

# State of Arizona Acupuncture Board of Examiners

Board should improve its processes for issuing licenses and certificates, revise its complaint resolution process, and improve its provision of public information

Performance Audit and  
Sunset Review

September 2016  
Report 16-109

A Report to the Arizona Legislature

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Auditor General





The Auditor General is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. Her mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, she provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits and special reviews of school districts, state agencies, and the programs they administer.

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September 14, 2016

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Pete Gonzalez, Executive Director  
State of Arizona Acupuncture Board of Examiners

Transmitted herewith is a report of the Auditor General, *A Performance Audit and Sunset Review of the State of Arizona Acupuncture Board of Examiners*. This report is in response to an October 22, 2014, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the State of Arizona Acupuncture Board of Examiners agrees with all of the findings and plans to implement all of the recommendations.

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

Sincerely,

Debbie Davenport  
Auditor General

cc: State of Arizona Acupuncture Board of Examiners members

Attachment



## State of Arizona Acupuncture Board of Examiners

**CONCLUSION:** The State of Arizona Acupuncture Board of Examiners (Board) regulates the practice of acupuncture in the State by issuing acupuncture licenses and auricular acupuncture certificates, investigating and resolving complaints, and providing information to the public about licensees and certificate holders. We found that the Board has not consistently obtained all licensing information before issuing licenses, and has renewed some licenses without verifying compliance with continuing education requirements. In addition, although the Board generally resolves complaints in a timely manner, the Board's complaint resolution process is not adequately designed to protect the public and the Board has not developed complaint-handling policies and procedures to appropriately guide staff. Finally, the Board did not consistently provide accurate information about licensees and certificate holders over the phone.

### Board should strengthen its license and certification processes

**Board issued some licenses without collecting or verifying required information—**State law requires all state licensing boards to collect documentation from applicants supporting their lawful presence in the U.S. before these boards issue or renew licenses. However, the Board has not consistently obtained such documentation. We reviewed a random sample of 12 initial licenses and certificates issued between August 2010 and March 2015, and 26 licenses and certificates renewed between January 2014 and January 2016, which included 3 licensees who were not U.S. citizens, and found that the Board renewed 2 of the 3 licensees without obtaining appropriate or updated documentation of lawful presence in the U.S. One of the licensees provided a passport, but not the required visa, while the other licensee did not provide updated documentation after her permanent resident card expired. Our review of an additional sample of six active licensees who were not U.S. citizens also revealed that the Board issued initial licenses to two of these licensees without obtaining documentation required by law.

**Board renewed licenses without verifying compliance with continuing education requirements—**Licensees are required to complete 15 hours of approved continuing education annually in order to renew their licenses. The Board randomly audits compliance and a licensee must provide documentation of compliance at the time of the audit. We reviewed a random sample of 21 licenses that were renewed between January 2014 and January 2016 and found that the Board improperly issued renewals for several years to one licensee who did not certify his compliance with the continuing education requirement on his renewal applications. We also reviewed a random sample of nine licensees that the Board had selected for audit between 2010 and 2015, and found that the Board renewed two of the licenses without ensuring that the licensees met continuing education requirements.

**Board should develop and implement policies and procedures and better track citizenship documentation—**Although the Board has established some policies and procedures for reviewing and approving licenses and certificates, board staff lacked clear guidance about what specific licensing documentation to collect and how to verify it. The Board began developing additional policies and procedures for reviewing and approving renewal licenses during the audit and should continue to develop and implement them.

In addition, the Board does not have an adequate process for tracking citizenship documentation for non-U.S. licensees whose documentation may expire and need to be updated. This information is currently maintained in separate documents, which the Board must check manually, instead of the Board's licensing database, which the Board could use to generate lists of licensees whose citizenship documentation has expired. In addition, the Board uses an outdated citizenship form that licensees and certificate holders complete to demonstrate lawful presence in the U.S. that does not reflect current statutory requirements for documentation.

## Recommendations

The Board should:

- Continue to develop and implement policies and procedures for reviewing and approving initial and renewal license and certificate applications; and
- Develop a more reliable system for tracking non-U.S. licensees' citizenship documentation and update its citizenship form to reflect current statutory requirements.

## Board generally resolved complaints in a timely manner, but should improve its complaint resolution process

**Board should improve its complaint resolution process**—We reviewed all ten complaints resolved by the Board between July 1, 2012 and December 14, 2015, and found that the Board generally resolves complaints in a timely manner; however, some of the Board's rules and practices do not adequately protect the public. For example, although not authorized by law, the Board's rules require the Board to dismiss a complaint if it is not filed within 90 days of an alleged violation. In addition, rules permit the Board to close a complaint if a complainant requests to withdraw it, even when the Board has not completed its investigation. For two of the ten complaints we reviewed, one for an alleged fraudulent billing and another regarding a monetary dispute, the Board stopped its investigation and closed the complaints when the complainants requested to withdraw the complaint or indicated they had reached an agreement with the licensee. Further, rule requires the Board to determine jurisdiction before it proceeds with an investigation, but for nine of the ten complaints we reviewed, the Board did not determine whether it had jurisdiction before undertaking the investigation.

**Board lacks adequate guidance for resolving complaints**—The Board has not developed policies and procedures to guide staff in investigating complaints, such as conducting interviews or reviewing applicable documentation. In addition, the Board does not have policies or procedures in place for how to proceed when a licensee does not respond to a complaint, or for developing, reviewing, and executing consent agreements. Finally, although statute requires the Board to notify a licensee's employer, if any, of disciplinary action initiated against the licensee, the Board does not have any policies and procedures for notifying employers.

## Recommendations

The Board should:

- Remove its complaint resolution process from rules;
- Develop and implement comprehensive policies and procedures for its complaint resolution process; and
- Modify its application forms to include employment information.

## Board should improve its provision of information to public

Although the Board provides appropriate licensee information on its website, when we placed four calls to request complaint and disciplinary history information on three licensees and one certificate holder, staff provided inaccurate information for two of these calls. For one call, board staff inaccurately reported that a complaint was dismissed when the complaint actually resulted in a nondisciplinary letter of concern. For the other, board staff reported that a licensee had three dismissed complaints when the actual number was five. These errors were likely made because the information was inaccurately recorded in the Board's licensing database.

## Recommendation

The Board should implement its recently developed policies and procedures for providing information to the public and ensure that the information in its licensing database is accurate.



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## Scope and objectives

The Office of the Auditor General has conducted a performance audit and sunset review of the State of Arizona Acupuncture Board of Examiners (Board) pursuant to an October 22, 2014, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq. This audit addresses the Board's licensing and complaint resolution processes and its provision of information to the public. It also includes responses to the statutory sunset factors.

## Mission and responsibilities

The Board was established in 1998 to regulate the practice of acupuncture. Its mission is to protect the health, safety, and welfare of the public by regulating and maintaining standards of practice in the field of acupuncture. The Board's responsibilities include:

- **Issuing licenses and certificates to qualified applicants**—The Board licenses acupuncturists and certifies auricular (ear) acupuncturists (see textbox). According to board records, as of June 20, 2016, the Board had 598 active licensed acupuncturists and 38 active certified auricular acupuncturists. According to board records, the Board approved 60 new acupuncture licenses and 9 new auricular certificates in calendar year 2015. All licensees and certificate holders are required to renew their license and/or certificate annually.

**Acupuncture** is the puncturing of the skin with thin, solid needles, stimulating the needles to produce a positive therapeutic response, and the use of related therapies, such as the thermal or magnetic stimulation of acupuncture points and energy pathways.

**Auricular acupuncture** is a therapy to treat alcoholism, substance abuse, or chemical dependency, which involves inserting needles into specific points in the outer ear.

Source: Auditor General staff summary of A.R.S. §§32-3901 and 32-3922, and Arizona Administrative Code (AAC) R4-8-101.

- **Investigating and resolving complaints**—The Board is required to investigate complaints against licensees and certificate holders and can take statutorily authorized nondisciplinary or disciplinary action, as needed, such as issuing a letter of concern or placing a licensee on probation (see page 11 for more information on nondisciplinary and disciplinary options). According to board records, the Board opened a total of ten complaints against licensed acupuncturists between July 1, 2012 and December 14, 2015.<sup>1</sup> The Board did not receive any complaints against auricular acupuncturists during this time frame. Of the ten total complaints, seven were dismissed, two resulted in nondisciplinary action, and one resulted in disciplinary action.<sup>2</sup>

<sup>1</sup> Auditors determined that one complaint was against an acupuncturist who had an expired license (see Complaint resolution, page 11).

<sup>2</sup> During this same period, the Board also investigated 27 complaints against individuals alleged to have practiced acupuncture without being licensed by the Board. Twenty-six of these 27 complaints were received in fiscal year 2014, of which 21 complaints were against physical therapists alleged to have practiced acupuncture in the form of dry needling. According to Arizona law, dry needling is a skilled intervention performed by a physical therapist that uses a thin needle to penetrate the skin and stimulate underlying neural, muscular, and connective tissues. The Board ultimately dismissed all 21 complaints against the physical therapists. Laws 2014, Ch. 220, modified the statutes of the Arizona Board of Physical Therapy to add that physical therapists could face disciplinary action for performing dry needling if the physical therapists failed to demonstrate professional standards of care and training and education qualifications, as established by the Arizona Board of Physical Therapy in rule. One complaint was against a licensed massage therapist and was also dismissed. As of January 26, 2016, two of the remaining five complaints were dismissed, two were still under investigation, and one had been forwarded for prosecution to the Maricopa County Attorney's Office.

- **Providing information to the public**—The Board provides information about licensees and certificate holders, including disciplinary history, on its website. In addition, the Board publishes public meeting agendas and minutes and a newsletter on its website. Finally, board staff respond to requests for public information, including requests made by phone, regarding the license status and disciplinary history of licensed acupuncturists and certified auricular acupuncturists.

## Organization and staffing

The Board is required by A.R.S. §32-3902 to consist of the following nine governor-appointed members: four licensed acupuncturists; three consumer members who are not employed in a health profession; and two members who are licensed in chiropractic, medicine and surgery, naturopathic medicine, osteopathy, or homeopathy. As of May 2016, the Board had one consumer member vacancy. Board members are appointed for 3-year terms. The Board was authorized 1 full-time equivalent staff position for fiscal year 2016, which was filled by its executive director as of May 2016.

## Budget

The Board does not receive any State General Fund appropriations. Rather, its revenues consist primarily of license and certification fees. Statutes require the Board to remit to the State General Fund all monies collected from civil penalties and 10 percent of all other revenues, and to remit the remaining 90 percent to the Acupuncture Board of Examiners Fund. As shown in Table 1 (see page 3), the Board's fiscal year 2016 net revenues totaled approximately \$161,200. The Board's expenditures totaled approximately \$142,000 in fiscal year 2016, the majority of which were personnel costs. The Board's fiscal year 2016 ending fund balance was nearly \$167,700.

**Table 1**  
**Schedule of revenues, expenditures, and changes in fund balance**  
**Fiscal years 2014 through 2016**  
(Unaudited)

	2014	2015	2016
<b>Revenues</b>			
Licenses and fees	\$164,175	\$176,074	\$176,850
Sales of goods and services	1,440	960	1,080
Fines, forfeitures, and penalties <sup>1</sup>	1,300	1,300	1,200
<b>Total gross revenues</b>	<b>166,915</b>	<b>178,334</b>	<b>179,130</b>
Remittances to the State General Fund <sup>2</sup>	(16,692)	(17,833)	(17,940)
<b>Net revenues</b>	<b>150,223</b>	<b>160,501</b>	<b>161,190</b>
<b>Expenditures</b>			
Personal services and related benefits	104,343	107,221	106,769
Professional and outside services	9,999	9,999	11,912
Travel	1,264	1,233	1,528
Other operating	25,848	25,899	21,529
Equipment and software	1,946	819	184
<b>Total expenditures</b>	<b>143,400</b>	<b>145,171</b>	<b>141,922</b>
Net change in fund balance	6,823	15,330	19,268
Fund balance, beginning of year	126,277	133,100	148,430
<b>Fund balance, end of year</b>	<b>\$133,100</b>	<b>\$148,430</b>	<b>\$167,698</b>

<sup>1</sup> According to the Board, amounts comprise late renewal fees.

<sup>2</sup> As required by statutes, the Board remits all monies collected from civil penalties, if any, and 10 percent of all other revenues to the State General Fund.

Source: Auditor General staff analysis of A.R.S. §§32-3905 and 32-3951, the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2014 through 2016, and the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2014 and 2015.





## Licensing and certification

The State of Arizona Acupuncture Board of Examiners (Board) needs to take steps to ensure it appropriately issues licenses and certificates to qualified applicants and track its timeliness in doing so. Specifically, the Board has issued some licenses without collecting or verifying applicant information required by statute or rule. The Board should improve its license and certification processes to better ensure that applicants meet all requirements. In addition, the Board issued licenses and certificates within its overall time frame, but should better track its compliance with its administrative review time frame.

### Board has issued some licenses without collecting or verifying required information

The Board has issued some licenses to applicants who did not demonstrate meeting all requirements. As discussed in the Introduction (see page 1), the Board issues both acupuncture licenses and auricular acupuncture certificates. The Board's statutes and rules outline specific requirements for licensure and certification (see textbox for example requirements). Auditors reviewed a random sample of nine initial acupuncture licenses and three initial auricular acupuncture certificates issued between August 2010 and March 2015, as well as 21 acupuncture licenses and 5 auricular acupuncture certificates that were renewed between January 2014 and January 2016. Although auditors found that the Board ensured that applicants met some important initial license and certification qualifications, such as completing an approved training program and clean needle technique course, the Board issued some licenses without collecting or verifying other required information. As a result, the Board did not ensure that some applicants met all statutory and rule requirements. Specifically:

- **Board has not consistently obtained required citizenship documentation**—The Board has not consistently ensured that licensees have met the statutory requirement to demonstrate lawful presence in the U.S. prior to approving or renewing their licenses. All licensing boards in Arizona are required by law to issue licenses only to individuals who provide documentation of citizenship or alien status, such as a copy of a U.S. passport or Certificate of Naturalization, indicating that the individual's presence in the U.S. is authorized under federal law. To meet this requirement, the Board requires applicants for a license or certificate to complete an Arizona Statement

#### Example license and certificate requirements

##### Acupuncture license requirements:

- Pay an application fee;
- Complete a board-approved clean needle technique course;
- Be certified in acupuncture by the national acupuncture certifying body or another state with similar standards, or pass exams offered by the national certifying body; and
- Graduate from a board-approved acupuncture program.

##### Auricular acupuncture certificate requirements:

- Pay an application fee;
- Complete a board-approved clean needle technique course; and
- Complete a board-approved auricular acupuncture training program.

Source: Auditor General staff analysis of Arizona Revised Statutes §§ 32-3922, 32-3924 and 32-3927.

of Citizenship and Alien Status for State Public Benefits form (citizenship form) and to supply supporting documentation. In addition, statute requires non-U.S. citizens whose documentation has expired to provide updated documentation upon renewal or reinstatement of a license.<sup>3</sup> Board staff reported that the Board informs licensees by phone or letter when they need to provide updated documentation. Auditors' review of the random sample of 12 initial and 26 renewal licenses and certificates included 3 licensees who were not U.S. citizens, and found that the Board renewed 2 of these 3 licensees without obtaining appropriate or updated documentation of lawful presence in the U.S. For example, one applicant provided a copy of his foreign passport with his January 2009 renewal application, but the passport was not accompanied by a visa, as required by statute. Further, the licensee's foreign passport expired in June 2009 after his license was renewed. According to statute, the Board should have obtained updated documentation from the licensee upon his next renewal in January 2010, but the Board did not obtain this documentation until 2015. Similarly, another licensee's permanent resident card expired in 2014 after she was licensed; however, the Board renewed her license twice before the licensee provided updated documentation in October 2015.

Auditors also reviewed an additional judgmental sample of six active acupuncture licensees who were not U.S. citizens and found that the Board issued initial and/or renewal licenses to two of the six licensees without obtaining appropriate documentation of lawful presence in the U.S. Specifically, the Board issued initial licenses to both licensees without obtaining appropriate documentation in June 2012 and March 2014. Although statute specifies the types of documentation that may be used to establish an applicant's lawful presence, the Board accepted documentation that is not authorized in statute for these two applicants.<sup>4</sup> In addition, the Board renewed one of the two licenses even though the updated documentation the licensee submitted did not meet statutory requirements.

- **Board renewed some licenses without verifying compliance with continuing education requirements**—The Board has not consistently ensured that applicants renewing their licenses met the statutory continuing education requirements. Statute requires licensees to complete at least 15 hours of approved continuing education annually prior to renewal. As part of the renewal application, licensees must sign a statement certifying that they have completed the required continuing education in accordance with rule. Licensees are not required to provide documentation of the completed continuing education hours unless selected for an audit. Board staff reported that the Board performs continuing education audits on a random sample of 15 percent of licensees who are due to renew each month. According to board staff, the Board notifies licensees who have been selected for an audit at the same time that licensees are sent a renewal application, which is at least 60 days before their licenses expire, as required by statute. Licensees selected for an audit should then provide the required continuing education documentation to the Board with their renewal applications.

Auditors' review of the random sample of 21 acupuncture licenses that were renewed between January 2014 and January 2016 found that the Board approved renewals in multiple years for one licensee who did not certify on his renewal application that he completed the required continuing education. In addition, auditors' review of a random sample of nine acupuncture licensees who had been selected for continuing education audit between 2010 and 2015 found that the Board did not ensure that two of the nine audited licensees met continuing education requirements before it renewed their licenses. Specifically, the Board approved a renewal for a licensee who did not provide documentation of completing the required number of continuing education hours. Although the licensee provided proof of teaching 26 hours of continuing education, board rules only allow 30 percent, or 4.5 hours, of a licensee's continuing education to come from teaching. In addition, the Board approved a renewal for a licensee whose documentation of completing continuing education was dated outside the audit period.

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<sup>3</sup> Individuals who establish U.S. citizenship or a form of nonexpiring work authorization with their initial applications are not required by statute to provide further documentation upon renewal or reinstatement of a license.

<sup>4</sup> Both applicants provided I-94 forms. According to statute, an I-94 form is an acceptable form of documentation only if accompanied by a photograph. These two applicants did not supply a photograph with their forms.

## Board should strengthen its license and certification processes

The Board should improve its license and certification processes to better ensure that applicants meet all requirements. Specifically, the Board should:

- **Develop and implement policies and procedures for its licensing and certification processes**—The Board did not collect or verify required information for initial and renewal licenses because board staff lacked clear guidance about what specific information to collect and how it should be verified. Although the Board has established some policies and procedures for reviewing and approving initial license and certificate applications, these policies and procedures do not direct staff to obtain and assess the appropriateness of citizenship documentation. In addition, the Board did not have any written policies and procedures for reviewing and approving renewal applications, including for obtaining and assessing the appropriateness of updated citizenship documentation and conducting continuing education audits. During the course of the audit, the Board began developing policies and procedures for reviewing and approving renewal licenses, but these policies and procedures had not been finalized as of June 2016. Therefore, the Board should continue to develop and implement policies and procedures for reviewing and approving initial and renewal applications that direct staff to obtain and assess the appropriateness of all documentation required by statute and rule. In addition, the policies and procedures should direct staff to obtain and assess the appropriateness of both initial citizenship documentation and updated documentation from non-U.S. citizens whose documentation has expired. Further, the policies and procedures should also direct staff on how to conduct continuing education audits, including how many licensees to review, how to determine the appropriateness of continuing education hours submitted, and how to verify that the continuing education was completed during the audit period.
- **Develop a more reliable system for tracking citizenship documentation and update its citizenship form**—The Board has not established an adequate process for tracking citizenship documentation and its citizenship form does not reflect current statutory citizenship documentation requirements. Specifically, the Board does not track the status of licensees' and certificate holders' citizenship and alien status documentation in its licensing database, which it uses to track other information about licensees and certificate holders, such as the licensee or certificate holder's contact information and license or certificate expiration dates. Instead, the Board tracks citizenship information in separate documents. As a result, although board staff can use the licensing database to generate a list of all licensees whose licenses will expire within a given month, staff cannot generate a similar list showing when citizenship documentation will expire. According to board staff, the Board knows which licensees and certificate holders have not established U.S. citizenship, manually checks the status of licensees' and certificate holders' documentation when their renewals are due, and then informs licensees and certificate holders by phone or letter that they need to supply updated documentation. However, this method appears to be inadequate for ensuring that licensees provide updated documentation, as demonstrated by the instances of noncompliance auditors identified. In addition, the Board's citizenship form, which licensees and certificate holders complete to demonstrate lawful presence in the U.S., is outdated and does not reflect the current statutory requirements for appropriate documentation. Therefore, the Board should develop a more reliable system for tracking when licensees' citizenship documentation expires, such as tracking licensees' documentation in its electronic licensing database. In addition, the Board should work with its Assistant Attorney General to update its citizenship form to reflect current statutory requirements.

## Board issued licenses and certificates in a timely manner, but should improve its tracking

As required by statute, the Board has established licensing and certification processing time frames in rule. Specifically, Arizona Administrative Code R4-8-105 requires the Board to review applications and issue initial and renewal licenses and certificates within 60 days. This time period includes 20 days to conduct an administrative completeness review and 40 days to conduct a substantive review. The administrative completeness review time frame is the time board staff have available to ensure that the application is complete before it is submitted to the Board for review. The substantive review time frame is the time that the Board has to review the applicant's

qualifications for licensure or certification and make the initial or renewal licensing or certification decision. These time frames are important because they provide information and an assurance to the public about what to expect in regard to having a license approved or denied, and increase the Board's accountability when time frames are not met. Further, if the Board does not meet its overall time frames, statute requires it to refund licensing or certification fees to applicants and pay a penalty of 2.5 percent of the applicant's fees to the State General Fund for each month that licenses and certificates are not issued or denied within the established overall time frames.

Although the Board issued acupuncture licenses and auricular acupuncture certificates within the overall time frames, the Board should better track its compliance with all time frames established in rule. Auditors reviewed the Board's timeliness in issuing licenses and certificates for the random sample of 12 initial licenses and certificates issued between August 2010 and March 2015, which included 3 initial auricular acupuncture certificates, and 26 licenses and certificates renewed between January 2014 and January 2016. Auditors found that the Board met its 20-day administrative review time frame and its 40-day substantive review time frame for each of the licenses and certificates reviewed, except in two cases where the Board's timeliness could not be determined. Specifically, two initial auricular acupuncture certificate applicants did not supply complete applications. When applications are incomplete, the Board's administrative review time frame is suspended until the applicant supplies the missing information. The Board notified these applicants that they needed to submit the missing information, but did not track when it received the applicants' missing information, which would resume the administrative time frame. As a result, auditors could not determine whether the Board met its administrative review time frame for these two applicants. In addition, although the Board uses a database to track its timeliness in issuing licenses and certificates, the database does not include a field for tracking the date when the Board receives application items not included with the initial application. Board staff reported that they rely on date stamps on the original documentation in its licensing files to track when missing items are received. However, the documentation that was eventually provided by the two applicants was not date stamped.

Finally, for two of the nine initial acupuncture license applications auditors reviewed, the Board notified applicants that their applications were complete before it had received all of the required documentation. Specifically, one applicant's transcripts and another applicant's verification of completion of a clean needle technique course had not been submitted to the Board prior to it notifying the applicants that their applications were complete. Although the Board has policies and procedures that direct staff to send applicants a letter informing them of the date that the Board will review their application once the application is complete, for these two applications, board staff sent the letter before the application was complete. In both cases, the applicants eventually supplied the Board with the required documentation, but notifying applicants of administrative completeness before the Board receives all required documentation puts the Board at risk for approving unqualified applicants. During the course of the audit, the Board began developing a checklist for tracking when the Board receives applicants' required documentation, but the checklist had not been finalized as of July 2016.

Therefore, to help ensure compliance with its administrative completeness review time frame, the Board should improve its timeliness tracking by including in its database a field for recording the date when the Board receives missing application items. In addition, the Board should finalize and implement its draft checklist to help ensure it correctly notifies applicants that their applications are complete only after all required elements of an application have been received.

## Recommendations

- 1.1. The Board should continue to develop and implement policies and procedures for reviewing and approving initial and renewal applications that direct staff to obtain and assess the appropriateness of all documentation required by statute and rule. In addition, the policies and procedures should:
  - a. Direct staff to obtain and assess the appropriateness of both initial citizenship documentation and updated citizenship documentation from non-U.S. citizens whose documentation has expired; and
  - b. Direct staff on how to conduct continuing education audits, including how many licensees to review, how to determine the appropriateness of continuing education hours submitted, and how to verify that the continuing education was completed during the audit period.

- 1.2. The Board should develop a more reliable system for tracking when licensees' citizenship documentation expires, such as tracking licensees' documentation in its electronic licensing database.
- 1.3. The Board should work with its Assistant Attorney General to update its citizenship form to reflect current statutory requirements.
- 1.4. The Board should improve its timeliness tracking by including in its database a field for recording the date when it receives missing application items.
- 1.5. The Board should finalize and implement its draft checklist to help ensure it correctly notifies applicants that their applications are complete only after all required elements of an application have been received.





## Complaint resolution

The State of Arizona Acupuncture Board of Examiners' (Board) complaint resolution process is not adequately designed to protect the public. The Board should improve its complaint resolution process by developing comprehensive policies and procedures to help ensure adequate complaint investigation and resolution. In addition, although the Board generally resolved complaints in a timely manner, the Board should improve its complaint tracking to help ensure it continues to resolve complaints in a timely manner.

### Board should improve its complaint resolution process

The Board is responsible for investigating complaints against licensees and certificate holders, and may dismiss complaints or take nondisciplinary or disciplinary action, as necessary (see textbox). Statute authorizes the Board to investigate complaints alleging violations of statute and/or board rules, including unprofessional conduct. Complaints may be submitted by the public or initiated by the Board and are investigated by board staff. According to board records, the Board received 10 complaints against licensed acupuncturists between July 1, 2012 and December 14, 2015.<sup>5</sup> The Board dismissed 7 of these complaints, imposed nondisciplinary action to address 2 of the complaints, and imposed disciplinary action for 1 complaint.

Auditors reviewed all 10 complaints resolved by the Board and the Board's complaint resolution process, which is established in the Board's rules, and found that this process is not adequately designed to protect the public and does not include important aspects of an effective complaint resolution process.

#### Board's process for resolving complaints does not adequately protect the public

—The Board's complaint resolution process includes various steps and requirements that the Board, licensees, and/or complainants must follow, such as time frame requirements for filing or responding to a complaint (see textbox on page 12). In general, these requirements are established in the Board's rules. However, auditors found that some of the Board's complaint investigation and resolution rules and/or practices do not adequately protect the public because they limit or conflict with the Board's ability to appropriately investigate and adjudicate complaints. Specifically:

- **90-day complaint filing limitation allows Board to potentially dismiss valid complaints**—Board rule requires the Board to dismiss complaints it does not receive within 90 days of the alleged violation. Although

<sup>5</sup> Auditors determined that one of the complaints concerned an acupuncturist whose license was expired.

#### Board's nondisciplinary and disciplinary options

##### Nondisciplinary options:

- Letter of concern
- Continuing education

##### Disciplinary options:

- Decree of censure
- Restrict or limit the practice of a licensee
- Civil penalty
- Probation
- Suspension
- Revocation

Source: Auditor General staff analysis of Arizona Revised Statutes (A.R.S.) §32-3951.

## Board's complaint filing and investigation process

**Step 1:** Complainant must file a complaint within 90 days of the alleged violation.

**Step 2:** The Board must determine if the complaint alleges a potential violation of statute or rule.

**Step 3:** The Board must provide a copy of the complaint to the licensee and provide him/her 20 days to submit a response to the complaint.

**Step 4:** If the licensee provides a response, the Board must provide a copy of the response to the complainant and provide the complainant 5 days to submit a rebuttal to the response.

**Step 5:** After receiving the licensee's response and the complainant's rebuttal, the Board must conduct an investigation.

**Step 6:** The Board reviews the results of the investigation at a board meeting.

Source: Auditor General staff analysis of Arizona Administrative Code R4-8-601 and R4-8-602.

the Board has not always complied with this rule requirement, it has dismissed some complaints received 90 days after the alleged violation occurred without completing an investigation. Specifically, 7 of the 10 complaints the Board received between July 1, 2012 and December 14, 2015, were filed with the Board more than 90 days after the alleged violations, and the Board dismissed 2 of these complaints based on the 90-day requirement. One of these dismissed complaints alleged that the patient was in pain after receiving acupuncture and the other alleged a patient illness that resulted from the herbal supplements that the patient purchased from the acupuncturist. However, by not investigating these complaints, the Board is not fulfilling its responsibility to protect the public.

Additionally, the 90-day filing requirement established in rule lacks statutory basis. Specifically, statute does not authorize the Board to establish a 90-day complaint filing requirement. Auditors also reviewed the statutes and rules for five other Arizona health regulatory boards and found that three of the boards do not impose a time limitation for filing a complaint.<sup>6</sup> The other two boards' statutes—the Arizona Medical Board and the Board of Homeopathic and Integrated Medicine Examiners—prohibit these boards from acting on a complaint regarding unprofessional conduct if the alleged violation occurred more than 7 years before the complaint was received by the Board.<sup>7</sup>

- **Board stops investigation when complaints withdrawn**—The Board's rules permit the Board to stop a complaint investigation and close a complaint when complainants request to withdraw a complaint. However, by ending a complaint investigation when complaints are withdrawn, the Board cannot ensure that it is adequately protecting the public because the licensee can continue to practice unrestricted, even when he/she may be unfit to do so. Auditors found that in two of the ten complaints reviewed, one alleging fraudulent billing and the other concerning a monetary dispute, the Board stopped its complaint investigation and closed the complaints when the complainants requested to withdraw the complaint or indicated they reached an agreement with the licensee.
- **Board has not appropriately determined its jurisdiction to investigate complaints**—According to rule, the Board should determine whether a complaint is within its jurisdiction prior to initiating a complaint investigation. However, for nine of the ten complaints auditors reviewed, the Board did not determine whether the complaints were within its jurisdiction prior to initiating an investigation. As a result of this practice, the Board may spend time investigating complaints that it has no authority to adjudicate. For example, of the ten

<sup>6</sup> Auditors reviewed the statutes and rules for the Arizona Medical Board, the Arizona Board of Osteopathic Examiners in Medicine and Surgery, the Board of Homeopathic and Integrated Medicine Examiners, the Naturopathic Physicians Medical Board, and the State Board of Chiropractic Examiners.

<sup>7</sup> An exception to this statutory requirement is medical malpractice settlements and judgments, which do not have a filing limitation.

complaints reviewed, the Board investigated one complaint that was outside of its jurisdiction. In this case, the licensee named in the complaint was no longer licensed by the Board; therefore no investigation should have been initiated. The Board ultimately dismissed this complaint because it was outside of its jurisdiction, but the dismissal took place 98 days from the date the complaint was filed.

Auditors contacted five Arizona health regulatory boards and found that for four of the five boards, staff, not board members, determine whether a complaint falls within its respective jurisdiction prior to initiating an investigation.

- **Board could dismiss legitimate complaints for missing unnecessary information**—Board rule requires the Board to dismiss what could be legitimate complaints for lacking unnecessary complaint information. Specifically, rule requires complainants to provide multiple pieces of information about the licensee and the alleged violation, such as the licensee’s name, address, and telephone number; a detailed description of the alleged events; and the date the complainant last discussed the complaint with the licensee. If complainants do not provide all of the required information, rule requires the Board to dismiss the complaint without an investigation. However, the Board does not need all of this information to initiate a complaint investigation and, in fact, should be able to gather much of this information as part of its investigation. For example, the Board does not need the date that the complainant last discussed the complaint with the licensee in order to initiate an investigation because this information would not immediately help the Board determine jurisdiction or assess whether a violation occurred. Although the Board did not dismiss any of the complaints auditors reviewed because information required by rule was missing, having this requirement in rule puts the Board at risk of dismissing legitimate complaints in the future.

**Board lacks adequate guidance for resolving complaints**—Although the Board has established much of its complaint resolution process in rule, these rules do not address all aspects of the process. Further, the Board has not developed complaint resolution policies and procedures to guide staff in areas that are not comprehensively addressed in rule. Specifically, the Board lacks guidance in the following areas:

- **Investigating complaints**—Although the Board’s rules specify that board staff should investigate a complaint, the Board does not have detailed policies and procedures directing staff on how to conduct a complete investigation, such as interviewing the complainant, the licensee, and any other parties to the complaint; obtaining and reviewing all applicable medical records; and adequately investigating all allegations. As a result, auditors found that board staff did not fully investigate one of the ten complaints reviewed. In this one case, the complainant alleged that a licensee was performing treatments outside of her scope of practice, engaging in fraudulent billing practices, and may have been keeping inaccurate medical records. Auditors found that the Board appropriately investigated the claims that the licensee was performing treatments outside of her scope of practice and was engaging in fraudulent billing practices; however, the Board did not conduct any investigative work to assess whether the medical records were inaccurate. By not investigating all aspects of a complaint, the Board does not fully protect the public.
- **Executing consent agreements**—The Board does not have any policies and procedures for developing, reviewing, and executing consent agreements. The Board may offer a consent agreement to a licensee to resolve a complaint without going to a formal hearing and, as part of the agreement, the licensee agrees to comply with the terms specified in the agreement, such as paying a fine or surrendering a license. The Board offered consent agreements for 2 of the 10 complaints auditors reviewed; however, the Board implemented the terms of one consent agreement without properly executing it. Specifically, the Board offered a licensee a consent agreement to surrender his license for failing to report a misdemeanor violation, but neither the licensee nor the Board’s executive director signed the consent agreement. Further, the Board must formally adopt the terms of the consent agreement prior to offering the consent agreement to the licensee for signature, which the Board did not do. However, board staff closed this complaint even though the Board did not appropriately execute the consent agreement. In addition, the Board does not track when it sends consent agreements to licensees for signature and when the licensees return signed agreements.

- **Notifying employers of disciplined licensees**—The Board does not have any policies and procedures for notifying employers when licensees have been disciplined by the Board. Specifically, A.R.S. §32-3951(F) requires the Board to promptly notify a licensee’s employer if the Board initiates a disciplinary action against the licensee, but the Board does not consistently collect employer information. Although board staff reported that licensees who face disciplinary action are verbally asked whether they have an employer or are self-employed, staff do not take any additional action to verify the information licensees verbally provide. Additionally, the Board’s initial and renewal applications do not ask whether an applicant is self-employed or has an employer, and, if the applicant has an employer, the name of that employer. Prompt notification to employers is important to prevent public harm as an unaware employer may continue to employ a disciplined licensee without restrictions.
- **Proceeding with a complaint investigation**—The Board lacks policies and procedures to guide board staff on how to proceed with a complaint investigation if a licensee does not respond to the notice of complaint and could better track when the licensee receives the notice. When the Board opens a complaint, the Board’s rules require it to send a notice of the complaint to the licensee by certified mail or personal delivery, and to give the licensee 20 days to respond. However, without policies and procedures to guide staff, complaint investigations can be delayed if a licensee does not respond within the prescribed 20 days. For example, in one complaint auditors reviewed, the Board postponed its investigation until the licensee’s response arrived 11 days after the due date. Although this particular complaint was still resolved in a timely manner, the Board should not delay its investigation when licensees do not provide a timely response (see pages 15 through 16 for more information on complaint resolution timeliness). When licensees do not respond within the 20-day time frame, the Board may add an additional violation to the complaint for not responding to a board request for information in a timely manner. In addition, auditors found that the Board did not send the notice of the complaint by certified mail or personal delivery for 6 of the 10 complaints auditors reviewed, which impedes the Board’s ability to track the notices and determine when the 20-day time frame should begin.

**Board should remove its complaint resolution process from rule and develop comprehensive policies and procedures**—

The Board should revise its complaint resolution process to better protect the public from harm. First, the Board should remove its complaint resolution process from rule because having its complaint resolution process in rule restricts its ability to effectively revise its process without undertaking a rulemaking process, and several of its rules limit or conflict with the Board’s responsibility to protect the public by investigating valid complaints. In particular, the Board should remove the 90-day filing limitation from its rule because it does not have statutory authority to establish a filing limitation. Although statute and a Governor’s executive order prohibit rulemaking that increases regulatory restraints, removing the Board’s complaint process from rule would appear to eliminate unnecessary complaint filing and processing requirements.<sup>8</sup> Second, in conjunction with removing its complaint process from rule, the Board should develop and implement policies and procedures for its complaint resolution process. The Board’s policies and procedures should address the following:

- Determining the jurisdiction of a complaint. Specifically, the policies and procedures should identify who should determine whether a complaint is within the Board’s jurisdiction, and when this determination should be made, and provide guidance for how to properly determine if a complaint is within the Board’s jurisdiction. For example, the Board could allow staff to make the determination, and if staff determine that the complaint is within the Board’s jurisdiction, staff would begin investigating the complaint without waiting for the Board to review it. However, if staff determine that the complaint does not fall within the Board’s jurisdiction, staff would not initiate an investigation until the Board subsequently reviews the complaint and determines jurisdiction;
- Responding to complaints that fall outside of its jurisdiction, such as referring them to the appropriate regulatory board for review, and how this will be documented;

<sup>8</sup> A.R.S. §41-1038 prohibits any rulemaking that increases regulatory restraints or burdens. Executive Order 2016-03 prohibits agencies from conducting rulemaking without prior approval of the Office of the Governor and by providing justification for a rulemaking, such as rule changes that would reduce or ameliorate the regulatory burden while achieving the same regulatory objective and/or rule changes made to comply with a statutory requirement.

- Prioritizing the complaints it receives that are within its jurisdiction for investigation based upon the nature of the complaint allegations, such as assigning a higher investigation priority to complaints with allegations that pose a potential danger to public health and safety;
- Identifying the information the Board needs to obtain from the complainant in order to initiate an investigation;
- Components of an adequate complaint investigation, such as interviewing the complainant, licensee, and all applicable witnesses; obtaining and reviewing all necessary responses and medical documentation; and ensuring that all complaint allegations are adequately investigated;
- Directing that staff fully investigate complaints and prepare investigative reports that summarize complaints and the results of the investigations before forwarding complaints to the Board for review and adjudication;
- Requiring the Board to proceed with the investigation and adjudication of a complaint, even if a complainant wishes to withdraw a complaint or settle with the licensee;
- Developing, reviewing, and executing consent agreements. Specifically:
  - Ensuring consent agreements terms are reviewed and adopted by the Board at a board meeting;
  - Ensuring that all appropriate parties, including the licensee and executive director, sign the consent agreement; and
  - Including guidance for how the Board should proceed if the licensee fails to sign the consent agreement;
- Requiring staff to track when the Board sends consent agreements to licensees and when the licensees should return the signed consent agreements to the Board;
- Notifying employers of disciplinary action, including how staff should notify the employer;
- Determining how to proceed if a licensee does not submit a response to the complaint within the 20-day response time frame, such as continuing with the complaint investigation and/or adding an additional violation of statute to the complaint;
- Requiring staff to send all notices of complaints to licensees using certified mail or personal delivery; and
- Developing time frames for key steps of its complaint resolution process, such as when the licensee received the notice of complaint, when the licensee's response is due to the Board, when the Board should send the licensee's response to the complainant, and when the complaint's rebuttal should be received by the Board.

Finally, once the Board has developed its policies and procedures for resolving complaints, the Board should train all board members and board staff on these policies and procedures. In addition, the Board should modify its initial and renewal application forms to include questions about whether licensees are self-employed, have an employer, and the name of the employer, if employed (for more information on licensing application form modifications, see Sunset Factor 2, pages 21 through 23).

## Board generally resolved complaints in a timely manner

The Board generally resolved complaints in a timely manner. The Office of the Auditor General has found that Arizona regulatory boards should resolve complaints within 180 days of receiving them, which includes the time to both investigate and adjudicate complaints. Auditors' review of the ten complaints found that the Board resolved all but one of these complaints within 180 days. This one complaint took 212 days to resolve, in part because board staff waited 71 days to place the complaint on the board agenda after the complainant's rebuttal was received. However, there were two board meetings between the time when the Board received the complainant's rebuttal and when the complaint was ultimately placed on a board agenda for review, suggesting that the complaint could have been forwarded to the Board for its review in a more timely manner. Board staff had no explanation for the delay in placing this complaint on the Board's agenda. Failure to resolve complaints

in a timely manner does not protect public health and safety because licensees alleged to have violated board statutes and rules can continue to practice unrestricted while under investigation, even though they may be unfit to do so. In such instances, a lengthy complaint resolution process may delay board actions that protect the public, such as revoking a license or otherwise limiting a licensee's practice.

Although board staff use a complaint log for tracking the complaint resolution process, the Board does not have policies and procedures directing staff to use the log to ensure that complaints are resolved in a timely manner. In addition, board staff reported they do not provide complaint processing timeliness reports to the Board. As a result, the Board cannot identify and address factors in the process that may impact complaint investigations' timeliness. Therefore, to help ensure that the Board resolves all complaints within 180 days, the Board should develop and implement policies and procedures for tracking complaints throughout the process, including the use of its complaint log. In addition, these policies and procedures should require staff to submit reports to the Board regarding complaint-processing timeliness to help the Board identify and address factors in the complaint resolution process that may affect timeliness.

## Recommendations

- 2.1. The Board should remove its complaint resolution process from rule, including the 90-day filing limitation.
- 2.2. The Board should develop and implement policies and procedures for its complaint resolution process. The Board's policies and procedures should address the following:
  - a. Determining the jurisdiction of a complaint. Specifically, the policies and procedures should identify who should determine whether a complaint is within the Board's jurisdiction, and when this determination should be made, and provide guidance for how to properly determine if a complaint is within the Board's jurisdiction.
  - b. Responding to complaints that fall outside of its jurisdiction, such as referring them to the appropriate regulatory board for review, and how this will be documented;
  - c. Prioritizing the complaints it receives that are within its jurisdiction for investigation based upon the nature of the complaint allegations, such as assigning a higher investigation priority to complaints with allegations that pose a potential danger to public health and safety;
  - d. Identifying the information the Board needs to obtain from the complainant in order to initiate an investigation;
  - e. Components of an adequate complaint investigation, such as interviewing the complainant, licensee, and all applicable witnesses; obtaining and reviewing all necessary responses and medical documentation; and ensuring that all complaint allegations are adequately investigated;
  - f. Directing that staff fully investigate complaints and prepare investigative reports that summarize complaints and the results of the investigations before forwarding complaints to the Board for review and adjudication;
  - g. Requiring the Board to proceed with the investigation and adjudication of a complaint, even if a complainant wishes to withdraw a complaint or settle with the licensee;
  - h. Developing, reviewing, and executing consent agreements. Specifically:
    - Ensuring consent agreements terms are reviewed and adopted by the Board at a board meeting;
    - Ensuring that all appropriate parties, including the licensee and executive director, sign the consent agreement; and
    - Including guidance for how the Board should proceed if the licensee fails to sign the consent agreement;

- i. Requiring staff to track when the Board sends consent agreements to licensees and when the licensees should return the signed consent agreements to the Board;
  - j. Notifying employers of disciplinary action, including how staff should notify the employer;
  - k. Determining how to proceed if a licensee does not submit a response to the complaint within 20 days, such as continuing with the complaint investigation and/or adding an additional violation of statute to the complaint;
  - l. Requiring staff to send all notices of complaints to licensees using certified mail or personal delivery;
  - m. Developing time frames for key steps of its complaint resolution process, such as when the licensee received the notice of complaint, when the licensee's response is due to the Board, when the Board should send the licensee's response to the complainant, and when the complainant's rebuttal should be received by the Board;
  - n. Requiring staff to use an electronic tracking mechanism, such as its complaint log, to track these time frames so that the Board can ensure that complaints continue to move through the complaint process in a timely manner; and
  - o. Requiring staff to submit reports to the Board regarding complaint-processing timeliness to help the Board identify and address factors in the complaint resolution process that may affect timeliness.
- 2.3. Once the Board has developed its policies and procedures for resolving complaints, the Board should train all board members and staff on these policies and procedures.
- 2.4. The Board should modify its initial and renewal application forms to include questions about whether licensees are self-employed, have an employer, and the name of the employer, if employed.





### Public information

The State of Arizona Acupuncture Board of Examiners (Board) provides appropriate public information on its website, but should improve its provision of public information over the phone.

#### Board should improve its provision of public information over the phone

Although the Board provides appropriate public information on its website, it should improve the provision of public information over the phone. As of June 2016, the information on the Board's website complied with Arizona Revised Statutes §32-3214, which prohibits state agencies from providing information on their websites regarding dismissed complaints or complaints that resulted in nondisciplinary action. In accordance with this statute, the Board's website also includes a statement that the public may contact the Board directly for information on complaints that were dismissed or that resulted in nondisciplinary action. In addition, the Board's website accurately reflected that the Board took disciplinary action to resolve one of ten complaints it received between July 1, 2012 and December 14, 2015.

However, auditors found that the Board needs to improve its provision of information over the phone. Specifically, auditors placed four phone calls to board staff in February and March 2016 to request complaint and disciplinary history information for three licensees and one certificate holder. Board staff provided inaccurate information in response to two of these calls. For one call, board staff inaccurately reported that a complaint against the licensee was dismissed; however, the Board had issued a nondisciplinary letter of concern to the licensee. For the second call, board staff reported that a licensee had three dismissed complaints, but the licensee had five dismissed complaints.

Board staff likely provided auditors inaccurate information in these phone calls because this information was inaccurately recorded in the Board's licensing database. As part of the Board's complaint-handling process, board staff reported that they enter information about complaints into the Board's licensing database, which staff then use to provide information to callers. In the case where board staff provided inaccurate information about how the complaint was resolved, the Board's licensing database incorrectly listed the resolution as dismissed when a nondisciplinary letter of concern had been issued. Further, in the case where staff incorrectly reported that the licensee had three dismissed complaints when the licensee had five, the Board's licensing database incorrectly listed that the licensee had fewer than five dismissed complaints. However, the public should have access to accurate and complete information about licensed and certified individuals to help make informed decisions about their healthcare.

During the audit, board staff developed policies and procedures for what information staff should provide to the public, such as the status of the license and if there have been any actions against the licensee. Therefore, in order to ensure that the public receives accurate and complete information, the Board should implement the new policies and procedures staff developed for providing information to the public. In addition, the Board should develop and implement a mechanism, such as periodically comparing information in a random sample of complaint files to information in the Board's licensing database, to ensure that the information in its licensing database is accurate.

## Recommendations

- 3.1. The Board should implement the new policies and procedures staff developed for providing information to the public.
- 3.2. The Board should develop and implement a mechanism to ensure that the information in its licensing database is accurate, such as periodically comparing information in a random sample of complaint files to information in the Board's licensing database.



In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether to continue or terminate the State of Arizona Acupuncture Board of Examiners (Board).

The analysis of the Sunset Factors includes seven recommendations not discussed earlier in this report. Specifically, the Board should modify its licensing and certification application forms and corresponding policies and procedures to ensure it obtains all required documentation, and it should evaluate its rules and work to remove licensing, certification, and continuing education requirements specified in rule that are not needed to protect public health and safety or are not enforceable (see Sunset Factor 2, pages 21 through 23). In addition, the Board should seek statutory and/or rule changes to ensure its rules are consistent with its statutory authority (see Sunset Factor 4, pages 23 through 24). To better comply with the State’s open meeting law, the Board should ensure that its board meeting minutes accurately reflect what occurred during the meeting and include sufficient information to clearly communicate to the public the basis for its complaint adjudication decisions (see Sunset Factor 5, page 25). Finally, the Board should seek statutory changes to allow it to inquire about all other active and past professional healthcare licenses or certificates for auricular acupuncture certificate applicants, and to request license or certificate verification directly from the jurisdiction that issued the license or certificate (see Sunset Factor 9, pages 26 through 27).

**1. The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.**

Established in 1998, the Board’s mission is to protect public health, safety, and welfare by regulating and maintaining standards of practice in the field of acupuncture. In accordance with statute, the Board accomplishes this mission by issuing licenses and certificates, investigating complaints, taking disciplinary action to enforce the Board’s statutes and rules, and providing information to the public about licensees and certificate holders, including disciplinary history (see Introduction, pages 1 through 3, for additional information regarding board responsibilities).

Auditors did not identify any states that met the Board’s objective and purpose through private enterprises. Specifically, auditors contacted four states that regulate acupuncture—California, Idaho, Indiana, and Ohio—and found that none used private enterprises to regulate the practice of acupuncture.<sup>9</sup>

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

The Board has, in part, met its statutory objective and purpose by issuing acupuncture licenses and auricular acupuncture certificates, investigating and adjudicating complaints against acupuncture licensees, and providing information to the public. However, as discussed in this report, the Board should obtain and review all required documentation as part of its license and certification processes and better track compliance with its licensing and certification time frames (see Licensing and certification, pages 5 through 9). In addition, the Board should improve its complaint resolution process by removing this process from its rules and establishing comprehensive policies and procedures, and better tracking complaints throughout the process to ensure timely complaint resolution (see Complaint resolution, pages 11 through 17). Further, the Board

<sup>9</sup> Auditors selected states with variations in organizational structures, such as states where a medical board or an umbrella licensing agency regulates the practice of acupuncture.

should improve its provision of public information over the phone (see Public information, pages 19 through 20).

Additionally, the Board should take the following steps to better meet its statutory objective and purpose:

- **Modify its license and certificate applications and corresponding policies and procedures**—The Board should modify its license and certificate applications to more clearly direct applicants on what documentation they should provide to the Board and modify its corresponding policies and procedures to direct staff on what license and certification application documentation they should obtain and review. The Board's initial acupuncture license and auricular certificate applications do not specifically direct applicants to provide all of the documentation that is required by statute and rule, such as documentation demonstrating certification from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).<sup>10</sup> Although the applications include a statement that applications are not complete until the board office has received all verification documents, the applications do not specify all of the documents applicants must submit.

In addition, the Board's application forms do not always clearly direct applicants on the specific information that the required documentation should include. For example, rule requires all applicants to answer a series of disclosure questions, such as whether the applicant has been convicted of a crime. Applicants who answer in the affirmative are required by rule to provide documentation that includes specific details, such as the nature of the crime, date of conviction, and current status. Although the Board's application forms request that the applicant supply documentation, they do not direct applicants on the specific information this documentation should include. Further, auditors found that the Board's policies and procedures do not always provide guidance to staff on the specific documentation applicants must submit. For example, the Board's policies and procedures do not direct staff to obtain the required documentation if an applicant answers yes to any of the Board's disclosure questions, such as whether the applicant has ever been convicted of a crime.

Auditors' review of a random sample of 9 initial acupuncture licenses and 3 initial auricular acupuncture certificates issued between August 2010 and March 2015, as well as 21 acupuncture licenses and 5 auricular acupuncture certificates that were renewed between January 2014 and January 2016, found that the Board obtained the required licensing and certification documentation. However, the lack of clear direction to applicants and board staff on what documentation is required and what that documentation should include places the Board at risk for not obtaining all required documentation. Auditors' review of other Arizona licensing boards' applications found that some health regulatory boards, such as the Arizona Medical Board and the Naturopathic Physicians Medical Board, include a checklist of items applicants should supply with their application forms. Therefore, the Board should modify its license and certificate applications to more clearly direct applicants on the documentation they are required to submit and the specific information that should be included in this documentation. In addition, the Board should develop and implement policies and procedures directing staff to obtain all required documentation, such as the documentation applicants must submit if they answer yes to any of the Board's disclosure questions.

- **Evaluate its rules to ensure that licensing, certification, and continuing education requirements protect public health and safety and are enforceable**—Some of the information required by board rule as part of the licensure and certification process may not be needed to protect public health and safety. Specifically, rule requires both initial license and certificate applicants to include a signed photograph of themselves with their applications. Auditors' review of a random sample of nine initial acupuncture licenses and three initial auricular acupuncture certificates issued between August 2010 and March 2015 found that although applicants provided the required photograph, they did not sign it. However, the Board requires applicants to attach the photograph to their license or certification application, which is required to be signed and notarized. In addition, auditors reviewed

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<sup>10</sup> The NCCAOM is a nonprofit organization that validates entry-level competency in the practice of acupuncture and oriental medicine through professional certification.

the statutory and rule application requirements of five other Arizona health regulatory boards and found that although three of the five boards require applicants to submit a photograph, none of them require the photograph to be signed.<sup>11</sup> As of May 2016, the Board was in the process of revising its rules to remove this requirement, but the proposed rule change does not remove the requirement for auricular acupuncture certificate applicants. Further, auditors found that the Board does not require applicants to provide a mobile phone number on its license and certificate applications as required by rule, although the Board's applications require applicants to provide work and home phone numbers. Also, rule requires auricular acupuncture certificate renewal applicants to submit an application that includes the date their certificates expire. Although the Board's renewal application does not request applicants to include the date their certificate expires on the application, the Board already tracks certificate holders' expiration dates in its licensing database.

In addition, other information that is required by rule as part of the licensure and certification process may be outside of the Board's ability to enforce. Specifically, the Board's rules require that acupuncture licensees who are selected for a continuing education audit provide to the Board a certificate or other evidence of attendance from the provider of each approved continuing education course. Rule requires the certificates to include specific elements, such as the licensee's license number, the name of the entity that approved the continuing education, and the time of day during which the continuing education course was held. Board staff reported that the Board will accept certificates with missing elements, such as the time of day when the course was held, because the licensees cannot control the content of certificates created by the continuing education providers. Auditors' review of the Board's licensing files for nine acupuncture licensees who had been selected by the Board for a continuing education audit between 2010 and 2015 confirmed that the certificates provided by licensees did not always include all of the required elements. Therefore, the Board should identify licensing, certification, and continuing education requirements that have been established in rule that are not needed to protect public health and safety or are not within the Board's ability to enforce and work to remove these unnecessary requirements from its rules. Although statute and a Governor's executive order prohibit rulemaking that increases regulatory restraints, it appears that removing these requirements would reduce the regulatory burden on licensees and certificate holders.<sup>12</sup>

### 3. The extent to which the Board serves the entire State rather than specific interests.

The Board serves the State by issuing licenses and certificates to individuals practicing acupuncture and auricular acupuncture throughout Arizona. In addition, the Board receives and investigates complaints and imposes nondisciplinary and disciplinary action on those who violate board laws and rules. Further, the Board provides the public with information through its website regarding licensees and certificate holders, including disciplinary history. The website also informs the public that it may contact the board office to obtain information about dismissed complaints and nondisciplinary actions that the Board has taken against licensees and certificate holders.

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

General Counsel for the Office of the Auditor General has analyzed the Board's rule-making statutes and believes that the Board has established rules required by statute. However, the Board has established the four following rules that are inconsistent with its statutory authority:

- **All licensees and certificate holders must provide updated citizenship documentation for renewal, contrary to statute**—Statute requires all licensing boards in Arizona to issue licenses only

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<sup>11</sup> Auditors reviewed the statutes and rules for the Arizona Medical Board, the Arizona Board of Osteopathic Examiners in Medicine and Surgery, the Board of Homeopathic and Integrated Medicine Examiners, the Naturopathic Physicians Medical Board, and the State Board of Chiropractic Examiners.

<sup>12</sup> A.R.S. §41-1038 prohibits any rulemaking that increases regulatory restraints or burdens. Executive Order 2016-03 prohibits agencies from conducting rulemaking without prior approval of the Office of the Governor and by providing justification for a rulemaking, such as rule changes that would reduce or ameliorate the regulatory burden while achieving the same regulatory objective.

to individuals who provide documentation of citizenship or alien status indicating that the individual's presence in the U.S. is authorized under federal law (see Licensing and certification, pages 5 through 6). To meet this requirement, the Board requires applicants for an initial license or certificate to complete an Arizona Statement of Citizenship and Alien Status for State Public Benefits form (citizenship form) and to supply supporting documentation. In addition, statute requires non-U.S. citizens whose documentation has expired to provide updated documentation upon renewal or reinstatement of a license. However, contrary to statute, the Board's rules require all acupuncture licensees and auricular acupuncture certificate holders, regardless of citizenship, to provide a new completed citizenship form and supporting documentation in order to renew a license or certificate.

- **Certificate renewal submission deadline contradicts statute**—A.R.S. §32-3922 requires auricular acupuncture certificate holders seeking to renew their certificate to submit their applications and fees at least 30 days before their certificate expires. However, the Board's rules allow certificate holders to submit renewal applications and fees on or up to the expiration date of the certificate. The Board does not have the authority to change the statutory submission deadline.
- **Board established time limit for filing complaints, contrary to statute** —The Board has established a requirement in rule that complaints must be filed within 90 days of the alleged violation. However, the Board does not have statutory authority to impose a time limit for filing a complaint (for more information, see Complaint resolution, pages 11 through 12).
- **Board's ability to appropriately investigate and resolve complaints limited by rule**—The Board is statutorily responsible for initiating complaint investigations against licensees and certificate holders and taking disciplinary actions to enforce its statutes. However, two of the Board's rules, Arizona Administrative Code (AAC) R4-8-602(A) and R4-8-601(C), limit the Board's ability to meet its statutory duty to investigate complaints and take disciplinary action. Specifically, these rules require the Board to dismiss complaints that do not include all of the information specified in rule, including the licensee's name, address, and telephone number, as well as the date the complainant last discussed the complaint with the licensee (see Complaint resolution, page 13). Although some of this information is important, such as the licensee's name, the Board does not need every piece of information required by rule in order to proceed with a complaint investigation. For example, the date the complainant last discussed the complaint with the licensee is not necessary to initiate an investigation. Further, the Board should be able to gather the required information during the course of its investigation. If the Board dismissed a valid complaint because it was missing one of the elements required by rule, the Board would not be fulfilling its statutory responsibility to investigate complaints and enforce its statutes.

In addition to the potential rule changes discussed in Sunset Factor 2 (see pages 21 through 23), the Board should seek statutory and/or rule changes to ensure that the Board's rules are consistent with its statutory authority. Specifically, the Board should revise its rules to require only non-U.S. citizens whose documentation of lawful presence in the U.S. has expired to provide updated documentation upon renewal of a license or certificate. In addition, the Board should seek statutory and/or rule changes to reconcile the differences between statutory and rule renewal application submission deadlines for certificate holders (for recommendations related to the Board's rules for processing complaints, including the 90-day filing limitation, see Complaint resolution, pages 11 through 17). As previously mentioned on page 23, although statute and a Governor's executive order prohibit rulemaking that increases regulatory restraints, approval may be granted for rule changes made to comply with statutory requirements.<sup>13</sup>

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<sup>13</sup> A.R.S. §41-1038 prohibits any rulemaking that increases regulatory restraints or burdens, but provides exception for rules necessary to implement statutes. Executive Order 2016-03 prohibits agencies from conducting rulemaking without prior approval of the Office of the Governor and by providing justification for a rulemaking, such as rule changes made to comply with a statutory requirement.

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

The Board has encouraged input from the public before adopting its rules and informed the public of the expected impact of proposed changes to its rules, as required by statute. During the audit, the Board initiated the process of revising its rule requirements for obtaining an acupuncture license to reflect changes made to its statutes under Laws 2014, Ch. 107, and in response to audit findings (for more information on Laws 2014, Ch. 107, see Sunset Factor 8, page 26).<sup>14</sup> For example, the Board's proposed rule revisions would require applicants to disclose all other active and past professional healthcare licenses, submit fingerprints for a background check, and remove the requirement for license applicants to sign the photograph submitted with the application. As of May 2016, the Board was still in the process of revising its rules. However, the Board has appropriately encouraged public input and informed the public of the proposed rules' expected impact. Specifically, the Board published a notice of proposed rulemaking in the Arizona Administrative Register, provided a summary of the expected impact of the proposed rules, and held a public meeting to allow the public to provide comment on the proposed rules.

Auditors also assessed the Board's compliance with various provisions of the State's open meeting law for the seven board meetings held between October 2015 and April 2016 and found that the Board had complied with some open meeting law requirements, but could improve its compliance with all open meeting law requirements. Specifically, auditors found that the Board posted meeting notices and agendas with all of the required elements on its website at least 24 hours in advance of the meetings and posted the notice and agendas at the physical locations indicated on its website for the meetings tested. In addition, as required by A.R.S. §38-431.02, the Board has conspicuously posted a statement on its website stating where all public notices of its meetings will be posted. However, contrary to open meeting law requirements, the Board's meeting minutes do not always reflect what happened during the meeting. Specifically, during one meeting auditors observed, two applicants made statements to the Board regarding criminal history information they had disclosed on their license applications. Although the board meeting minutes reflect that the applicants were present, they do not reflect that the applicants made statements and do not include a general description of these statements.

Further, auditors reviewed additional board meeting minutes to determine why the Board dismissed some complaints and found that the Board did not always reflect in its board meeting minutes why complaints were dismissed. For example, auditors' review of the board meeting minutes for two dismissed complaint cases involving the same licensee found that the meeting minutes did not document the basis for the dismissals. Without sufficient information in the Board's meeting minutes, especially when the Board dismisses a complaint, it is difficult for the public to understand the basis for the Board's complaint adjudication decisions.

In order to better comply with the State's open meeting law, the Board should ensure that its board meeting minutes accurately reflect what occurred during the meeting and include sufficient information to clearly communicate to the public the basis for its complaint-adjudication decisions.

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

The Board has been able to investigate and resolve complaints against licensees. The Board has statutory authority to investigate and adjudicate complaints within its jurisdiction and has various nondisciplinary and disciplinary options available to use to address violations of statute and/or rule, such as issuing a letter of concern, imposing probation, and revoking a license. However, as discussed in the Complaint resolution chapter of this report, the Board should improve its complaint resolution process by removing its process from its administrative rules and by developing and implementing comprehensive policies and procedures for resolving complaints. In addition, the Board should improve its complaint tracking to ensure it continues to resolve complaints in a timely manner (see pages 11 through 17 for additional information).

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<sup>14</sup> The fingerprinting requirements in Laws 2014, Ch. 107, were not effective until July 1, 2016.

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

The Attorney General is the Board's attorney according to A.R.S. §41-192(A)(1). Pursuant to this statute, the Attorney General is required to provide the legal services the Board requires, such as representing the Board at meetings, prosecuting disciplinary actions, handling appeals from board orders, defending against lawsuits, advising the Board on rulemaking, and filing petitions for injunctive relief. Further, according to A.R.S. §32-3953, the Board has the authority to have a county attorney file a petition to enjoin violations of the Board's statutes or rules, in addition to having the Attorney General make the filing.

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

Board staff reported that the Board sought statutory changes in 2014 and 2016 to update licensing requirements to reflect changes in the acupuncture field and to strengthen its ability to protect the public. Specifically:

- Laws 2014, Ch. 107, amended A.R.S. §§32-3901 and 32-3903 to remove the Board's authority to approve preceptorship training programs, and amended A.R.S. §32-3924 to include new requirements or options for licensure. The new requirements include requiring applicants to submit fingerprints for a criminal background check beginning July 1, 2016, and requiring applicants to disclose all other active or past professional healthcare licenses or certificates on their applications. The changes also added the option for license applicants to take and pass specific exams offered by the NCCAOM, the national acupuncture certifying body, instead of being certified by the NCCAOM.<sup>15</sup>
- Laws 2016, Ch. 266, amended A.R.S. §32-3924 to specify that only applicants for initial licensure must submit fingerprints to the Board for a criminal background check.

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

In addition to the statutory changes recommended in Sunset Factor 4 (see pages 23 through 24), auditors identified one area affecting auricular acupuncture certificate applicants where the Board should seek statutory revisions. In 2014, the Legislature amended A.R.S. §32-3924 to require acupuncture license applicants to disclose all other active and past professional healthcare licenses on their applications.<sup>16</sup> Board staff reported that the Board sought the change at the advice of its Assistant Attorney General to strengthen its protection of the public health and safety. Although the Board already had a rule requiring applicants for an acupuncture license to disclose whether they had been permitted by law to practice acupuncture in another jurisdiction, the change in statute allowed the Board to inquire about other healthcare licenses, such as nursing or chiropractic licenses, and to request verification of those licenses directly from the other licensing jurisdictions. For example, if an applicant was licensed as a chiropractor in another state, the Board now requires the applicant to request that the other state's licensing agency send verification directly to the Board.

However, the 2014 statutory change does not apply to auricular acupuncture certificate applicants. Although rule requires certificate applicants to disclose whether they have been permitted by law to practice auricular acupuncture in another jurisdiction, they are not required to disclose other healthcare licenses. In addition, board staff reported that because the Board's Assistant Attorney General advised that the Board could not request license or certificate verification directly from another jurisdiction without statutory authority, the Board requires auricular acupuncture certificate applicants who have been licensed to practice auricular acupuncture in another jurisdiction to provide only a copy of their license or certificate rather than the Board requesting verification directly from the other jurisdiction. Therefore, in order to ensure that it obtains and

<sup>15</sup> According to NCCAOM, 43 states and the District of Columbia consider a passing score on the NCCAOM examinations or obtaining NCCAOM certification as meeting the requirement for competency.

<sup>16</sup> Laws 2014, Ch. 107, §5.

verifies all of the available and relevant information to make an informed certification decision, the Board should seek statutory changes to allow it to inquire about all other active and past professional healthcare licenses or certificates for auricular acupuncture certificate applicants and request license or certificate verification directly from the jurisdiction that issued the license or certificate.

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

Terminating the Board would affect the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board is responsible for licensing acupuncturists and certifying auricular acupuncturists, investigating complaints against licensees and certificate holders and taking disciplinary or nondisciplinary action as necessary, and providing information to the public about licensees and certificate holders, including disciplinary history. These functions help protect the public from harm.

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

According to the NCCAOM, as of 2015, 45 states, including Arizona, regulated the practice of acupuncture. Additionally, according to the National Acupuncture Detoxification Association (NADA), 20 states, including Arizona, regulated the practice of NADA auricular acupuncture.<sup>17</sup> Auditors contacted four other state acupuncture boards—California, Idaho, Indiana, and Ohio—and found that the Board provides a similar level of regulation as compared to these states. For example:

- **Examination**—All four states require applicants to pass an examination in order to demonstrate their competency to practice acupuncture. Similar to Arizona, three of the four states—Idaho, Indiana, and Ohio—allow applicants to use the NCCAOM exam to satisfy the examination requirement. One state, California, uses its own state licensing exam, which contains similar standards as the NCCAOM exam.
- **Background checks**—Three of the four states perform a background check on initial acupuncture licensees. One state, Idaho, does not perform a background check on initial acupuncture licensees. As indicated previously, Arizona is required to perform background checks on initial acupuncture licensees beginning July 1, 2016.<sup>18</sup> None of the states contacted perform background checks on renewal applicants, although Indiana reported that it is permitted to do so by law.
- **Continuing education**—Similar to Arizona, two of the four states require licensees to complete continuing education in order to renew their license.<sup>19</sup> In the other two states, Indiana and Ohio, the acupuncturist is required to maintain an NCCAOM certification, which requires 60 hours of continuing education in a 4-year period.
- **Auricular Acupuncture Certificates**—One other state, Indiana, has a separate certification for auricular acupuncture similar to Arizona.<sup>20</sup> The other three states did not have a separate certification to regulate auricular acupuncture.

**12. The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.**

Auditors found that the Board does not use private contractors to perform its mission-critical services. The Board was established to protect the public health, safety, and welfare and it accomplishes this by issuing

<sup>17</sup> According to its website, NADA is a nonprofit association that provides auricular acupuncture reference materials and training for treating behavioral health problems, addictions, mental health, and disaster and emotional trauma.

<sup>18</sup> The Board does not have statutory authority to perform background checks on initial auricular certificate applicants.

<sup>19</sup> Specifically, Arizona and Idaho require 15 hours of continuing education annually, while California requires 50 hours of continuing education every 2 years.

<sup>20</sup> Indiana auricular acupuncturists are certified as acupuncture detoxification specialists.

licenses to qualified applicants, investigating complaints, and taking disciplinary action to enforce the Board's statutes and rules. Auditors found that the Board does not use private contractors for any of these functions.

Auditors contacted four states' acupuncture boards—California, Idaho, Indiana, and Ohio—to obtain information regarding their use of contractors for these regulatory activities. Idaho indicated that it sometimes contracts with licensees to serve as experts to assist investigators during the investigative process and Ohio indicated that it uses temporary service workers to assist in reviewing patient records as part of its complaint investigations. Both states also indicated they contract for a hearing examiner or officer.<sup>21</sup> In addition, Idaho indicated that it uses private attorneys to prosecute complaints, which sometimes results in consent orders.

The audit did not identify any additional areas where the Board should consider using private contractors.

## Recommendations

1. The Board should modify its license and certificate applications to more clearly direct applicants on the documentation they are required to submit and the information that should be included in this documentation (see Sunset Factor 2, pages 21 through 23, for more information).
2. The Board should develop and implement policies and procedures directing staff to obtain all required documentation, such as the documentation applicants must submit if they answer yes to any of the Board's disclosure questions (see Sunset Factor 2, pages 21 through 23, for more information).
3. The Board should identify licensing, certification, and continuing education requirements that have been established in rule that are not needed to protect the public health and safety or are not within the Board's ability to enforce and work to remove these unnecessary requirements from its rules (see Sunset Factor 2, pages 21 through 23, for more information).
4. The Board should seek the following statutory and/or rule changes to ensure that the Board's rules are consistent with its statutory authority:
  - a. Requiring only non-U.S. citizens whose documentation of lawful presence in the U.S. has expired to provide updated documentation upon renewal of a license or certificate; and
  - b. Reconciling the differences between statutory and rule renewal application submission deadlines for certificate holders (see Sunset Factor 4, pages 23 through 24, for more information).
5. The Board should ensure that its board meeting minutes accurately reflect what occurred during the meeting and include sufficient information to clearly communicate to the public the basis for its complaint-adjudication decisions (see Sunset Factor 5, page 25, for more information).
6. The Board should seek statutory changes to allow it to inquire about all other active and past professional healthcare licenses or certificates for auricular acupuncture certificate applicants and request license or certificate verification directly from the jurisdiction that issued the license or certificate (see Sunset Factor 9, pages 26 through 27, for more information).

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<sup>21</sup> Ohio contracts for a hearing examiner to supplement the Board's full-time hearing examiner, while Idaho will contract for a hearing officer if the complaint process results in a formal hearing.



## Methodology

Auditors used various methods to study the issues in this performance audit and sunset review. These methods included reviewing State of Arizona Acupuncture Board of Examiners (Board) statutes, rules, and policies and procedures; interviewing board members, staff, and stakeholders; and reviewing information from the Board's website. Auditors also reviewed minutes from and attended seven board meetings held between October 2015 and April 2016.

In addition, auditors used the following specific methods to meet the audit's objectives:

- To determine whether the Board's processes and practices helped ensure that it issued licenses and certificates to qualified applicants in a timely manner, auditors reviewed a random sample of 25 acupuncture licensees and 5 auricular acupuncture certificate holders from the total population of active licensees and certificate holders. The 25 acupuncture licensees reviewed included 9 initial acupuncture licenses issued between July 2011 and March 2015 and 21 renewal acupuncture licenses issued between January 2014 and January 2016. The 5 auricular acupuncture certificate holders reviewed included 3 initial auricular certificates issued between August 2010 and August 2014 and 5 renewal certificates issued between June 2015 and October 2015. In addition, auditors reviewed a judgmental sample of 6 acupuncture licensees who were not U.S. citizens selected from the Board's citizenship tracking documents.
- To determine whether the Board processes complaints in an appropriate and timely manner, auditors reviewed 10 complaints the Board received between July 1, 2012 and December 14, 2015.<sup>22,23</sup> As part of assessing the Board's compliance with its complaint process, auditors also reviewed board meeting minutes from January 2013 to December 2015 for the 10 complaint files reviewed. Additionally, auditors reviewed the statutes and rules of and contacted staff at five other Arizona regulatory boards—the Arizona Medical Board, the Arizona Board of Osteopathic Examiners in Medicine and Surgery, the Board of Homeopathic and Integrated Medicine Examiners, the Naturopathic Physicians Medical Board, and the State of Arizona Board of Chiropractic Examiners—to compare their complaint investigation and adjudication requirements and practices to the Board's complaint investigation and adjudication requirements and practices.
- To assess whether the Board provides appropriate information to the public, auditors placed four anonymous phone calls to board staff in February and March 2016 requesting information about three licensees and one certificate holder and compared the information provided to board records. Auditors also reviewed the Board's website and assessed whether the information provided about licensees' complaint history was accurate and consistent with statutory requirements.
- To obtain information for the Introduction, auditors reviewed board records regarding the number of licenses and certificates issued in 2015, the number of active licensees and certificate holders as of June 2016, and the number of complaints the Board opened against licensed acupuncturists between July 2012 and December 2015. In addition, auditors compiled and analyzed unaudited information from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2014 through 2016 and the AFIS

<sup>22</sup> Although the Board's records showed that all ten complaints were against licensed acupuncturists, auditors determined that one of the complaints concerned an acupuncturist whose license had expired.

<sup>23</sup> In addition to these 10 complaints, the Board also received 27 complaints involving individuals alleged to have practiced acupuncture without a license during the same time frame. Of those, 21 were licensed physical therapists alleged to have practiced acupuncture.

Management Information System *Status of General Ledger—Trial Balance* screen for fiscal years 2014 and 2015.

- To obtain information for the Sunset Factors, auditors reviewed the Board's initial and renewal application forms and compared them to statutes and rules, and license application forms from the Arizona Medical Board and the Naturopathic Physicians Medical Board. Auditors also reviewed information in the Arizona Administrative Register regarding the Board's proposed rules during calendar years 2010 through 2016 and attended a meeting held in May 2016 to allow public comment on the proposed rules. In addition, auditors reviewed the Board's meeting notices, agendas, and minutes; attended the seven board meetings held between October 2015 to April 2016; and reviewed the Board's meeting minutes from June 2012 to May 2013 for information regarding one licensee; the National Certification Commission for Acupuncture and Oriental Medicine's (NCCAOM) Recertification Handbook for Maintaining National Standards of Continued Competence to gather information on continuing education requirements; the NCCAOM website, and the Board's substantive policy statements. Finally, auditors reviewed the National Acupuncture Detoxification Association website to obtain information regarding the regulation of auricular acupuncture, and contacted staff from acupuncture boards in four other states—California, Idaho, Indiana, and Ohio—to obtain information about their use of private enterprises, the regulation of acupuncturists and auricular acupuncturists, and the use of private contractors.
- Auditors' work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with board statutes and rules and, where applicable, testing its compliance with these policies and procedures. Auditors report their conclusions on these internal controls as well as the Board's efforts to improve its controls in the report chapters and Sunset Factor 2. In addition, auditors assessed the usability of the Board's database information for performing audit work. Specifically, auditors reviewed the Board's licensing database and the Board's mechanism for tracking complaints and determined that although the Board's database and complaint-tracking mechanism were sufficiently reliable for the purpose of selecting samples, they lacked fields for tracking information critical for audit work. Therefore, auditors did not use the Board's licensing database and complaint-tracking mechanism to review licensing and complaint information, but used them to select various samples of licensees, certificate holders, and complaints for further test work.

Auditors conducted this performance audit and sunset review of the Board in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

# AGENCY RESPONSE

Douglas A. Ducey  
Governor

Craig Seitz, D.C., L.AC., Chairman  
Jennifer Sandoval, L.AC., Secretary



## State of Arizona Acupuncture Board of Examiners

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September 8, 2016

Auditor General Debbie Davenport  
Office of the Auditor General  
2910 North 44<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85018

RE: Performance Audit – Sunset Review

Dear Auditor General Davenport:

The Arizona Acupuncture Board of Examiners (Board) has reviewed the preliminary report draft of the performance audit and sunset review. As requested, please find the following responses:

### Chapter 1: Licensing and certification

**Recommendation 1.1:** The Board should continue to develop and implement policies and procedures for reviewing and approving initial and renewal applications that direct staff to obtain and assess the appropriateness of all documentation required by statute and rule. In addition, the policies and procedures should:

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

Response explanation: The Board has begun to develop a format to accomplish the intent of this recommendation.

**Recommendation 1.1a:** Direct staff to obtain and assess the appropriateness of both initial citizenship documentation and updated citizenship documentation from non-U.S. citizens whose documentation has expired; and

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

Response explanation: The Board will develop a more accurate method of obtaining and recording this critical information.

**Recommendation 1.1b:** Direct staff on how to conduct continuing education audits, including how many licensees to review, how to determine the appropriateness of continuing education hours submitted, and how to verify that the continuing education was completed during the audit period.

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

Response explanation: The Board will seek to improve the process by updating the current electronic licensing database.

**Recommendation 1.2:** The Board should develop a more reliable system for tracking when licensees' citizenship documentation expires, such as tracking licensees' documentation in its electronic licensing database.

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

Response explanation: The Board will update the current electronic licensing database to address this recommendation.

**Recommendation 1.3:** The Board should work with its Assistant Attorney General to update its citizenship form to reflect current statutory requirements.

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

Response explanation: The Board has begun discussions with the Assistant Attorney General to update its current citizenship form to reflect current statutory citations.

**Recommendation 1.4:** The Board should improve its timeliness tracking by including in its database a field for recording the date when it receives missing application items.

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

Response explanation: The Board office has developed and implemented a new method to record the listing of missing application items and when the required items arrive at the office. The board will seek to further improve this process by updating the current electronic licensing database.

**Recommendation 1.5:** The Board should finalize and implement its draft checklist to help ensure it correctly notifies applicants that their applications are complete only after all required elements of an application have been received.

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

Response explanation: The Board will refine its current notification of administrative completeness to license applicants.

## **Chapter 2:** Complaint resolution

**Recommendation 2.1:** The Board should remove its complaint resolution process from rule, including the 90-day filing limitation.

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

Response explanation: The Board will remove the complaint resolution process currently in board rules to include the elimination of the 90-day filing limitation. In addition, the Board will develop and implement policies and procedures for the complaint resolution process.

**Recommendation 2.2:** The Board should develop and implement policies and procedures for its complaint resolution process. The Board's policies and procedures should address the following:

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process

**Recommendation 2.2a:** Determining the jurisdiction of a complaint. Specifically, the policies and procedures should identify who should determine whether a complaint is within the Board's jurisdiction, and when this

determination should be made, and provide guidance for how to properly determine if a complaint is within the Board's jurisdiction.

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process. The Board in the development of policies and procedures will incorporate the intent of this recommendation.

**Recommendation 2.2b:** Responding to complaints that fall outside of its jurisdiction, such as referring them to the appropriate regulatory board for review, and how this will be documented;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process. The Board in the development of policies and procedures will incorporate the intent of this recommendation

**Recommendation 2.2c:** Prioritizing the complaints it receives that are within its jurisdiction for investigation based upon the nature of the complaint allegations, such as assigning a higher investigation priority to complaints with allegations that pose a potential danger to public 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 will develop and implement policies and procedures for the complaint resolution process. The Board will develop and implement new procedures and policies to ensure this recommendation is met.

**Recommendation 2.2d:** Identifying the information the Board needs to obtain from the complainant in order to initiate an investigation;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process. The Board will develop and implement new procedures and policies to ensure this recommendation is met.

**Recommendation 2.2e:** Components of an adequate complaint investigation, such as interviewing the complainant, licensee, and all applicable witnesses; obtaining and reviewing all necessary responses and medical documentation; and ensuring that all complaint allegations are adequately investigated;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process. The Board will develop and implement new procedures and policies to ensure this recommendation is met.

**Recommendation 2.2f:** Directing that staff fully investigate complaints and prepare investigative reports that summarize complaints and the results of the investigations before forwarding complaints to the Board for review and adjudication;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process. The Board will review "best practice" procedures and policies used by other health care regulatory boards to develop and implement new procedures in order to meet this recommendation.

**Recommendation 2.2g:** Requiring the Board to proceed with the investigation and adjudication of a complaint, even if a complainant wishes to withdraw a complaint or settle with the licensee;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process. Again, the Board will review “best practice” procedures and policies used by other health care regulatory boards to develop and implement new procedures to satisfy this recommendation.

**Recommendation 2.2h:** Developing, reviewing, and executing consent agreements. Specifically:

- Ensuring consent agreements terms are reviewed and adopted by the Board at a board meeting;
- Ensuring that all appropriate parties, including the licensee and executive director, sign the consent agreement; and
- Including guidance for how the Board should proceed if the licensee fails to sign the consent agreement;

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

Response explanation: The Board will study, develop, and implement new procedures and policies to meet the intent of this recommendation.

**Recommendation 2.2i:** Requiring staff to track when the Board sends consent agreements to licensees and when the licensees should return the signed consent agreements to the Board;

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

Response explanation: The Board will direct staff to develop procedures and policies to better track the sending and receiving of consent agreements.

**Recommendation 2.2j:** Notifying employers of disciplinary action, including how staff should notify the employer;

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

Response explanation: The Board will review the current requirement and direct staff to notify employers of disciplinary action.

**Recommendation 2.2k:** Determining how to proceed if a licensee does not submit a response to the complaint within 20 days, such as continuing with the complaint investigation and/or adding an additional violation of statute to the complaint;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process to meet the intent of this recommendation.

**Recommendation 2.2l:** Requiring staff to send all notices of complaints to licensees using certified mail or personal delivery;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process.

**Recommendation 2.2m:** Developing time frames for key steps of its complaint resolution process, such as when the licensee received the notice of complaint, when the licensee's response is due to the Board, when the Board should send the licensee's response to the complainant, and when the complainant's rebuttal should be received by the Board;

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

Response explanation: The Board will develop and implement policies and procedures for the complaint resolution process to meet this recommendation.

**Recommendation 2.2n:** Requiring staff to use an electronic tracking mechanism, such as its complaint log, to track these time frames so that the Board can ensure that complaints continue to move through the complaint process in a timely manner; and

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

Response explanation: The Board will update the current electronic licensing database to address this recommendation.

**Recommendation 2.2o:** Requiring staff to submit reports to the Board regarding complaint-processing timeliness to help the Board identify and address factors in the complaint resolution process that may affect timeliness.

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

Response explanation: The Board will work with staff to develop and implement procedures on how best to address this recommendation.

**Recommendation 2.3:** Once the Board has developed its policies and procedures for resolving complaints, the Board should train all board members and staff on these policies and procedures.

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

Response explanation: The training will be incorporated into the board meeting training sessions conducted throughout the year.

**Recommendation 2.4:** The Board should modify its initial and renewal application forms to include questions about whether licensees are self-employed, have an employer, and the name of the employer, if employed.

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

Response explanation: The Board will review and determine if any statutory or rulemaking changes are required to implement this recommendation.

## **Chapter 3:** Public information

**Recommendation 3.1:** The Board should implement the new policies and procedures staff developed for providing information to the public.

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

Response explanation: The Board has begun to implement these new policies and procedures.

**Recommendation 3.2:** The Board should develop and implement a mechanism to ensure that the information in its licensing database is accurate, such as periodically comparing information in a random sample of complaint files to information in the Board's licensing database.

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

Response explanation: The Board will direct staff to develop some options to consider for implementation of a mechanism to accomplish this recommendation.

**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 1:** The Board should modify its license and certificate applications to more clearly direct applicants on the documentation they are required to submit and the information that should be included in this documentation.

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

Response explanation: The Board will direct staff to review and recommend changes for Board consideration.

**Recommendation 2:** The Board should develop and implement policies and procedures directing staff to obtain all required documentation, such as the documentation applicants must submit if they answer yes to any of the Board's disclosure questions.

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

Response explanation: The Board will develop and implement the appropriate policies and procedures to meet the intended outcome of this recommendation.

**Recommendation 3:** The Board should identify licensing, certification, and continuing education requirements that have been established in rule that are not needed to protect the public health and safety or are not within the Board's ability to enforce and work to remove these unnecessary requirements from its rules.

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

Response explanation: The Board will review these rules and determine if changes are required.

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

**Recommendation 4:** The Board should seek the following statutory and/or rule changes to ensure that the Board's rules are consistent with its statutory authority:

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

Response explanation: The Board will review its statutes and rules for potential changes.

**Recommendation 4a:** Requiring only non-U.S. citizens whose documentation of lawful presence in the U.S. has expired to provide updated documentation upon renewal of a license or certificate; and

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

Response explanation: The Board will seek to improve the process by updating the current electronic licensing database.

**Recommendation 4b:** Reconciling the differences between statutory and rule renewal application submission deadlines for certificate holders.

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

Response explanation: The Board will review and determine if statutes or rules require change and take the appropriate action to reconcile the differences.

**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 5:** The Board should ensure that its board meeting minutes accurately reflect what occurred during the meeting and include sufficient information to clearly communicate to the public the basis for its complaint-adjudication decisions.

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

Response explanation: The Board will continue to examine continual improvements in providing accurate information to the general public.

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

**Recommendation 6:** The Board should seek statutory changes to allow it to inquire about all other active and past professional healthcare licenses or certificates for auricular acupuncture certificate applicants and request license or certificate verification directly from the jurisdiction that issued the license or certificate.

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

Response explanation: The Board will review this recommendation and direct staff to take the necessary steps in having legislation drafted for consideration.

On behalf of the Acupuncture Board of Examiners, I want to thank you for the opportunity to respond to the recommendations presented by your office. In addition, we commend the work of your staff throughout the whole audit process.

Sincerely,

Pete Gonzalez  
Executive Director

