these instances, even though the dentist has agreed to take corrective action, the public is told only that the complaint has been dismissed. The second area involves the Board's dismissal of certain malpractice complaints out of concern that the incident would be double-reported in a national database used by insurers and medical organizations. This concern is unfounded, and dismissing the complaint means that Arizona consumers do not learn that malpractice has occurred.

Public Should Be Informed of Consent Agreement Requirements

In a consent agreement, licensee agrees to take specific corrective action.

One form of board action, called a consent agreement, is typically not disclosed to the public even when it is used to resolve a complaint in which disciplinary action may have been warranted. Consent agreements typically involve a dentist agreeing to take specific corrective action, and are used to resolve a variety of complaints. Many of the complaints resolved with consent agreements do not appear to warrant formal disciplinary action; however, in some cases the Board appears to have used consent agreements in lieu of discipline. Because these consent agreements are not considered disciplinary, the public is informed only that the complaint was dismissed and is not made aware of the consent agreement or its requirements.

Dentists who enter into consent agreements with the Board agree to take specified actions to correct existing situations or to prevent future problems. For example, dentists with substance abuse problems enter into standardized consent agreements to obtain treatment and counseling. In other cases, the Board uses consent agreements to help ensure that dentists receive specialized training to improve techniques or practices that, if not corrected, could result in future problems.

Board entered into some consent agreements in lieu of disciplining dentists.

Consent agreements are sometimes used in place of discipline— In some cases, the Board has also used consent agreements to resolve complaints when it appears that discipline may have been warranted. Auditors identified 10 of 30 cases resolved with consent agreements in 1997 and 1998 where investigators had identified possible statutory violations and recommended discipline in the form of censure, as well as requirements such as continuing education and restitution.[1] In lieu of the disciplinary censure in these cases, the Board entered into nondisciplinary consent agreements with the dentists to voluntarily complete additional education and/or pay restitution. Because these consent agreements are not considered disciplinary action, the dentists involved in these cases avoided having a disciplinary action noted on their licensing records.

Public not informed of consent agreement provisions— When the Board enters into nondisciplinary consent agreements, it informs consumers seeking information that the complaints were dismissed. Ordinarily, a complaint dismissal indicates that there is no evidence of statutory violations. Therefore, entering into consent agreements in lieu of taking disciplinary action and reporting these cases as dismissed can mislead the public and compromise consumers' ability to make informed decisions. Here is one of the more serious cases the auditors identified:

- Investigators identified potential statutory violations involving billing irregularities, fraud, and misrepresentation and recommended that the Board impose censure, restitution, continuing education, and random audits. The Board

[1] The 30 consent agreements reviewed were nondisciplinary and did not include those related to the Board's Monitored Aftercare Treatment Program, which uses consent agreements to help ensure that licensees with substance abuse problems receive treatment.

did not censure the dentist, but did enter into a consent agreement requiring 12 hours of continuing education, $752 restitution, and random audits. When consumers call to request information about this dentist, they are informed only that this complaint was dismissed.

In another, more typical, case:

- Investigators substantiated allegations of a dentist performing inadequate crown and bridge work and recommended that the Board impose censure, restitution, and continuing education. The Board entered into a consent agreement for $500 restitution and six hours of continuing education. Since censure was not imposed, the Board reports this complaint as dismissed.

If the Board continues to use consent agreements to resolve cases that appear to involve statutory violations, it should treat these agreements as disciplinary and report their provisions to the public.

Inconsistent Malpractice Case Adjudication Adversely Impacts Public Information

The Board's actions on certain malpractice complaints have limited the public's ability to obtain information about some malpractice cases. Using the Board's database and meeting minutes, auditors identified and reviewed information relating to all 36 malpractice cases received and adjudicated in 1996, 1997, and 1998. The Board imposed censure in 7 of the 36 cases. In 3 of the 36 cases, however, it appeared that the Board considered imposing discipline but instead chose not to based on concerns that the information would be "double reported" to a national data bank. [1]

[1] The remaining 29 cases were dismissed. Of these 29, 12 were dismissed with a nondisciplinary letter of concern and/or consent agreement.

The double-counting concerns are related to a database called the National Practitioner Data Bank (Data Bank), which maintains disciplinary and malpractice settlement histories that are accessible to health care organizations and state licensing boards. When a malpractice insurer settles a claim, it informs the Board and also reports the settlement to the Data Bank. Based on the insurer's report, the Board opens a complaint against the licensee or certificate holder and performs its own independent investigation. If the Board decides to impose censure, this decision is also reported to the Data Bank.

Although the Board's adjudication of the complaint is supposed to be independent of the insurer's actions, in a few malpractice cases the Board appears to have allowed concerns about potential double-counting in Data Bank records to influence its decisions. Here are two examples:

- In one instance, the Board reviewed a complaint against a dentist and initially voted to impose censure. However, the dentist's attorney argued that because the dentist had already been reported to the Data Bank for this malpractice case and Board discipline would result in a second report, the dentist would be subject to discipline twice on the same case. After discussion, the Board voted a second time, changing its conclusion to "no violation" and calling for a nondisciplinary letter of concern and a consent agreement for six hours of continuing education.

- In another case, the dentist's attorney likewise argued that a Board censure would result in the dentist being disciplined twice because of Data Bank reporting requirements. He also pointed out that the dentist had been practicing for more than 20 years and had not previously appeared before the Board. The Board agreed to enter into a nondisciplinary consent agreement for 12 hours of continuing education in crown and bridge procedures. At the time, the Board was unaware of another pending complaint against this dentist that also alleged inadequate crown and bridge work.

The Board's concern that its action would result in a double-counting are unfounded. According to a National Data Bank representative, health care organizations would be informed of

both malpractice settlements and state licensing actions, and could determine whether the actions related to a single case.

Public needs to be better informed of corrective actions dentists are required to take.

The Board's action deprives the general public of information about the incident. The general public does not have access to Data Bank information and is privy only to board actions. When Data Bank reporting requirements impact board decisions, the public is not made aware of the extent of the Board's concerns. To minimize inconsistency and better inform the public, the Board needs to ensure malpractice cases are adjudicated without regard for Data Bank reporting requirements.

Recommendations

1. When the Board uses consent agreements to resolve complaints that appear to involve statutory violations, the Board should report the provisions of the consent agreements to the public.

2. The Board needs to ensure that it adjudicates malpractice cases solely on their merits and without regard to whether the case has been reported to the National Practitioner Data Bank.

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OTHER PERTINENT INFORMATION

Concerns have been raised by the public and legislators regarding the provision of holistic dentistry in Arizona. Holistic dentistry, which is not a specialty recognized by the American Dental Association, espouses treating the teeth and mouth to enhance overall health.[1] Issues relating to holistic dentistry are not new in Arizona, and have been previously debated in the Legislature in 1995 and 1996. Most recently the issue was brought to the forefront when the Board received several complaints against one holistic dentist and voted to hold a formal hearing to determine whether action should be taken against his license.

Holistic Dentistry Philosophy and Practices

Holistic dentistry, also known by names such as alternative or biological dentistry, advocates using restoration materials other than amalgam[2] and focusing on the unrecognized impact that dental toxins and hidden dental infections can have on overall health. A common practice among dentists who embrace the holistic dentistry philosophy is removal of amalgam fillings because of concerns about mercury toxicity. However, the American Dental Association's *Principles of Ethics and Code of Professional Conduct* does not support this procedure in situations where the fillings are still serviceable and the patient does not initiate their removal. Some holistic dentists also perform more invasive procedures, such as removing teeth that have had

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1 The eight ADA-recognized specialty areas are endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, dental public health, and oral and maxillofacial pathology.

2 Amalgam generally consists of a mix of silver, mercury, tin, and copper. It is typically the least expensive filling material, is long lasting, and can be placed in a single visit. However, some consumers and dentists believe amalgam fillings can contribute to noncurable systemic illnesses, such as Alzheimer's disease.

root canals. Others also perform cavitational surgery. There is no prohibition against dentists performing or choosing not to perform these activities so long as they do not misrepresent the procedures or cause patient harm.

Cavitational Surgery—Surgery to remove what are thought to be residual areas of dead bone tissue in the jaw bones around the former site of a tooth. It involves cutting into the soft tissue to reach the bone and then curretting, or cleaning out, the bone surrounding the area. Sites for possible cavitational surgery are not detectable through x-rays, and cannot be treated with antibiotics.

Attempts Have Been Made to Obtain Recognition

There have been efforts to have holistic dentistry recognized in the State. In 1995, a Sunrise review hearing was held to discuss establishing a separate board to regulate holistic dentists. Proponents argued that the existing dental board is biased against holistic dentists because of their nontraditional practices and procedures. A bill was never introduced, however, because the number of dentists who considered themselves holistic appeared to be so few that a separate regulatory board could not have been supported through licensing fees. One supporter indicated that there were approximately 20 holistic dentists practicing in the State.

After the failed attempt to establish a separate board, legislation was introduced in 1996 to require one Board of Dental Examiners member to be a holistic dentist. This effort was also unsuccessful.

More recently, holistic proponents have sought administrative rules specifically defining dentistry and assuring that holistic dentistry may be practiced in Arizona. However, dentistry in Arizona is defined in statute, and the Board does not have the authority to further define dentistry in rule. These recent efforts are related to a formal hearing against one holistic dentist.

Formal Hearing Addressed Complaints Against One Holistic Dentist

When the Board initiated a formal hearing against one holistic dentist, allegations arose that this dentist had been singled out because of his holistic philosophy; however, the formal complaints against this dentist do not support the allegations. During a 16-day formal hearing, an independent administrative law judge heard 9 complaints against this dentist. Based on the evidence, the judge recommended that the Board revoke the dentist's license. The conclusions of law supporting the recommendation did not pertain to holistic dentistry but rather to misconduct as defined by Dental Board statutes. Specifically, the judge concluded that the dentist had endangered patients' health, safety, and welfare through behaviors such as:

- Basing treatment on inadequate x-rays and insufficient and unreliable clinical data;
- Failing to maintain adequate treatment records for each of the 9 patients involved;
- Failing to perform periodontal evaluations, despite evidence of periodontal concerns;
- Abandoning patients in the midst of treatment; and,
- Failing to adequately address complications stemming from procedures.

In February 1999, the Board considered the judge's recommendation and rejected it in favor of ordering censure, 5 years' probation, 48 hours of continuing education, and 5 years of quarterly audits of diagnosis, treatment, and planning skills, as well as recordkeeping.

The allegation in this case that the Board singles out holistic dentists appears to be unfounded. In fact, based on a review of complaint records, few dentists appear to be practicing holistic

dentistry. Further, in those instances where complaints have been made about these dentists, most appear typically to relate to the quality of dental work rather than to practices considered "holistic."

SUNSET FACTORS

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

1. The objective and purpose in establishing the Board.

The Board was established in 1935 to protect the public's health, safety, and welfare by licensing dentists and investigating and adjudicating complaints. Since then, the Board's statutes have been amended to also require licensure for dental hygienists, and to provide for certification of denturists and dental assistants who take oral x-rays. Other statutory responsibilities include issuing permits to dentists who administer general anesthesia, semiconscious sedation, or conscious sedation; and issuing restricted permits to dentists who work for charitable organizations and do not receive compensation.

To enable the Board to fulfill its responsibilities, statute authorizes the Board to perform such activities as:

- Establish uniform and reasonable educational requirements;
- Determine eligibility of applicants for licensure, certification, and/or permits;
- Investigate charges of misconduct;
- Resolve or adjudicate complaints through either mediation or hearings; and,
- Establish a program to rehabilitate licensees with substance abuse problems.

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

The Board's licensing and complaint-handling processes appear to be generally efficient and effective. Specifically:

- **Licensing renewals—**The Board issues renewal licenses in a timely manner. Auditors reviewed a random sample of 30 renewal applications and found the Board issued renewal licenses within two weeks of receiving the application, and in some cases on the same day the application was received.

- **Complaint processing—**Complaint handling has improved and is now generally timely. Statute requires the Board to act on complaints within 150 days, unless there is good cause for extending this time frame. A 1993 Auditor General review found that the Board seldom heard cases within the statutory 150-day time frame and had accumulated a large backlog of complaints (see Report No. 93-1). At the time of the report, the Board had 333 unresolved complaints, which was equivalent to more than one year's worth of complaints.

  Since the last report, the Board has improved timeliness and eliminated its backlog. Analysis of computerized data relating to 1,040 complaints received in 1996, 1997, and 1998 shows timeliness has improved; the average time from receipt to initial Board action is 162 days. Although this average exceeds the statutory allowance, there appeared to be good cause for exceeding the 150-day standard for approximately 57 percent, or 316, of the 555 cases involved. Specifically, 214 cases were postponed at the request of the complainant or the licensee, for the most part; and 102 cases required a clinical evaluation by an outside dentist to ascertain the quality of work. In the remaining 239 cases, good cause for delayed action was not readily identifiable. It also appears that improved timeliness has eliminated the Board's backlog. A separate review of cases not yet acted on

was performed and it appears that the Board currently does not have a complaint backlog.

In addition, the 1993 audit reported that board requirements for filing a complaint may unnecessarily burden the public; however, these requirements have since been modified. At the time of the audit, statute required complainants to sign their complaints in the presence of a notary or authorized board staff member. The Board also required that complainants sign a form authorizing the release of their dental records to the Board. Statute now requires complainants to sign their complaints, but does not require that these signatures be verified. In addition, the Board no longer requires complainants to authorize release of their records. Instead, it has adopted the audit recommendation to use its subpoena powers to obtain dental records.

Although the Board's processes were generally efficient and effective, Auditor General staff did identify processes that could be improved. Specifically:

- **Compliance monitoring**—Although complaint handling appears generally timely, the Board could improve its enforcement efforts and the consistency of some complaint adjudications. Specifically, the Board needs to increase its efforts to ensure that licensees and certificate holders take corrective action in response to complaints. (see Finding I, pages 9 through 12). In addition, the Board needs to ensure that the public has adequate knowledge of the extent to which actions are taken against dentists (see Finding II, pages 13 through 17).

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

The Board has generally operated in the public interest to protect the public health, safety, and welfare. The Board publishes a quarterly newsletter to inform regulated individuals of its actions and to educate them about compliance issues. In addition, the Board provides

consumers with accessible and accurate information about licensed professionals by telephone or through review of board files.

Notwithstanding the Board's general efforts to operate in the public interest, auditors identified two main ways in which the public interest could be better protected. Specifically:

- **Increasing information provided to consumers—** Test calls made by the auditors, and a visit to review information in person, showed that the Board readily released information about licensure status and complaints, including disciplinary actions. However, the Board could do more to inform the public by ensuring malpractice complaint adjudications more accurately reflect its concerns. The Board should also begin informing consumers about the nature of all dismissed complaints as well as consent agreement provisions (for further discussion see Finding II, pages 13 through 14).

- **Increasing consumer advocacy on the Board**—A legislative change increasing the Board's public membership so that it is closer to 50 percent could potentially increase consumer advocacy on the Board. Previous Auditor General reports recommend that regulatory boards' public membership be 50 percent. Currently, the Board's statutes require 27 percent public membership. The Board consists of six licensed dentists, two licensed dental hygienists, and three public members. To increase public membership closer to 50 percent, the Legislature would need to amend A.R.S. §32-1203(A).

  To increase the potential for public members to be effective consumer advocates, they must be selected and trained for that purpose. As discussed in a previous Auditor General report on the health regulatory system (see Report No. 95-13), public board members should receive training on the importance of their public protection role. Currently, through its Board

Member Orientation and Procedures Manual and initial orientation, the Board informs new members of their role to protect the public. These efforts should continue since the board member training available through the Governor's Office for Excellence in Government does not include information on the importance of the public protection role.

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

The Board promulgates rules pursuant to A.R.S. §32-1207(A) and (B). Although the Board has recently reviewed and updated its rules, according to the Governor's Regulatory Review Council, some rules further defining and clarifying some statutory requirements are needed. Issues to be addressed include:

- Standards for determining whether postgraduate training is equivalent to an approved dental residency training program;
- Standards the Board will use to determine disciplinary action;
- Standards the Board will use to determine whether evidence of additional training completion is satisfactory for denture technology applicants who have failed two or more examinations;
- Standards the Board will use to determine whether to inspect dispensing dentists' practices;
- Fees to be charged for copying records and for the jurisprudence examination; and,
- Treatment and rehabilitation of licensees involved in the monitored aftercare treatment program.

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 Board staff, the Board has encouraged public input in revising and developing its rules. To assist it with developing and revising rules, the Board has established a number of committees. The committees include board members, association representatives, lay members, and representatives from other state agencies, as appropriate. The committee meetings are open to the public and interested parties are given notice of the meetings. The Board considers committee recommendations during its regular meetings, and the public also has an opportunity to comment on the rules at that time.

In addition, the Board also complies with Open Meeting Laws by appropriately posting meeting notices. Further, the Board notifies complainants and licensees of board meetings and actions.

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

The Board has sufficient statutory authority and disciplinary options to investigate and adjudicate complaints. The Board receives approximately 450 complaints each year, most of which are against dentists. In adjudicating these complaints, the Board has disciplinary options ranging from dismissal or nondisciplinary letters of concern to suspension or revocation. The Board may also impose or require censure, probation, practice restrictions, continuing education, restitution, peer review, and administrative penalties. In addition, statute also allows the Board to mediate complaints that do not appear to include dental incompetence, malpractice, or criminal allegations. As discussed earlier in Sunset Factor 2 (see pages 24 through 25), the Board appears to be generally timely in processing complaints and does not appear to have a backlog.

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. §32-1266 authorizes the Attorney General's Office to prosecute actions and represent the Board. The Board currently has an intergovernmental service agreement with the Attorney General's Office for one full-time and one part-time assistant attorneys general to advise the Board and prosecute actions under the Board's statutes. In addition, the Board works with agencies such as the Department of Public Safety and the federal Drug Enforcement Agency to investigate cases involving criminal allegations, such as abuse of prescription-writing privileges and fraud.

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

According to Board staff, numerous changes have been made to agency statutes over the years. For example, during the 1993 legislative session the Board received authority to require graduates of nonaccredited schools to receive additional schooling from an accredited program and to successfully complete national board exams. Additional changes required dentists to have successfully passed a clinical examination within the past five years. Other changes included such things as requiring dentists who administer semi-conscious and conscious sedation to obtain a permit. During the 1995 legislative session, statutes defining unprofessional conduct and records maintenance were expanded and licensure requirements for dentists and dental hygienists were standardized. Other changes established an examination for dental assistants who take x-rays and gave the Board the authority to mediate complaints. During the 1996 legislative session, statutory language was clarified pertaining to issues such as restricted permits and subpoena authority.

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.

As discussed earlier in Sunset Factor 3 (see pages 25 through 27), the Legislature should consider modifying A.R.S. §32-1203(A) to increase the number of public members on the Board so that it is closer to 50 percent.

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

Terminating the Board would significantly endanger the public health, safety, and welfare. Health care providers are typically viewed as experts, which makes the public vulnerable. In addition, dentists generally operate without much oversight from peer review. Consequently, without state regulation establishing educational and competency standards, the public could be subject to untrained and unskilled dental practices. In addition, individuals who were physically or financially harmed would have fewer avenues for obtaining relief. Currently, all 50 states, as well as the District of Columbia, Puerto Rico, and the Virgin Islands, regulate dentistry.

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.

This audit found that the current level of regulation exercised by the Dental Board is appropriate.

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 uses private contractors for services such as complaint investigation, mediation, and evaluation of the participants in its Monitored Aftercare Treatment Program. According to the Board's Executive Director, use of contract personnel in these positions is cost-

effective since the services are obtained on an as-needed basis. These contracts appear to have been properly developed and awarded. However, the Board has exercised its option to renew these contracts a number of times, and has not obtained adequate justification for cost increases it has awarded.

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Agency Response

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ARIZONA STATE BOARD OF DENTAL EXAMINERS

5060 North 19th Avenue, Suite 406 ! Phoenix, Arizona 85015-3214

Telephone (602) 242-1492 ! Fax (602) 242-1445

Jane Dee Hull, Governor

August 16, 1999

Ms. Debbie Davenport
Acting Auditor General
2910 North 44th Street, Suite 410
Phoenix, AZ 85018

RE: Arizona State Board of Dental Examiners'
Response to the Auditor General

Dear Ms. Davenport:

This is in response to your revised preliminary report dated August 13, 1999. The Board reviewed the two Findings and subsequent recommendations as well as the Sunset Factors at their August 6, 1999 Board Meeting.

It was noted in your letter that the Joint Legislative Audit Committee now requires a written explanation of the status of all recommendations within six months. The Board will comply with this request no later than the end of February 2000.

Enclosed is the Board's written response to be included in the published report. As indicated in the written comments, the findings of the Auditor General are agreed to and the audit recommendations will be implemented.

Sincerely,

Robert J. Price, DDS
President of the Board

Julie N. Chapko
Executive Director

Encl

ARIZONA STATE
BOARD OF DENTAL EXAMINERS

Response to the
Auditor General's Preliminary Report

FINDING 1: The Board should improve its monitoring efforts.

The Auditor General recommends that:

1. The Board needs to ensure that data such as due dates and completion dates are consistently and accurately entered into tracking fields to facilitate monitoring and enforcement efforts.

2. The Board needs to establish and implement a schedule for running, reviewing, and acting on management reports to ensure instances of noncompliance are identified and necessary follow-up is performed in a timely manner.

BODEX response:

The Board agrees with the Auditor General's two recommendations involving monitoring efforts and has begun to implement them in the following way:

1. It should be noted that many of the inconsistencies have occurred because consent agreements have been prepared by the Attorney General's Office, and therefore the terms of the Agreements were not entered into the database. The Board believes it is only fair to consider the total number of cases that have been monitored over the last five fiscal years:

TYPE	FY 95	FY 96	FY 97	FY 98	FY 99	TOTAL
Sanction	**125**	**68**	**55**	**68**	**63**	**379**
CA (D)[1]	**13**	**10**	**16**	**14**	**14**	**67**
CA (ND)[2]	**0**	**1**	**12**	**16**	**33**	**62**
GRAND TOTAL						**508**

[1] Consent Agreements that are disciplinary as a result of a violation of the Dental Practice Act.
[2] Consent Agreements that are non-disciplinary but generally require some type of compliance.

Monitoring is a monumental task for an agency this size especially when you consider the fact that the period of enforcement overlaps from year to

year. We began to address this problem over a year ago. A "tracking table" was devised but in spite of this early effort, a few fell through the cracks mainly due to a turnover in staff.

At this point in time, an intensive review has been done, staff responsibilities clearly designated, and a comprehensive effort has been made to update this pertinent information in the database. Those agreements that are currently under "enforcement" and are still being monitored have had the terms of the agreement, due dates, completion dates if applicable, and findings of fact entered into the database. The "standard" terms of the agreements for the Monitored Aftercare Treatment Program have been programmed into the database so that those may be created in this office.

For those agreements in which the terms have been met, pertinent information has been added in the database stating the terms have been met, the date and the case is closed.

Improvements in this area will continue to be taken very seriously by this Board. Every effort will be made to appropriately monitor all cases.

2. The Board agrees the long established management tracking report system should be better utilized. Effective immediately, reports will be run the first week of each month for appropriate follow-up.

FINDING 2: The Board could better serve the Public through improved handling of Consent Agreements and Malpractice Cases

The Auditor General recommends that:

1. When the Board uses Consent Agreements to resolve complaints that appear to involve statutory violations, the Board should report the provisions of the Consent Agreement to the public.

2. The Board needs to ensure that it adjudicates malpractice cases solely on their merits and without regard to whether the case has been reported to the National Practitioner Data Bank.

BODEX response:

The Board agrees with the Auditor General's two recommendations involving better serving the public through the handling of Consent Agreements and Malpractice Cases and has begun to implement them in the following way:

1. In an effort to provide the public with accurate information on consent agreements, the provisions agreed to by the licensee will be entered into

the database as outlined above. For clarification, this would include restitution or voluntary payment, continuing education whether voluntary or not, community service, etc.

The Board in good faith initiated the use of non-disciplinary Consent Agreements. The rationale behind this approach was twofold: (1) The dentist would take responsibility for his or her actions; and (2) often the result would be appropriate remuneration to the complainant in a more timely manner. Another frequently imposed condition of a consent agreement was completion of continuing education in a subject matter related to the case. An element of every consent agreement has been that the dentist would not take the Board to Superior Court, which prolongs payment to the patient and is costly to the Board.

To ensure the public is protected:

- The Board now considers previous cases reflecting similar allegations prior to final adjudication on a more consistent basis.

- The Board will establish broad categories which will allow the public to know the nature of a complaint (i.e., "quality of care," "billing irregularities," "non-compliance," "substance abuse," etc.)

2. The Board will be better educated that malpractice cases must be adjudicated without regard to whether the case has been reported to the National Practitioner Databank. The Board understands their responsibility in protecting the public. As an explanation of the Board's past practice, this has always been argued before the Board as an issue of due process and double jeopardy – in fact, the Board took into consideration the opinions of several past Lay Members who supported this interpretation. It should be noted that these individuals were practicing attorneys.

SUNSET FACTORS TO ADDRESS:

1. ***The objective and purpose in establishing the Board.***

   No response necessary.

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

» Compliance monitoring – addressed in Finding 1.

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

» The Board should also begin informing consumers about the nature of all dismissed complaints as well as consent agreement provisions.

For clarification, staff is trained to inform the public they may come to the Board office and review the administrative (or public) files of licensees which includes Board Orders, Letters of Concern, and/or Consent Agreements. As far as Dismissed Complaints are concerned, potentially, this is a burdensome requirement in light of the tremendous telephone inquiries received on a daily basis. However, as previously stated in Finding II, the Board will establish broad categories which would allow the public to know that a complaint was regarding a "quality of care" issue, a "billing irregularity," "non-compliance," "drug or alcohol abuse," etc. It would not be appropriate to outline the allegations that were ultimately dismissed. Broad categories would minimize the potential agency liability arising from an inaccurate description or summary of the charges.

» Increasing consumer advocacy on the Board

It is suggested in the audit report that the membership of the Boards be closer to 50 percent.

The Board relies on and respects the opinions of lay members, their role is very important. Consequently, lay members serve on Investigative Interview panels, Informal Interview panels, and Board Committees.

However, dental expertise is required to understand the details involving the majority of complaints received by this Board which includes the ability to establish sound findings of fact based on patient records, treatment planning, charting, testimony, and x-rays. Increasing the public membership closer to 50 percent would not necessarily make the Board more efficient or better protect the public. National studies regarding greater lay membership on health regulatory boards do not conclusively indicate that greater lay representation automatically transfers to greater or better disciplinary action against licensees (*Health Letter*, The Public Citizen Health Research Group, May 1995, page 9.)

It is important to note that it was reported in both 1994 and 1995 in the American Association of Dental Examiners *Composite*, that the Arizona State Board of Dental Examiners took more disciplinary action against licensees than any other state dental board in the country.

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

» Standards for determining whether postgraduate training is equivalent to an approved dental residency training program.

An approved dental residency training program **is** postgraduate training. The two terms are synonymous. Postgraduate training includes two general programs and the eight recognized specialty areas. The two general programs are Advanced Education in General Dentistry (community-based) and Advanced Education in General Practice Residency Programs (hospital-based). There are three other areas of postgraduate training available in oralfacial pain, anesthesiology, and radiology that are not recognized specialties. Most recognized specialty programs require a year of postgraduate training as a prerequisite. This particular issue has not been a problem or concern to the Board. Also, the Board does not issue specialty licenses.

» Standards the Board will use to determine disciplinary action.

The Board drafted disciplinary guidelines in response to 1995 Session Law. They are included in the Board Members Orientation and Procedures Manual. The Board is in the process of revamping them and they will become a substantive policy.

» Standards the Board will use to determine whether evidence of additional training completion is satisfactory for denture technology applicants who have failed two or more examinations.

The Secretary of State repealed this section after the last 5-Year Rule Review because the Board has a contract with the Western Regional Examining Board (WREB), a nationally recognized testing agency, that maintains dental and dental hygiene remediation policies.

At this time, the Board regulates 14 denturists that were certified in 1979. Since that time, no new applicants have been certified mainly because there are no schools of denture technology in the United States. When necessary, the Board will amend the state contract with WREB to include testing of denturists.

The official Candidates Guide for the exam states “Candidates are allowed to take the exam three times. Upon the third failure WREB requires remediation in all areas of deficiency prior to retaking the exam.” WREB has specific remediation course requirements. To take the exam again, the candidate must provide a “Dental Certification of Successful Completion

of Remedial Education Requirements" signed, with school seal, by the instruction. The "evidence" that the additional training was satisfactory would be fulfilled by the result of the test.

One Board Member serves on the Board of Directors for WREB. One dentist and one dental hygienist serve on their respective Examination Review Committees, and all dentists and dental hygienists are examiners throughout the country at WREB exams. Therefore, our Board takes its responsibility of ensuring that its licensees satisfactorily meet the requirements of remedial training very seriously.

» Standards the Board will use to determine whether to inspect dispensing dentists' practices.

The Board conducts inspections only if there is an allegation or violation of the law. Inspections are conducted pursuant to statute (A.R.S. § 41-1009) and the Board would then take appropriate action against a dentist who had been issued a permit. The Board's rules outline requirements licensees must adhere to regarding Labeling and Dispensing, Storage and Packaging, and Recordkeeping. The proper protocol for an on-site inspection regarding dispensing is underway and will be approved by the Board at the October 1, 1999 Board Meeting.

» Fees to be charged for copying records and for the jurisprudence examination.

The Board has begun the process for establishing these fees in rule. A Notice for Rule Making Docket Opening regarding fees was received by the Secretary of State June 22, 1999. (Note: Repeal of the jurisprudence exam fee was an oversight.)

» Treatment and rehabilitation of licensees involved in the monitored aftercare treatment program.

The Board seeks the advice of an addictionologist on each individual. In order to appropriately assess the best means of treatment, the Board relies on the recommendation of the addictionologist. To ensure successful compliance with the terms, an agreement is crafted on a case by case basis.

State Procurement has recently awarded a new contract for the services of an addictionologist. The overall program is assessed on an ongoing basis to ensure adequate treatment and subsequent protection of the public.

An analysis of the Board's program and its 20 participants was done for the period of 1993 through 1998 including a questionnaire completed by

all 20 participants. The major points of interest were: (1) the current rate of successful programs was 90 percent; and (2) there had been two failures due to relapse in which one license was revoked and the other was voluntarily surrendered. It is the Board's opinion that restricting this program to the burdensome rules process could ultimately hamper changes inherent in such an important, evolving program.

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.***

No response necessary.

6. ***The extent to which the Board has been able to investigate and resole complaints that are within it jurisdiction.***

No response necessary.

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.***

No response necessary.

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

No response necessary.

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.***

No response necessary.

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

No response necessary.

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.***

No response 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 has exercised its option to renew these contracts a number of times, and has not obtained adequate justification for cost increases it has awarded.

Based on the fact that only those contracts awarded by the State Procurement Office (SPO) on behalf of the Dental Board have included renewal price increases, the Board has always considered those increases during evaluation process. It should be noted that this philosophy has been acceptable to SPO in the past and only recently, through the Auditor General's inquiry has a SPO representative indicated that additional justification is required. It should also be noted that while SPO has suggested further justification to the Auditors, SPO has not officially communicated this position to the Board nor provided assistance through suggested documentation, etc. Since it is the State Procurement Office that awards each renewal, it is interesting that they have never questioned the Board as to whether or not justification was received.

Other Performance Audit Reports Issued Within the Last 12 Months

98-12	Arizona Universities' Enrollment
98-13	Private Enterprise Review Board
98-14	Adult Services
98-15	Podiatry Board
98-16	Board of Medical Examiners
98-17	Department of Health Services—Division of Assurance and Licensure
98-18	Governor's Council on Developmental Disabilities
98-19	Personnel Board
98-20	Department of Liquor
98-21	Department of Insurance
98-22	State Compensation Fund
99-1	Department of Administration, Human Resources Division
99-2	Arizona Air Pollution Control Commission
99-3	Home Health Care Regulation
99-4	Adult Probation
99-5	Department of Gaming
99-6	Department of Health Services—Emergency Medical Services
99-7	Arizona Drug and Gang Policy Council
99-8	Department of Water Resources
99-9	Department of Health Services—Arizona State Hospital
99-10	Residential Utility Consumer Office/Residential Utility Consumer Board
99-11	Department of Economic Security—Child Support Enforcement
99-12	Department of Health Services—Division of Behavioral Health Services
99-13	Board of Psychologist Examiners
99-14	Arizona Council for the Hearing Impaired

Future Performance Audit Reports

Department of Building and Fire Safety
Department of Health Services—Tobacco Education and Prevention Program
Department of Health Services—Bureau of Epidemiology and Disease Control Services