



# Arizona State Board of Dental Examiners

“Caring for the Public’s Dental  
Health and Professional Standards”

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September 27, 2022

Lindsey Perry, CPA, CFE, Arizona Auditor General  
Arizona Auditor General  
2910 North 44<sup>th</sup> Street, Suite, 410  
Phoenix, Arizona 85018-7271

***Re: Arizona State Board of Dental Examiners – Sunset Review Audit; A.R.S. § 41-3023.07***

Dear Ms. Perry:

At its special board meeting on September 26, 2022, the Arizona State Board of Dental Examiners’ (“Board”) voted to approve the enclosed response to the Auditor General’s Sunset Review Audit.

The Board’s staff, as well as the Board itself, appreciated the professionalism and courtesy of the Auditor General’s staff and believes that we developed a candid and great working relationship. The Board has already begun addressing the findings by forming an ad hoc committee consisting of current board and investigation committee members and two members of the public to develop guidelines as outlined in the Audit to achieve the recommended, successful results during post-audit meetings.

The Board through its executive director, Ryan Edmonson, and other staff, look forward to meeting with the Committees of Reference in both chambers of Arizona government with positive changes already made. In addition, the Board has finally been able to make a giant leap forward with a new database that should be operational by December 2022, which will help the Board become more automated and track and provide better measuring metrics.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ryan Edmonson", is written over a light blue circular stamp.

Ryan P. Edmonson  
Executive Director

Enclosure: Board’s Response(s)

Cc: Dr. Anthony Herro, Board President  
Dr. Lisa Bienstock, Board Vice-president  
Monette Kipke, Audit Manager

**Finding 1:** Board has not considered nature and severity of some complaints' substantiated violations or licensees' history when taking enforcement action, potentially jeopardizing public health and welfare

**Recommendation 1:** The Board should work with its legal counsel to develop and implement policies and procedures for determining and taking enforcement actions that address the nature and severity of substantiated violations, including:

**Recommendation 1a:** Establishing when to use nondisciplinary versus disciplinary actions.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board currently references statute as a basis to determine whether there is a violation that merits non-disciplinary or disciplinary action. The Board currently receives their board materials, which also includes the Board's current statutes and rules. The Board reviews all matters on the merits of each case. Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

**Recommendation 1b:** Implementing a graduated and equitable system of sanctions structured so that the discipline rendered is sufficient to achieve the desired results of ensuring that public health and welfare are protected.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

**Recommendation 1c:** Documenting its consideration of mitigating and/or aggravating factors when determining enforcement actions, including licensee disciplinary and nondisciplinary histories.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

**Recommendation 2:** The Board should, consistent with its statutory authority and written procedures, review and consider a licensee's history when determining enforcement action.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Based on the recommendation, the Board will be meeting with the AG's office and staff to form guidelines for imposing non-disciplinary and disciplinary actions beginning 10/7/2022.

**Recommendation 3:** The Board should adhere to its statutory authority when resolving complaints, such as by refraining from dismissing complaints without prejudice.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board implemented this procedure in, or around March 2022, when it was discovered that staff, by direction from the previous administration, was dismissing complaints without prejudice when a licensee, under investigation, let his/her license expire. Pursuant to A.R.S. § 32-3202, the staff is fully aware that they cannot dismiss complaints without prejudice due to the expiration of a licensee's license if there is a pending investigation. Instead of expiration that license is suspended on the date it otherwise would have expired.

**Finding 2:** Board has not resolved some complaints in a timely manner, which may affect patient safety

**Recommendation 4:** The Board should investigate and resolve complaints within 180 days.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board continually strives to investigate and resolve complaints within 180 days. However, the Board has not been able to do so due to the lack of resources, staff and support. Please note the Board's inability to receive funding to hire 11 FTEs until July 1, 2021. From 2019 – 2021, the Board only operated with 2 or 3 compliance FTEs. Since November of 2021, the Board has maintained 3 consistent FTEs in compliance and is hopeful that their appropriation request to hire additional staff is met.

**Recommendation 5:** The Board should assess the impact of its current number of contracted investigators on its complaint-resolution timeliness and take action as needed to ensure it has a sufficient number of investigators to resolve complaints within 180 days.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board believes that it has already begun implementing the recommendation by hiring more contract investigators beginning with one additional investigator in December of 2020 increasing its number of contract investigators from one to two. After the Board received its higher appropriated request beginning in July 2021, the Board sought to hire three more contract investigators, and the final contract was signed and implemented in May 2022 bringing the total contract investigators to five. The Board believes that by contracting with five contract investigators and periodically using additional specialized consultants that it will be able to meet the 180-day recommendation.

**Recommendation 6:** The Board should continue to develop and implement policies and procedures for processing complaints, including:

**Recommendation 6a:** Time frames for completing all key steps in its complaint-handling process, including opening the complaint, assigning the complaint for investigation, completing the investigative report, placing the complaint on the Board's meeting agenda for its review, and time frames for the Board to review and resolve the complaint.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board already had procedures for key steps in its complaint-handling process including opening the complaint, assigning the complaint for investigation, completing the investigative report, placing the complaint on the Board's meeting agenda for its review, but overlooked adding time frames to its already listed procedures. The time frames were added in July 2022.

**Recommendation 6b:** Criteria for prioritizing complaints based on the nature of the alleged violations and the extent to which these alleged violations endanger the public's health and safety.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board established guidelines in or around April 2021 to include criteria for prioritizing complaints based on the nature of the alleged violations and will formalize the guideline as a policy and procedure.

**Recommendation 7:** The Board should develop and implement a process for tracking and monitoring the complaint process, including the timeliness of opening, investigating, and resolving complaints; and taking action to address delays in complaint processing.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is currently in the process of transitioning to a new database system, which should allow for tracking and monitoring of complaints. This transition is on track to be completed in December 2022. Whereas, the Board's current database lacks these efficiencies. In the meantime, board staff uses a Google Sheet to track and monitor the complaint process, which is reviewed regularly by members of the Board during their board meetings.

**Recommendation 8:** The Board should develop and implement a process that requires the Executive Director to regularly report to the Board on the timeliness of closed complaints and the status of open complaints to provide information the Board needs to monitor, review, and discuss the timeliness of complaint handling.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Staff will generate reports with the new database system to regularly provide the Board reports of complaints. In the meantime, board staff uses a Google Sheet to track and monitor the complaint process, which is reviewed regularly by members of the Board during their board meetings. The Board received a copy of the complaint log in its June 2022 meeting.

**Recommendation 9:** The Board should ensure its database can be used to monitor complaint timeliness, by:

**Recommendation 9a:** Developing and implementing policies and procedures to help ensure consistent and accurate information is entered into its database.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is currently in the process of transitioning to a new database system, which should allow for tracking and monitoring of complaints. Once the transition is complete, policies and procedures will be developed and training will be provided to board staff.

**Recommendation 9b:** Developing and implementing guidance for compiling and using the reports in its database system to track complaints.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board anticipates accomplishing more automation when the transition to the new database is complete. This includes the ability to generate reports and tracking complaints. Once the transition is complete, policies and procedures will be developed and training will be provided to board staff.

**Recommendation 9c:** Developing and providing training for staff responsible for using the database.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Once the transition to the new database system is complete, training will be provided to all board staff.

**Finding 3:** Board did not comply with some State- and Board-specific conflict-of-interest requirements, increasing risk that employees, public officers, and contract investigators had not disclosed substantial interests that might influence or could affect their official conduct

**Recommendation 10:** The Board should develop and implement conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:

**Recommendation 10a:** Ensuring all employees and Board members complete a conflict-of-interest disclosure form upon hire/appointment, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their form when their circumstances change, consistent with State requirements and recommended practices.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board established guidelines in June 2022, to check employees' possible conflicts annually, including board members, but will also formalize the guidelines with a policy and procedure.

**Recommendation 10b:** Requiring Board members to fully disclose the nature of their interests when making a conflict-of-interest disclosure and documenting these disclosures in the Board's meeting minutes.

Board response: The finding of the Auditor General is not agreed to and the recommendation will not be implemented.

Response explanation: The Board believes that members are currently disclosing all conflicts of interest at every board meeting. In fact, this is the second action item on each board agenda after the call to order. Board members declare their conflicts of interest and recuse themselves from participating in the case(s) in which they have a conflict(s). The Board's current process fulfills State and Board requirements. The Board believes that it closely follows A.R.S. § 38-503(B), which reads, "*Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision*". There is no reference to the terms "fully disclose the nature" nor are those defined terms in statute, and therefore, the Board believes this finding is without merit and will not be implemented.

**Recommendation 10c:** Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will maintain a "special file" to store the board members' conflicts of interests and meeting minutes.

**Recommendation 10d:** Establishing a process to review and remediate disclosed employee conflicts, consistent with recommended practices.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has implemented this recommendation in July 2022.

**Recommendation 11:** The Board should continue the efforts it initiated during the audit to ensure all complaint investigators complete a conflict-of-interest disclosure form prior to being assigned a case for review, as required by the Board's compliance manual.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board believes that this was already written in its procedures prior to the initiation of the audit, but staff, on several occasions did not ensure the completion of the conflicts of interests by the Board's investigators. The Board's administrative leadership has made appropriate staffing changes and has directed all compliance staff to follow the procedures to ensure the Board's investigators do not have conflicts prior to the assignment of an investigation.

**Sunset Factor 2:** The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

**Recommendation 12:** The Board should develop and implement written policies and procedures for reviewing and approving license, permit, and business entity registration applications, including:

**Recommendation 12a:** Ensuring applicants meet licensing requirements for submitting CPR certification as specified in rule.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board anticipates this requirement to be fulfilled with the new database system.

**Recommendation 12b:** Requiring Board staff to confirm the validity of fingerprint clearance cards at initial licensure.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is looking to resolve this with the implementation of its new database. In the meantime, the Board implemented guidelines in or about September 2022, with its licensing staff, to confirm the validity of fingerprint clearance cards by accessing the Arizona DPS fingerprint website and printing the confirmation and storing it in the applicants' files.

**Recommendation 13:** The Board should develop and implement written policies and procedures for annually conducting continuing education audits, as required by rule.

Board response: The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.

Response explanation: The Board anticipates this requirement to be fulfilled with the new database system which will allow staff to do a 100% CE audit. Policies and

procedures will be developed after the transition to the database is complete. Additionally, and from the Board's understanding, the Auditor's only reviewed records in 2021. During that year, and the year prior, the Board lifted many of its restrictions and CE requirements due to the Governor's exercised executive powers through his Executive Order 2020-17 (EO), and therefore, no audits were conducted to determine the compliance of the CE requirements. In light of the EO and the Board's CE requirements, most, if not all, licensees would have failed an audit since one of the requirements limits the licensees to a minimum number of self-study courses. The EO allowed for licensees to complete as many self-study courses as desired to maintain physical distance. The EO was lifted December 2021.

**Recommendation 14:** The Board should improve the use of its database for licensing and complaint handling by:

**Recommendation 14a:** Developing and implementing policies and procedures to help ensure the consistent and accurate entry of licensing and complaint information into its database, including performing risk-based supervisory review of data entry.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is in the process of transitioning to a different database system. If necessary, policies and procedures will be developed after the transition to the database is complete. It may be unnecessary to develop policies and procedures due to the new automation of the Board's new database, which is projected to require the licensees to submit proof for each course they completed to meet the Board's CE requirements. After the new database is available and all staff receives formal training, the Board will create policies and procedures to address the accuracy of data for entering and retrieving complaint data.

**Recommendation 14b:** Working with its contractor to develop and provide training to all staff who use the database, ensuring staff are trained upon hire, and/or as changes to the system are made, to fully implement database features, such as generating and using data reports.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The contract with the new database vendor requires the vendor to provide training to all staff. The training will be given orally and in print and the Board will maintain all print versions of the training received to ensure new staff will be given the same instructions.

**Recommendation 15:** The Board should develop and implement written policies and procedures for protecting complainants who request anonymity, including procedures for:

- Ensuring information provided to licensees does not include information identifying complainants wishing to remain anonymous.
- Conducting a secondary review of information that is sent to licensees to help ensure that confidential information is not provided to licensees.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board's intent has never been to disclose the anonymity of a complainant to anyone and will therefore implement policies and procedures to best protect the identity of complainants who wish to remain anonymous. The Board would be remiss if they didn't opine of the audit finding that board staff redacted confidential information with a black marker, but the reader could read the complainant's name through the black redaction. This proves the Board's intent, but also the unintended consequences of not having a more consistent and robust policy and procedure for ensuring confidentiality. It's also worth noting that if a complainant is also a patient that it's virtually impossible, if not altogether impossible, to conduct an investigation without revealing the patient's identity in order to subpoena the patient's records. Board staff will revise its policies and procedures related to confidential information to receive complainant permission before proceeding to subpoena records if the complainant stated, in their complaint that they wish to remain anonymous.

**Recommendation 16:** Work with its legal counsel to determine its authority to periodically review the appropriateness of each individual fee it assesses, in addition to its renewal fees, and develop and implement written policies and procedures for analyzing the costs of its regulatory processes, comparing these costs to the associated fees, determining the appropriate licensing fees, and then revising its fees as applicable.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Pursuant to A.R.S. §§ 32-1236, 32-1276.02, 32-1287 and 32-1297.06, the Board believes that it only has statutory authority to change its renewal fees. Therefore, the Board will continue to review its renewal fees every three years. The Board will work with the Board's legal counsel to determine if it has authority, beyond the aforementioned statutes, to change its other fees without the need of a statutory revision through the legislative process or a rule change through a Notice of Proposed Rulemaking. If it's determined that the Board does have the authority, then the Board will develop policies and procedures based on that legal advice. That being said, the Board believes that its fund balance and the economy plays an important role in whether or not they change its renewal fees. Based on that, they also believe that all licensees will benefit from any reduced renewal fees, whereas not all licensees will benefit from the Board's other fees. To that end, the Board had a 100% fee waiver from January 2018 – December 2020. In April of 2021, the Board voted continue to offer its licensee population a reduced renewal fee, but not at 100%. Instead, the Board voted to reduce all licensee renewal fees by 60%. The next review will be in calendar year 2023 with an effective date of January 2024.

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

**Recommendation 17:** The Board should continue with the rulemaking process to adopt rules for dental therapists, including establishing application fees, and continuing education and licensing requirements as required by A.R.S. §§32-1276.01, 32-1276.02, and 32-1276.07.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees to continue with the rulemaking process to adopt rules for dental therapists. The Board anticipates the rulemaking process to conclude later this calendar year or early 2023.

**Recommendation 18:** The Board should seek an exemption from the rulemaking moratorium and, contingent on receiving an exemption, adopt rules as required by A.R.S. §32-1299.23(A)(B).

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Although the Board agrees with the recommendation, the Board also believes that they likely do *not* need to seek an additional exemption from the Governor's office because the Board has already been granted an exemption to amend its rules in this regard and will just add this recommendation to its current rulemaking process. However, if its determined that this recommendation is substantive and that the Board needs to seek an additional exemption to the rulemaking process, then the Board will do so. This recommendation from the Auditor General's office is appreciated.

**Recommendation 19:** The Board should comply with statutory requirements for adopting rules as specified in A.R.S. §§32-1213(M) and 32-1295(C), including taking action to seek exemptions from the rulemaking moratorium where necessary. If the Board does not comply with a statutory requirement for adopting a rule as specified in statute, it should obtain legislation that eliminates the statutory requirement to adopt the rule.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: At its September 2, 2022 meeting, the Board voted to direct staff to repeal the rules promulgated by A.R.S. § 32-1282(B). This reference is *not* mentioned in this recommendation, but it's relevant since A.R.S. § 32-1213(M) and A.R.S. § 32-1295(C) have similar language regarding the "assistance and advice" from specific, but limited dental professions. Based on the Board's action, the Board believes that A.R.S. § 32-1213(M) and A.R.S. § 32-1295(C) along with A.R.S. § 32-1282(B) are unnecessary since the Board handles all things dental related, and therefore, adopting rules for methods to receive assistance and advice is burdensome, unachievable and the makeup of the Board is such that the entire dental community is represented. The current makeup of the Board has hygienist and a business entity members. The makeup of the Board does not include a dentist, but that's because A.R.S. 32-1203(A) sets the makeup of the Board and does not include a dentist. It's worth noting that there are only 10 active dentist certificates in the State of Arizona. Based on this, the Board will seek legislation to eliminate these statutory requirements.

**Sunset Factor 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.

**Recommendation 20:** The Board should comply with all statutory requirements for providing public information, including ensuring all required nondisciplinary and disciplinary information is accurately reported and included on the Board's website and is posted for not more than 5 years.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: [The Board anticipates that the new database will address this recommendation through an automated process.](#)

**Sunset Factor 6:** The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the Board to timely investigate and resolve complaints within its jurisdiction.

**Recommendation 21:** The Board should develop and implement a process to track and ensure that its staff and investigators comply with statute and its complaint-handling procedures, including:

- Contacting complainants and licensees for investigation interviews.
- Notifying licensees of Board meetings where the complaint will be discussed.
- Notifying complainants of complaint outcomes.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: [The Board's current process is to contact all complainants and licensees for investigation interviews. Pursuant to A.R.S. § 32-3206, all health boards, including the dental board, are required to provide notices of the Board's meetings. The Board believes it follows the law and provides proper notification of all its meetings. The Board also believes its current processes provides the complaint outcomes to all complainants with the exception of anonymous complainants, Board opened complaints, which have no complainant and the complaints opened as a result of a malpractice settlement, which is discovered by correspondence received from the National Practitioner Data Bank.](#)

**Sunset Factor 9:** The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in this sunset law.

**Recommendation 22:** The Legislature should consider revising Board statutes to require licensees to maintain a valid fingerprint clearance card and submit them at renewal.

Board response: A Board response is not required since the recommendation is to the Legislature.

**Recommendation 23:** If the Legislature revises Board statutes to require licensees to maintain a valid fingerprint clearance card and submit them at renewal, the Board should check the validity of fingerprint clearance cards at the time of license renewal.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: [If passed, the Board will adhere to the law passed.](#)