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September 12, 2024

Members of the Arizona Legislature

The Honorable Katie Hobbs, Governor

Ms. Tobi Zavala, Executive Director  
Arizona Board of Behavioral Health Examiners

Transmitted herewith is the report, *Performance Audit and Sunset Review of the Arizona Board of Behavioral Health Examiners*. This audit was conducted by the independent CPA firm Walker & Armstrong, LLP under contract with the Arizona Auditor General and was in response to a November 21, 2022, 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 to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Behavioral Health Examiners agrees with all the findings and plans to implement all the recommendations. My Office has contracted with Walker and Armstrong, LLP to follow up with the Arizona Board of Behavioral Health Examiners in 6 months to assess its progress in implementing the recommendations. I express my appreciation to the Board's members, Executive Director Zavala, and Board staff for their cooperation and assistance throughout the audit.

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

Sincerely,

*Lindsey A. Perry*

Lindsey A. Perry, CPA, CFE  
Auditor General

cc: Arizona Board of Behavioral Health members

# Walker & Armstrong

CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

September 11, 2024

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

Dear Ms. Perry:

We are pleased to submit our report in connection with our performance audit and sunset review of the Arizona Board of Behavioral Health Examiners. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq.

As outlined in its response, the Board agrees with all the findings and plans to implement all the recommendations. We will follow up with the Arizona Board of Behavioral Health Examiners in 6 months to assess its progress in implementing the recommendations.

We appreciate the opportunity to provide these services and work with your Office. Please let us know if you have any questions.

Sincerely,



Walker & Armstrong, LLP  
Phoenix, Arizona

# Arizona Board of Behavioral Health Examiners

Board complied with statutory and rule requirements related to its objective and purposes for 3 areas we reviewed but did not timely resolve complaints, potentially affecting patient safety, and charged fees that exceeded its operational costs

## Performance Audit and Sunset Review

September 2024  
Report 24-108



Walker & Armstrong

CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

## Arizona Board of Behavioral Health Examiners (Board)

Board complied with statutory and rule requirements related to its objective and purposes for 3 areas we reviewed, but did not timely resolve complaints, potentially affecting patient safety, and charged fees that exceeded its operational costs

### Audit purpose

To assess whether the Board issued licenses in accordance with statute and rule requirements, investigated and resolved complaints within its jurisdiction and in a timely manner, provided information to the public as required by statute, and complied with conflict-of-interest requirements, and to provide responses to the statutory sunset factors.

### Key findings

The Board:

- Is responsible for regulating the behavioral health profession including issuing and renewing licenses, investigating and resolving complaints, and providing information to the public about licensees.
- Reviewed and approved or denied initial and renewal license applications within required time frames, verified that initial and renewal applicants met licensure requirements for applications we reviewed, and took consistent and progressive enforcement action to address substantiated violations for complaints we reviewed.
- Did not resolve 58 percent of complaints it closed in fiscal year 2023 within 180 days, and 31 percent of open complaints had been open for more than 180 days as of June 2023. Untimely complaint resolution may impact patient safety when licensees alleged to have violated Board statutes and rules continue to practice while under investigation even though they may be unfit to do so. The Board did not timely address staffing needs in response to an increase in complaints and prioritized complaints it opened related to licensing applications over investigating lower-risk public complaints, which contributed to untimely complaint resolution.
- Charged fees that exceeded its operational costs in each of the past 3 years, inconsistent with a statutory requirement to establish fees that approximate the cost of maintaining the Board.

### Key recommendations

The Board should:

- Investigate and resolve complaints within 180 days.
- Hire additional investigators to assist in more timely resolution of complaints.
- Develop and implement a process for annually assessing whether its staffing level is sufficient to resolve complaints timely and work with the Legislature to obtain additional staffing resources as appropriate.
- Discontinue prioritizing complaints it opens related to licensing investigations over lower-priority public complaints.
- Establish fees that align with its operating costs as required by statute.

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# BOARD OVERVIEW

## Arizona Board of Behavioral Health Examiners

The Arizona Board of Behavioral Health Examiners (Board) regulates the behavioral health profession by issuing and renewing licenses; investigating and resolving complaints; and providing information to the public about license holders. Statute requires the Board to consist of 12 Governor-appointed members who serve no more than 2 consecutive 3-year terms. As of May 2024, 10 of 12 Board member positions were filled. In fiscal year 2024, the Board was appropriated 20 full-time equivalent staff positions. The Board does not receive any State General Fund appropriations. Rather, the Board’s revenues consist primarily of licensing and registration fees.

<b>Active individual licenses as of May 2024:</b>	17,939
<b>Complaints opened in fiscal year 2023:</b>	232

### Audit results summary

Key regulatory areas reviewed	Results			
<b>Individual licenses</b> —Process initial applications within 270 days. Key qualifications include education, experience and a criminal history records check.	Issued timely?	✓	Ensured qualifications met?	✓
<b>License renewals</b> —Process renewal applications within 180 days and licensees must complete 30 hours of continuing education every 2 years.	Issued timely?	✓	Continuing education met?	✓
<b>Complaint handling</b> —Investigate complaints it receives and take action to address violations within 180 days.	Resolved complaints in a timely manner?	✗	Followed statutory requirements for adjudication?	✓
<b>Public information</b> —Provide specific complaint and licensee information to the public upon request.	Provided via website?	✗	Provided via phone?	✓
Other responsibilities reviewed	Results			
<b>Fee setting</b> —Establish fees based on the actual costs of providing services.	Assessed costs?	✓	Based fees on actual costs?	✗

## Audit results summary (continued)

Other responsibilities reviewed	Results			
<p><b>Conflicts of interest</b>—Sign a disclosure form annually, maintain substantial interest disclosures in a special file, and recuse oneself from decisions involving substantial interests.</p>	<p>Board members/ staff signed annual disclosures and Board maintained special file?</p>	<p>✓</p>	<p>Board members with conflicts recused selves during board meetings?</p>	<p>✓</p>
<p><b>Rulemaking and open meeting law</b>— Requirements include involving the public in rulemaking and making meeting minutes available in 3 working days.</p>	<p>Involved public in rulemaking?</p>	<p>✓</p>	<p>Meeting minutes available in 3 working days?</p>	<p>✓</p>

# INTRODUCTION

On behalf of the Arizona Auditor General, Walker & Armstrong has completed a performance audit and sunset review of the Arizona Board of Behavioral Health Examiners (Board). This performance audit and sunset review determined whether the Board (1) issued and renewed licenses in accordance with statute and rule requirements, (2) resolved complaints in a timely manner and imposed disciplinary action consistent with the nature and severity of violations, (3) provided information to the public as required by statute, and (4) complied with State conflict-of-interest requirements and aligned its conflict-of-interest processes with recommended practices. This report also provides responses to the statutory sunset factors.

## Board mission and responsibilities

The Board was established in 1988, and according to its website, its mission is to establish and maintain standards of qualifications and performance for licensed behavioral health professionals in the fields of counseling, marriage and family therapy, social work, and substance abuse counseling, and to regulate the practice of licensed behavioral health professionals for the protection of the public (see textbox for definition of key terms).<sup>1</sup>

The Board's statutory responsibilities include:

- Issuing and renewing licenses to qualified applicants (see Sunset Factor 2, pages 13 and 14, for more information on licensing requirements). As shown in Table 1 (see page 4), the Board had 17,939 active licenses as of May 2024.
- Investigating and adjudicating complaints against licensees. In fiscal year 2023, the Board opened 232 complaints, including those opened as a result of background checks or other issues identified during the Board's review of license applications (see Finding 1, pages 8 through 12, and Sunset Factor 6, pages 17 and 18, for more information on our findings related to the Board's processes for handling complaints).
- Providing information to the public, including licensees' disciplinary and nondisciplinary histories (see Sunset Factor 5, pages 16 and 17, for more information on public information requirements).

### Key terms

**Counselors**—Work with individuals, families, and/or groups to treat behavioral, emotional, and/or mental problems and disorders through guidance and conversation.

**Marriage and family therapists**—Work with couples and families to diagnose and treat behavioral, emotional, and/or mental problems and disorders.

**Social workers**—Work with individuals, families, and communities to provide both counseling services and social service assistance through various organizations such as schools and other public social agencies.

**Substance abuse counselors**—Counsel individuals, families, and/or groups on addiction prevention, treatment, recovery support, and education.

Source: Walker & Armstrong staff analysis of information from professional associations' websites and inquiries with the Board's staff.

<sup>1</sup> The Board was originally established to offer voluntary certification to behavioral health professionals in the State. However, Laws 2003, Ch. 65, revised statute to eliminate voluntary certification and require behavioral health professionals to be licensed beginning July 1, 2004. Statute exempts certain individuals who practice psychotherapy from Board licensure, including individuals licensed by the Arizona Medical Board, Arizona Board of Psychologist Examiners, and Arizona Board of Nursing, some individuals employed by an agency licensed by the Arizona Department of Health Services, and individuals employed by the Arizona Department of Economic Security or Arizona Department of Child Safety.



**Table 1: Board’s license types, number of active licenses, and education and experience requirements for licensure  
As of May 2024  
(Unaudited)**

License types	Number of active licenses	Education and experience requirements for licensure <sup>1</sup>
<b>Counseling</b>		
Associate Counselor	2,198	Master’s degree or higher with an emphasis on counseling
Professional Counselor <sup>2</sup>	5,403	In addition to the above, 1,600 hours of supervised work in no less than 2 years and 100 hours of clinical supervision
<b>Marriage &amp; Family Therapy</b>		
Associate Marriage & Family Therapist	329	Master’s degree or higher in a behavioral science
Marriage & Family Therapist <sup>2</sup>	1,084	In addition to the above, 1,600 hours of direct client contact, 100 hours of clinical experience with couples and families, and 100 hours of clinical supervision
<b>Social Work</b>		
Baccalaureate Social Worker	99	Bachelor’s degree in social work
Master Social Worker	3,539	Master’s degree or higher in social work
Clinical Social Worker <sup>2</sup>	4,010	In addition to the Master Social Worker requirements, 1,600 hours of direct client contact with at least 100 hours of clinical supervision
<b>Substance Abuse Counseling</b>		
Substance Abuse Technician	57	Associate’s degree in chemical dependency or a bachelor’s degree in a behavioral science with an emphasis on counseling
Associate Substance Abuse Counselor	328	Bachelor’s degree in a behavioral science with an emphasis on counseling and 1,600 hours of direct client contact work experience in substance abuse within 2 years or a master’s degree in a behavioral science with an emphasis on counseling
Independent Substance Abuse Counselor <sup>2</sup>	892	Master’s degree or higher in behavioral science with an emphasis on counseling and 1,600 hours of work experience in substance abuse counseling with direct client contact within 2 years
<b>Total active licenses</b>	<b><u>17,939</u></b>	

<sup>1</sup> In addition to education and experience requirements, behavioral health professionals must also pass professional exams to obtain a license.

<sup>2</sup> This type of license allows a licensee to practice without supervision.

Source: Walker & Armstrong staff analysis of Arizona Revised Statute (A.R.S.) §§32-3291 through 32-3321 and licensing information provided by Board staff.

## Organization and staffing

A.R.S. §32-3252 requires the Board to consist of 12 Governor-appointed members who serve no more than 2 consecutive 3-year terms, and include:

- 2 individuals licensed in social work, with at least 1 being a clinical social worker
- 2 individuals licensed in counseling, with at least 1 being a licensed professional counselor
- 2 individuals licensed in marriage and family therapy, with at least 1 being a licensed marriage and family therapist
- 2 individuals licensed in substance abuse counseling, with at least 1 being a licensed substance abuse counselor
- 4 public members

As of May 2024, 10 Board member positions were filled, and 2 public member positions were vacant. The Board was appropriated 20 full-time equivalent (FTE) staff positions for fiscal year 2024 and reported that as of May 2024, all 20 FTE positions were filled. Board staff positions include an executive director; a deputy director; an assistant director; an operations manager; a project specialist; 7 credentialing staff who are primarily responsible for reviewing initial and renewal licensing applications; and 8 investigative staff who are primarily responsible for investigating licensee complaints received from the public and background checks and other issues related to license applications. See Finding 1, pages 8 through 12, for information about available staffing to conduct timely complaint investigations.

Additionally, pursuant to A.R.S. §32-3261, the Board has 4 academic review committees, each to review license applications referred by the Board or executive director to determine whether an applicant, whose curriculum has not been approved or whose program is not accredited by an organization or entity approved by the Board, has met statutory/rule educational requirements for licensure (see textbox). Committees consist of Governor-appointed members who are not in Board member positions and who serve no more than 2 consecutive 3-year terms. Committee meetings are open to the public.

### Board committees

**Counseling Academic Review Committee**—3 members, with all positions filled as of May 2024

**Marriage and Family Therapy Academic Review Committee**—3 members, with 1 vacancy as of May 2024

**Social Work Academic Review Committee**—3 members, with 1 vacancy as of May 2024

**Substance Abuse Academic Review Committee**—3 members, with 1 vacancy as of May 2024

Source: Walker & Armstrong staff review of the Board's website and inquiries with the Board's staff.

## Budget

The Board does not receive any State General Fund appropriations. Instead, the Board’s revenues consist of licensing and other fees. Statute requires the Board to remit all administrative penalties, certain civil penalties, and 10 percent of all fees, fines, and other revenues received to the State General Fund and to deposit the remaining 90 percent of these revenues into the Behavioral Health Examiners Board Fund. As shown in Table 2, in fiscal years 2022 through 2024, most of the Board’s expenditures or estimated expenditures were for personnel costs, professional services such as legal fees paid to the Arizona Attorney General’s Office and background checks, and other operating expenses, such as rent, software support and maintenance, and financial services from the Arizona Department of Administration. Between fiscal years 2022 and 2023, the Board’s fiscal year ending fund balance increased from about \$4.8 to \$5.3 million. Based on the Board’s fiscal year 2024 estimated revenues and expenditures, its fiscal year 2024 ending fund balance is an estimated \$1.8 million, or about 84 percent of its annual expenditures for the fiscal year, excluding transfers. The State approved budget for fiscal year 2025 includes a transfer of \$4.2 million of the Board’s fund balance to the State General Fund.

**Table 2: Schedule of revenues, expenditures, and changes in fund balance**  
**Fiscal years 2022 through 2024**  
(Unaudited)

	<b>2022</b>	<b>2023</b>	<b>2024</b>
	<b>(Actual)</b>	<b>(Actual)</b>	<b>(Estimated)</b>
<b>Revenues</b>			
Licensing and fees	\$ 2,638,717	\$ 2,827,528	\$ 3,110,300
Charges for goods and services			
Publications and reproductions	30,224	35,017	38,600
Other <sup>1</sup>	18,055	17,940	19,800
Fines, forfeits, and penalties	25,394	30,270	33,200
Other <sup>2,7</sup>	13,287	-	-
<b>Total gross revenues</b>	<b>2,725,677</b>	<b>2,910,755</b>	<b>3,201,900</b>
Remittances to the State General Fund <sup>3</sup>	(272,568)	(286,990)	(315,620)
<b>Total net revenues</b>	<b>2,453,109</b>	<b>2,623,765</b>	<b>2,886,280</b>
<b>Expenditures and transfers</b>			
Payroll and related benefits	1,354,108	1,675,603	1,651,800
Professional and outside services <sup>4</sup>	71,117	90,619	190,000
Travel	6,029	9,505	35,000
Other operating <sup>5,7</sup>	268,902	287,305	205,900
Furniture, equipment, and software	19,140	48,945	75,700
Transfers to other agencies <sup>6</sup>	56,420	52,517	-
Transfers to State General Fund <sup>8</sup>	-	-	4,200,000
<b>Total expenditures</b>	<b>1,775,716</b>	<b>2,164,494</b>	<b>6,358,400</b>
Excess of revenues over (under) expenditures	677,393	459,271	(3,472,120)
Fund balance, beginning of year	4,144,250	4,821,643	5,280,914
<b>Fund balance, end of year</b>	<b>\$ 4,821,643</b>	<b>\$ 5,280,914</b>	<b>\$ 1,808,794</b>

- <sup>1</sup> Other charges for goods and services consist of fees for various services such as providing a license verification for licensure in another state.
- <sup>2</sup> Other revenues primarily consist of credit card convenience fees and public record request copying fees.
- <sup>3</sup> The Board is required to remit to the State General Fund 10 percent of all monies it receives in accordance with A.R.S. §32-3254. However, effective September 15, 2024, Laws 2024, Ch. 222, requires the Board to remit to the State General Fund 15 percent of all monies it receives through June 30, 2028.
- <sup>4</sup> Professional and outside services expenditures primarily consist of legal fees paid to the Arizona Attorney General's office and fees for background checks. The Board reported a significant increase in estimated fiscal year 2024 expenditures as the Board planned to use outside consultants for investigations.
- <sup>5</sup> Other operating expenditures consist of various expenditures such as rent, software support and maintenance, postage and delivery, financial services, supplies, and insurance.
- <sup>6</sup> Transfers to other agencies primarily consist of transfers to the Arizona Department of Administration for an interagency agreement to make improvements to the Board's office space and boardroom. The Board reported that no transfers are anticipated for fiscal year 2024.
- <sup>7</sup> As of August 2022, the Board no longer charges applicants a \$4.50 credit card convenience fee and instead pays the cost of credit card convenience fees for applicants who pay fees by credit card. The Board classifies these costs as other operating expenditures.
- <sup>8</sup> The State approved budget for fiscal year 2025 includes a transfer of \$4.2 million of the Board's fund balance to the State General Fund.

**Source:** Walker & Armstrong staff analysis of the Arizona Department of Administration provided monthly financial reporting files and the State of Arizona *Annual Financial Report* for fiscal years 2022 and 2023; and Board and Arizona Department of Administration provided fiscal year 2024 estimates.

## Board has not resolved some complaints in a timely manner, which may affect patient safety

### Board is responsible for investigating and resolving complaints against licensees

The Board is responsible for investigating and adjudicating complaints against licensees. Specifically, statute authorizes the Board to investigate and resolve complaints alleging that a licensee has engaged in unprofessional conduct, is incompetent, or is mentally or physically unable to provide behavior health services.<sup>2</sup> Statute also authorizes the Board to take various disciplinary and nondisciplinary actions to address substantiated violations of statute and rule, such as revoking a license or levying civil penalties (see textbox).<sup>3</sup>

The Board's procedures require its executive director to conduct an initial review of all public complaints that includes categorizing each complaint with a processing priority of high, medium, or no priority.<sup>4</sup>

High- and medium-priority complaints are expected to be resolved within 90 days. All other complaints are processed in the order they are received with a goal of resolving them within 180 days.

The Board also opens complaints when an applicant self-reports an act of unprofessional conduct on an initial or renewal license application and when an applicant's background check identifies an act of unprofessional conduct not disclosed on the initial application. The Board prioritizes complaints opened

#### Examples of disciplinary and nondisciplinary actions the Board may take

##### Disciplinary actions:

- \* Revoke license
- \* Suspend license
- \* Issue a decree of censure
- \* Impose a probationary term
- \* Impose civil penalty up to \$1,000 per violation of statute or rule

##### Nondisciplinary actions:

- \* Issue a letter of concern
- \* Require continuing education

Source: Walker & Armstrong staff review of A.R.S. §32-3281

<sup>2</sup> A.R.S. §32-3253.

<sup>3</sup> A.R.S. §32-3281.

<sup>4</sup> High priority complaints are those with allegations such as sexual misconduct, imminent harm to a client, active substance use, and licenses with significant behavioral health concerns, and are required to immediately be assigned to an investigator. Medium priority complaints are those with allegations such as boundary concerns between a provider and client, potential harm to a client, or practicing beyond the professional's scope of licensure, and are required to be assigned immediately to investigations if there are no high-priority complaints pending. Complaints with no priority are those with allegations unrelated to patient care, such as inaccurate billings.

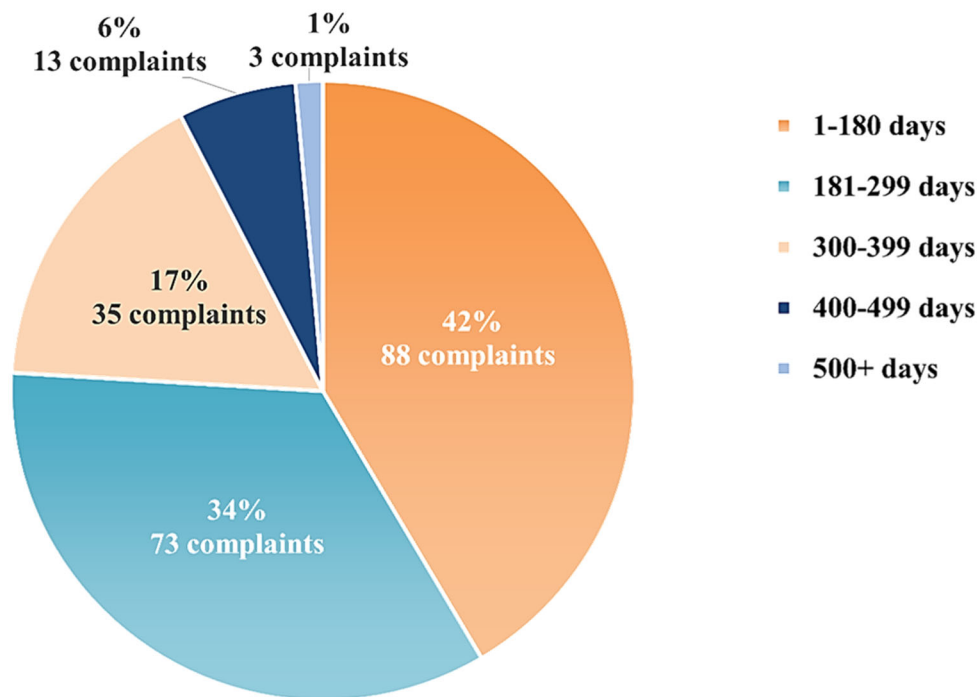
as a result of the application process after its high- and medium-priority complaints, but before public complaints that are not assigned a priority level.

## Board did not resolve within 180 days 58 percent of complaints it closed in fiscal year 2023, and 31 percent of open complaints had been open for more than 180 days as of June 2023

Similar to the Board’s previous performance audit and sunset review in August 2012, in which the Arizona Auditor General found the Board did not resolve most complaints timely, our review of the information in the Board’s complaint database found:

- 124 of 212 complaints the Board closed in fiscal year 2023, or 58 percent, took more than 180 days to resolve (see Figure 1), including 4 complaints that the Board had classified as high- or medium-priority. The Board took an average of 300 days, ranging between 182 and 854 days, to investigate and resolve or refer the complaint to the Office of Administrative Hearings (OAH) for a formal hearing.
- As of June 30, 2023, 39 of the Board’s 127 open complaints, or 31 percent, had been open for more than 180 days, including 2 complaints the Board had classified as high- or medium-priority. These 39 complaints had been open for an average of 273 days, ranging between 182 and 715 days as of June 30, 2023.

**Figure 1: Board took more than 180 days to resolve 58 percent of complaints closed in fiscal year 2023**



Source: Walker & Armstrong staff analysis of complaints closed in fiscal year 2023 as indicated in the Board’s database.

## Board's failure to timely resolve complaints may negatively affect patient safety and may cause undue burden for licensees under investigation for lengthy periods of time

Untimely complaint resolution may negatively impact patient safety when delays allow licensees alleged to have violated Board statutes and rules to continue to practice while under investigation even though they may be unfit to do so. Although the Board has a process for prioritizing complaints, more than one-third of complaints resulting in revocation or suspension were not resolved timely. For example:

- The Board received a complaint that alleged a licensee continued to treat a minor patient after consent to treat was removed by 1 of the minor's parents, but not the other parent. The Board classified this complaint as no priority, and it did not assign this complaint to an investigator until 135 days after it received the complaint. However, after investigating the complaint, the Board determined that the licensee had engaged in conduct that was grossly negligent, and violated the code of ethics by (1) participating in an inappropriate relationship with a client that impaired the licensee's judgement or created a risk of harm to the client; (2) engaging in activities that were not consistent with the licensee's education, training, and/or experience; and (3) exploiting a client, former client, and/or supervisee. Although the Board disciplined the licensee by suspending their license, it took 211 days to resolve the complaint.
- The Board received a complaint that alleged a licensee who was authorized to provide supervised services represented that they were providing life coaching to substance abuse patients until they received a license to provide unsupervised services, then converted the life coaching clients to their substance abuse practice. Although the Board classified the complaint as medium-priority, it reported that it did not assign the complaint to an investigator until 171 days after receiving it. The Board eventually disciplined the licensee by revoking their license, but took 325 days to resolve the complaint (see page 11 for information on why the Board did not timely resolve this complaint despite prioritizing it for investigation).

In both cases, during the investigation process, the licensees held active licenses and were permitted to continue practicing and thus may have continued to provide behavioral health services that fell below the standard of care, leaving the public at risk.

In addition, even when the Board does not substantiate and dismisses complaints, untimely complaint handling subjects licensees to unproven allegations of professional or harmful conduct for longer than necessary. Untimely complaint handling may also create an undue burden for licensees who are under investigation, as they may be required to be responsive to Board requests for information or documentation for a lengthy period of time. For example, the Board took 316 days to investigate and resolve a complaint that it ultimately dismissed after the investigation found the allegations that the licensee had misrepresented themselves as a doctor, inappropriately shared personal views and confidential information with others, and threatened the complainant to be unsubstantiated. Finally, while licensees are under investigation, statute does not permit the Board to make information available to the public regarding complaints involving a licensee.<sup>5</sup>

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<sup>5</sup> A.R.S. §32-3281.

## Board did not timely request staff in response to increase in complaints and prioritized licensing applications over complaint resolution, which contributed to untimely complaint resolution

Although the Board has implemented and sustained several changes in response to recommendations from the Auditor General’s 2012 performance audit and sunset review, it continues to experience issues timely investigating and resolving complaints. For example, the Board developed and continues to implement processes for reviewing complaints to determine if they are within the Board’s jurisdiction and not opening those that are not and assigning risk-based priority levels to complaints based on the nature of the allegations. The Board’s executive director also conducts weekly meetings to review and discuss the status and timing of complaint investigations with investigations staff. However, we identified 2 main issues that have led to its continued inability to timely investigate and resolve complaints:

- **Board did not timely address staffing issues in response to an increased complaint workload**—According to Board records, it opened 232 complaints in fiscal year 2023, which represented a 21 percent increase from the previous year. Despite this increase the Board did not request any additional staffing for fiscal year 2024. As a result, the Board has not always been able to timely resolve complaints it identified as a priority. For example, as previously discussed (see page 10), the Board took 171 days to assign a medium-priority complaint to an investigator, and it reported that this delay occurred because its investigators had been assigned other higher-priority complaints. Although the Board reported it has tried to address its workload issues by having credentialing staff assist by performing an initial review of complaint information and highlighting important facts, this resulted in less efficiency because credentialing staff are more administrative in nature and missed important facts, and investigators had to duplicate their work. Additionally, the Board considered hiring outside consultants to assist in the complaint process, but determined the \$200 to \$250 per hour cost wasn’t feasible based on its budget. The Board requested and received an increase in appropriations to hire 3 more investigators in fiscal year 2025. Board staff reported that they expect the additional investigators will allow the Board to resolve complaints within 180 days.
- **Board prioritized complaints it opened related to licensing applications over investigating lower-risk public complaints**—According to Board staff, the same investigators who conduct background reviews resulting from complaints opened during the application process also investigate public complaints. Board staff indicated that they have prioritized background reviews related to licensing applications over investigating lower-risk public complaints. Board staff reported that they follow this practice to ensure there are enough qualified individuals to provide mental health services in the State. However, this practice likely contributed to the Board’s 135-day delay in assigning a complaint to an investigator, which then delayed the Board from substantiating violations that created a risk of harm to the client (see page 10 for more information on this complaint). Additionally, the Board’s goal is to resolve public complaints within 180 days whereas its rules provide it 270 days to review and approve/deny initial and renewal license applications (see Sunset Factor 2, pages 13 and 14, for more information on Board’s timeliness in approving/denying license applications). Further, the Board received 307 more license applications in fiscal year 2023 than in fiscal year 2022, which may have led to it



opening more internal complaints for background reviews, thus exacerbating delays in resolving low-priority public complaints.

## Recommendations

The Board should:

1. Investigate and resolve complaints within 180 days.
2. Hire additional investigators for which it received funding in fiscal year 2025.
3. Develop a process, supported by written policies and procedures, for annually assessing whether its staffing level is sufficient to handle its workload, and work with the Legislature to obtain additional staffing resources as appropriate.
4. Discontinue its practice of prioritizing complaints it opens related to licensing investigations over lower-priority public complaints.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

Pursuant to A.R.S. §41-2954(D), the legislative committees of reference shall consider but not be limited to the following factors in determining the need for the Board’s continuation or termination. The sunset factor analysis includes additional findings and recommendations not discussed earlier in the report.

## **Sunset factor 1: The key statutory objectives and purposes in establishing the Board.**

The Board’s key statutory responsibilities include licensing qualified behavioral health professionals such as counselors and therapists; investigating and adjudicating complaints about licensees; and providing licensee information to the public.

## **Sunset factor 2: The Board’s effectiveness and efficiency in fulfilling its key statutory objectives and purposes.**

The Board complied with statutory and rule requirements related to its key statutory objective and purposes for 3 areas we reviewed. Specifically, the Board:

- **Reviewed and approved or denied initial and renewal license applications within required time frames**—The Board’s administrative rules require it to approve or deny initial and renewal applications within 270 days.<sup>6</sup> Our review of the Board’s database of 1,602 initial applications and 6,002 renewal applications the Board received in fiscal year 2023 found that the Board approved or denied all initial and renewal applications within 270 days unless the licensee requested an extension. The Board granted extensions for 12 applicants in fiscal year 2023.<sup>7</sup>
- **Verified that initial and renewal applicants met licensure requirements for applications we reviewed**—Our review of a stratified random sample of 26 of 1,602 initial applications the Board approved or denied in fiscal year 2023 found that the Board verified applicants’ qualifications for licensure (see Table 1, page 4). Additionally, our review of a sample of 20 of 5,946 renewal applications the Board received in fiscal year 2023, including 6 indicated as having had continuing education audits, found that licensees met continuing education requirements and the Board conducted audits to ensure that licensees had support for continuing education that met the requirements outlined in rule. (see Appendix, page a-1, for more information on our sampling methodology).
- **Took consistent and progressive enforcement action to address substantiated violations for complaints we reviewed**—Our review of a stratified random sample of 20 of 109 complaints recorded in the Board’s database as opened and closed in fiscal year 2023 found that the Board took consistent enforcement action for similar allegations against licensees for similar

<sup>6</sup> Arizona Administrative Code (AAC) R4-6-302.

<sup>7</sup> AAC R4-6-309 allows an applicant to request an extension of time to demonstrate that it meets license qualification requirements. The Board can grant a maximum of 2 extensions, but must be requested in advance of the deadline for submission of application requirements and be granted by the Board chair or the applicable academic review committee.

substantiated violations and took progressive enforcement actions for licensees with a history of violations.<sup>8</sup> For example, the Board has a policy and procedures directive for handling driving-under-the-influence cases and to include harsher enforcement for more egregious or repeat offenses, and the Board took enforcement action consistent with its written directives for 2 such cases we reviewed.

However, we identified 1 area in which the Board can improve its effectiveness and efficiency in fulfilling its statutory objectives and purposes. Specifically, statute requires the Board to establish fees that approximate the cost of maintaining the Board.<sup>9</sup> Based on our review of the Board's financial information, the Board's fees have exceeded its operational costs in each of the 3 years shown in Table 2 (see page 6). Additionally, the Board's fiscal year 2023 year-end fund balance was nearly \$5.3 million, more than twice its annual operating expenditures during that year. Board staff reported that revenue continues to increase due to the continual influx in applicants and that the Board has reduced license issuance fees and credit card fees, but it has been reluctant to reduce fees further due to uncertainty on how Arizona's participation in the Counseling Compact Commission will impact its revenues in future years.<sup>10</sup>

## Recommendation

5. The Board should establish fees that align with its operating costs as required by statute.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

### **Sunset factor 3: The extent to which the Board's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.**

We did not identify any other agencies or private enterprises with the authority to regulate the licenses that the Board oversees in the State of Arizona. For example, we did not identify any federal agency or private entity with authority to regulate the licenses the Board oversees. Specifically, according to the U.S. Bureau of Labor Statistics and the National Board of Certified Counselors, all 50 states require behavioral health professionals to be licensed by a state regulatory entity.<sup>11,12</sup> In addition, pursuant to statute, practitioners of psychotherapy licensed by the Arizona Medical Board, Arizona Board of Psychological Examiners, and Arizona Board of Nursing; some individuals employed by an agency licensed by the Arizona Department of Health Services; and individuals employed by the Arizona

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<sup>8</sup> 13 of the 20 complaints we reviewed had substantiated violations of Board statute or rule.

<sup>9</sup> A.R.S. §32-3272(D).

<sup>10</sup> Based on Walker & Armstrong staff review of the Counseling Compact Commission (Compact) website at <https://counselingcompact.org/> on 06/25/2024, the Compact allows counselors licensed in other states to work in Arizona under a cooperative agreement by applying through the Compact. Arizona fees for out-of-state licensees have not yet been established and the Compact will begin operating in late 2024 or early 2025.

<sup>11</sup> National Board of Certified Counselors. (n.d.) State Licensure. Retrieved 02/09/2022 from <https://www.nbcc.org/licensure>; U.S. Bureau of Labor Statistics. (September 6, 2023). *How to Become a Substance Abuse, Behavioral Disorder, or Mental Health Counselor*. <https://www.bls.gov/ooh/community-and-social-service/substance-abuse-behavioral-disorder-and-mental-health-counselors.htm#tab-4>

<sup>12</sup> Based on Walker & Armstrong staff review of the National Board of Certified Counselors (NBCC) website at <https://nbcc.org/>, NBCC offers national credentialing which requires continuing education and adherence to a professional code of conduct but does not allow an individual to practice without licensure and oversight by a state board.

Department of Economic Security or Arizona Department of Child Safety are exempt for licensure under the Board.<sup>13</sup> As a result, the Board’s regulatory responsibilities do not duplicate other State entities’ regulation of certain behavioral health professionals.

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

Our review of the Board’s statutes and rules found that the Board adopted rules for statutes when required to do so. However, some of the Board’s rules for licensure are not consistent with statute. Specifically:

- Statutes related to licensed marriage and family therapists, associate substance abuse counselors, and independent substance abuse counselors require an individual who applies for Board licensure to complete 1,600 hours of direct client contact work experience in at least 24 months.<sup>14</sup>

Conversely, the Board’s related rules require 3,200 hours of direct client contact to qualify for these 3 license types.<sup>15</sup>

- This discrepancy resulted from legislation that revised the Board’s statutes to reduce the number of hours required for licensure from 3,200 hours to 1,600 hours of experience.<sup>16</sup> The Board’s website homepage includes a link titled “Letter” from the executive director referencing the update in statute effective September 29, 2021. Board staff reported that the rules are not consistent because although it proposed rules that reflected the updated requirements in July 2022, public comments necessitated revisions to the proposed rules, and the Board reported that it complied with a request from the Governor's Regulatory Review Council to terminate its rulemaking package due to the information received from public comments. Our review of the proposed rulemaking confirmed the revised statutory requirements had been included. In July 2024, the Board published a notice of proposed rulemaking in the Arizona Administrative Register, and Board staff reported that they expect the rulemaking process to be completed by the end of calendar year 2024.
- Statute authorizes the Board to issue a license by endorsement and requires the Board to adopt rules for application requirements.<sup>17</sup> AAC R4-6-304 outlines the requirements for applicants who apply for licensure by endorsement, which includes submitting the same information as an application for a license by examination. However, the Board does not require applicants for license by endorsement to submit all the documents outlined because they may not be

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<sup>13</sup> A.R.S. §32-3271(1).

<sup>14</sup> A.R.S. §32-3311(2) outlines the requirement for a licensed marriage and family therapist, A.R.S. §32-3321(D)(1)(a) outlines the requirements for an associate substance abuse counselor, and A.R.S. §32-3321 (F)(2) outlines the requirements for an independent substance abuse counselor.

<sup>15</sup> AAC R4-6-603(A) outlines the requirement for licensed marriage and family therapists, AAC R4-6-705(A) outlines the requirements for an associate substance abuse counselor, and AAC R4-6-705(B) outlines the requirements for a licensed independent substance abuse counselor.

<sup>16</sup> Laws 2021, Ch. 62.

<sup>17</sup> According to A.R.S. §32-3274, licensure by endorsement is the process to license an individual who is licensed or certified by the regulatory agency of 1 or more other state or federal jurisdictions at a substantially equivalent or higher practice level as determined by the Board.

applicable. For example, an applicant applying for licensure by endorsement is not required to pass an examination approved by the Board since they already have a license; therefore, submitting the score the applicant obtained on the examination, would not be relevant. Board staff stated that the inconsistency was an oversight and that they intend to propose a rule to correct the error.

## Recommendations

The Board should:

6. Finalize its proposed rulemakings to be consistent with statutory changes for the number of hours of experience required for each license.
7. Update AAC R4-6-304 to be consistent with current practices for processing applications for licensure by endorsement.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendations.

### **Sunset factor 5: The extent to which the Board has provided appropriate public access to records, meetings, and rulemakings, including soliciting public input in making rules and decisions.**

The Board has generally encouraged input from the public before adopting its rules, informed the public of its actions and expected impacts, and provided public information over the phone and on its website, with 1 exception. Specifically, the Board:

- **Involved the public in adopting rules**—The Board informed the public of its 3 most recent rulemakings between fiscal years 2019 and 2023 and their expected impacts and provided opportunities for public input. Specifically, the Board published notices of its proposed rulemakings in the Arizona Administrative Register and included a statement detailing these proposed rules' impact on the public. Additionally, the Board provided contact information in the notices for Board staff who would receive public input about the proposed rulemaking in the notices, as well as provided information on the time and place where a public meeting will be held.<sup>18</sup>
- **Complied with open meeting law requirements we reviewed for 2 meetings it held in February and March 2024**—As required by open meeting law, the Board posted meeting notices and agendas on its website as well as in the public area of the building complex where the Board is located at least 24 hours in advance for the 2 meetings we reviewed in February and March 2024.<sup>19</sup> The Board also uploaded an audio recording and written minutes of each meeting to its website within 3 business days following the meetings.<sup>20</sup> Finally, the meeting notices and written minutes we reviewed complied with the provisions of open meeting law we

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<sup>18</sup> According to the Notice of Final Rulemaking for R20-193, finalized in November of 2020, the Board received 6 public comments, all of which the Board considered and incorporated 2 into changes as part of the rulemaking. Due to public comments, the Board has yet to finalize its 2 most recent proposed rulemakings.

<sup>19</sup> A.R.S. §38-431.02(C).

<sup>20</sup> A.R.S. §38-431.01(E).

tested, such as providing the date, time, and location of the meeting in the notices and written minutes.<sup>21</sup>

- **Provided sufficient public information in response to anonymous phone calls we made**—Statute requires the Board to provide public information related to licensees such as the name, practice address, status of license, and disciplinary actions the Board has taken against the licensee.<sup>22</sup> As part of our procedures, we placed 3 anonymous phone calls to the Board and found that the Board appropriately provided or withheld information requested for all questions asked.
- **Provided required public information on its website, with 1 exception**—Statute requires the Board to publish certain information pertaining to licensee disciplinary histories, such as final nondisciplinary and disciplinary actions, on its website for 5 years.<sup>23</sup> Our review of the Board’s website for 25 licensees who received complaints against them found that the Board published information on its website consistent with statutory requirements. Specifically, all 25 licensees had accurate information posted in the licensee search on the Board’s website as required, proper information regarding the complaint and investigation was disclosed, and applicable Board meetings had agendas, minutes, and audio recordings posted on the website as required.<sup>24,25,26</sup> However, statute requires disciplinary actions be removed from the Board’s website after 5 years, but we identified 1 instance in which the Board allowed information on a disciplinary action to be publicly accessible for more than 5 years. Specifically, a disciplinary order for a license that should have been removed in 2014 remained stored on the Board’s website server. Despite the absence of a direct link to the order on the Board’s website, it was accessible to the public through web search engines because the order remained on the Board’s website server.<sup>27</sup>

## Recommendation

8. The Board should develop and implement procedures to ensure that it removes disciplinary actions, both stored on the Board’s website server and available directly from its website, after 5 years as required by statute.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

### **Sunset factor 6: The extent to which the Board timely investigated and resolved complaints that are within its jurisdiction.**

As discussed in Finding 1, pages 8 through 12, we found that the Board did not resolve 124 of 212 complaints it closed in fiscal year 2023 within 180 days of receiving them. Additionally, as of June 30,

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<sup>21</sup> A.R.S. §38-431.01(C)(1).

<sup>22</sup> A.R.S. §§32-3226 and A.R.S. 32-3209.

<sup>23</sup> A.R.S. §32-3214.

<sup>24</sup> A.R.S. §39-121.

<sup>25</sup> A.R.S. §§32-3206 and 32-3214.

<sup>26</sup> A.R.S. §32-3281(A); AAC R4-6-207 Confidential records.

<sup>27</sup> A.R.S. §32-3214.

2023, 39 of the Board’s 127 open complaints had been open for more than 180 days. Untimely complaint resolution may negatively impact patient safety when delays allow licensees alleged to have violated Board statutes and rules to continue to practice while under investigation even though they may be unfit to do so. In addition, even when the Board does not substantiate and dismisses complaint, untimely complaint handling subjects licensees to unproven allegations of professional or harmful conduct for longer than necessary and may also create undue burden for licensees who are under investigation, as they may be required to be responsive to Board requests for information or documentation for a lengthy period of time. Further, while licensees are under investigation, statute does not permit the Board to make information available to the public regarding complaints involving a licensee.<sup>28</sup> We recommended that the Board resolve complaints within 180 days and made several other recommendations to address issues that led to untimely complaint investigations.

**Sunset factor 7: The extent to which the level of regulation exercised by the Board is appropriate as compared to other states or best practices, or both.**

We compared Arizona’s level of regulation to 4 other states—Colorado, Idaho, Montana, and New Mexico—and found that the level of regulation the Board exercises is similar to these 4 states. Specifically:

- **License types**—Although there is some variation in the types of licenses offered in each state, similar to Arizona, all 4 states require licensure for marriage counseling, substance abuse/addiction counseling, social work, and family counseling. Similar to Arizona, each of the other states has structured the licenses they offer in a tiered fashion—that is, there are certificates and/or associate licenses that require a specific number of supervised hours of practice that must be fulfilled before a licensee can provide services unsupervised.
- **Education**—Education requirements for licensure are consistent across the states we reviewed with the following exceptions:
  - A Certified Addiction Technician in Colorado requires a high school diploma or equivalent whereas Arizona requires an associate degree for the technician-level license for this specialty.
  - A Licensed Addiction Counselor in Montana requires a bachelor’s degree, whereas the equivalent license in Arizona requires a master’s degree.
- **Examinations**—Arizona and the 4 other states we reviewed all require passing an examination for licensure, with the exam type varying based on the license. Unlike the other states, Arizona offers more specialized testing options. For instance, while other states require passing the National Counselor Examination (NCE) for Licensed Professional Counselor licensure, Arizona also allows candidates to pass the Certified Rehabilitation Counselor Examination (CRCE) for this type of license. The NCE covers a broad range of counseling topics, while the CRCE focuses specifically on rehabilitation counseling, typically for those seeking certification as Certified Rehabilitation Counselors.
- **Fingerprinting**—Arizona, Colorado, Idaho, and Montana require background checks including fingerprinting as part of the process for initial licensure. New Mexico does not currently require

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<sup>28</sup> A.R.S. §32-3214.

any type of background checks to obtain an initial license.

- **Experience**—The other states we reviewed all require a specified number of hours or years of experience based on the licenses offered, similar to Arizona. However, the amount of experience required varied between states for some types of licenses (see Table 3).

**Table 3: Comparison of hours of experience required for licensure**

License type	Arizona	Other states <sup>1</sup>
Licensed Associate Counselor	None	None
Licensed Professional Counselor	1,600	1,000 to 3,000
Associate Licensed Marriage and Family Therapist	None	None
Licensed Marriage and Family Therapist	1,600	1,200 to 3,000
Licensed Bachelor Social Worker	None	0 to 2,000
Licensed Master Social Worker	None	0 to 3,000
Licensed Clinical Social Worker	1,600	3,000 to 3,600
Substance Abuse Technician	None	1,000 to 3,000
Associate Substance Abuse Counselor	1,600	1,000 to 4,000
Independent Substance Abuse Counselor	1,600	1,000 to 3,000

<sup>1</sup> Colorado, Idaho, Montana, and New Mexico.

Source: Walker & Armstrong staff review of experience requirements for licenses in Arizona, Colorado, Idaho, Montana, and New Mexico.

- **Continuing education**—Arizona and the 4 states we reviewed require documentation and submission of continuing education prior to license renewal. However, Arizona requires 30 hours of continuing education every 2 years whereas the other 4 states all require 40 hours of continuing education every 2 years, with 1 exception: social workers in New Mexico are required to complete 30 hours of continuing education every 2 years, consistent with Arizona.

**Sunset factor 8: The extent to which the Board has established safeguards against possible conflicts of interest.**

The State’s conflict-of-interest requirements exist to remove or limit the possibility of personal influence from impacting a decision of a public agency employee or public officer. Specifically, statute requires employees of public agencies and public officers, including Board members, to avoid conflicts of interest that might influence or affect their official conduct.<sup>29</sup> These laws require employees/public officers to disclose substantial financial or decision-making interests in a public agency’s official records, either through a signed document or the Board’s official minutes. Statute further requires that employees/public officers who have disclosed conflicts to refrain from participating in matters related

<sup>29</sup> A.R.S. §38-503.



to the disclosed interests. To help ensure compliance with these requirements, the Arizona Department of Administration’s (ADOA) *State Personnel System Employee Handbook* and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and any time there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” Finally, A.R.S. §38-509 also requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest and to make this file available for public inspection.

Additionally, in response to conflict-of-interest noncompliance and violations investigated in the past, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, the Arizona Auditor General has recommended several practices and actions to various school districts, State agencies, and other public entities.<sup>30</sup> The Arizona Auditor General’s recommendations are based on recommended practices for managing conflicts of interest in government and are designed to help ensure compliance with State conflict-of-interest requirements by reminding employees/public officers of the importance of complying with the State’s conflict-of-interest laws.<sup>31</sup> Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually to help remind them to update their disclosure form if their circumstances change and that the form include a field for the employee/public officer to provide an “affirmative no,” if applicable. These recommended practices also indicate that agencies should develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

Our review of the Board’s conflict-of-interest practices found that it complied with State conflict-of-interest requirements and implemented most recommended practices. For example, the Board’s policy requires all employees and Board members to submit conflict-of-interest forms that include both financial and decision-making interests annually and either disclosing conflicts or affirming no conflicts exist. We found that all Board members and employees complied with this requirement in calendar year 2023. Additionally, during the 2 meetings we observed in February and March 2024, Board members recused themselves from voting on meeting agenda items for which they had disclosed a substantial interest.<sup>32</sup> Further, the Board maintained a special file of all disclosures of substantial interest. However, the Board does not provide periodic conflict-of-interest training, which is a recommended practice.

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<sup>30</sup> For example, see Auditor General reports 21-402 *Higley Unified School District Criminal Indictment—Conspiracy, Procurement Fraud, Fraudulent Schemes, Misuse of Public Monies, False Return, and Conflict of Interest* and 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*.

<sup>31</sup> Recommended practices we reviewed included: Organization for Economic Cooperation and Development. (2022). *Recommendation of the Council on OECD guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 6/27/2024 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative. (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 6/27/2024 from <https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining-Preventing-Identifying-Addressing.pdf>; and Controller and Auditor General of New Zealand. (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 6/27/2024 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

<sup>32</sup> The Board documented members’ recusals within its meeting minutes.

## Recommendation

9. The Board should provide periodic training on conflicts-of-interest for staff and Board members.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

### **Sunset factor 9: The extent to which changes are necessary for the Board to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.**

We identified 1 statutory change that could enable the Board to more effectively fulfill its objective and purposes. Specifically, A.R.S. §32-3303(A) requires applicants for an associate counselor license to meet requirements for supervised experience outlined in a separate statute, A.R.S. §32-3301(H). However, the statute requires an individual to first obtain an associate counselor license to practice under supervision, meaning an unlicensed individual cannot satisfy the initial licensure requirement. The statutes for the Board's other associate licenses also do not include a similar requirement.

## Recommendation

10. The Legislature should consider revising A.R.S. §32-3303(A) to remove the requirement for associate counselor license applicants to obtain supervised experience prior to licensure.

### **Sunset factor 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. As stated in Sunset Factor 1 (see page 13), the Board is responsible for (1) ensuring that behavioral health professionals, including counselors, therapists, social workers, and technicians are qualified to provide psychotherapy; (2) investigating and adjudicating complaints against licensees alleging incompetence or unprofessional conduct; and (3) providing information to the public related to the licensees, which includes disciplinary history. The combination of these functions helps protect the public from potential harm.

Based on a study conducted by Mental Health America, as of 2022, Arizona has 790,000 adults experiencing substance abuse disorders, 1,099,000 adults experiencing mental illness, 27,000 youth experiencing substance abuse disorders, and 64,000 youth experiencing severe major depressive episodes.<sup>33</sup> Additionally, we identified an approximate 18,000 licensees licensed by the Board. As a result, if the Board were to be terminated as many as 2 million individuals could be impacted if the Board's regulatory responsibilities were not transferred to another entity.

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<sup>33</sup> Mental Health America. Prevalence Data 2022. Retrieved 2/29/2024 from <https://mhanational.org/issues/2022/mental-health-america-prevalence-data#three>.

# SUMMARY OF RECOMMENDATIONS

## Walker & Armstrong makes 9 recommendations to the Board and 1 recommendation to the Legislature

The Board should:

1. Investigate and resolve complaints within 180 days (see Finding 1, pages 8 through 12, for more information).
2. Hire additional investigators for which it received funding in fiscal year 2025 (see Finding 1, pages 8 through 12, for more information).
3. Develop a process, supported by written policies and procedures, for annually assessing whether its staffing level is sufficient to handle its workload and work with the Legislature to obtain additional staffing resources as appropriate (see Finding 1, pages 8 through 12, for more information).
4. Discontinue its practice of prioritizing complaints it opens related to licensing investigations over lower-priority public complaints (see Finding 1, pages 8 through 12, for more information).
5. Establish fees that align with its operating costs as required by statute (see Sunset Factor 2, pages 13 and 14, for more information).
6. Finalize its proposed rulemakings to be consistent with statutory changes for the number of hours of experience required for each license (see Sunset Factor 4, pages 15 and 16, for more information).
7. Update AAC R4-6-304 to be consistent with current practices for processing applications for licensure by endorsement (see Sunset Factor 4, pages 15 and 16, for more information).
8. Develop and implement procedures to ensure that it removes disciplinary actions, both stored on the Board's website server and available directly from its website, after 5 years as required by statute (see Sunset Factor 5, pages 16 and 17, for more information).
9. Provide periodic training on conflicts-of-interest for staff and Board members (see Sunset Factor 8, pages 19 through 21, for more information).

The Legislature should:

1. Consider revising A.R.S. §32-3303(A) to remove the requirement for associate counselor license applicants to obtain supervised experience prior to licensure (see Sunset Factor 9, page 21, for more information).

## Scope and methodology

We have conducted a performance audit and sunset review of the Board on behalf of the Arizona Auditor General pursuant to a November 21, 2022, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq.

We used various methods to address the audit's objectives. These methods include reviewing the Board's statutes, rules, website, policies and procedures, supporting documentation, and interviewing Board staff. In addition, we used the following specific methods to meet the audit objectives:

- **License issuance and renewal**—To determine whether the Board issued and renewed licenses in accordance with statute and rule requirements, we reviewed information from the Board's files and database for several samples of license applications, including initial and renewal applications approved or denied in fiscal year 2023. Our work included reviewing the application files and associated documents, such as transcripts, exam scores, proof of background check, and other applicable documents. The applications we reviewed were as follows:
  - 20 initial applications consisting of a stratified random sample of 10—1 from each license type listed in Table 1 (see page 4)—and 10 randomly selected from 1,288 initial applications the Board approved in fiscal year 2023.
  - 6 of 314 randomly selected initial applications the Board denied in fiscal year 2023.
  - A stratified random sample of 10—1 from each license type listed in Table 1 (see page 4)—of 5,946 license renewal applications the Board approved in fiscal year 2023.
  - A random sample of 4 of 56 license renewal applications the Board denied in fiscal year 2023.
  - A random sample of 6 of 120 license renewal applications the Board selected for a continuing education audit in fiscal year 2023.
- **Complaint handling and timeliness of resolution**—We reviewed the Board complaint files and database information for a stratified random sample of 20 of 109 complaints recorded in the Board's database as opened and closed in fiscal year 2023. The 20 complaints were selected based on the percentage of each type of complaint enforcement/action to the total population to include complaints that were dismissed executively or by the Board, application denied, probation, suspension, and revocation of licenses. Additionally, we used dates for when complaints were received and closed from the Board's database to calculate the number of days the Board took to resolve all complaints it closed in fiscal year 2023 and to identify the number of open complaints as of June 30, 2023, that had been open for more than 180 days. Further, we reviewed notes in the Board's database to determine priority levels assigned to complaints.

- **Public information**—We reviewed the nondisciplinary and disciplinary information on the Board’s website for complaints selected for testing and placed 3 anonymous phone calls between February and May 2024 to assess whether the information provided was accurate and consistent with statutory requirements. We assigned 3 Walker & Armstrong staff to call the Board during business hours over the course of 3 months in 2024 and ask a series of questions to determine whether Board staff would provide public information and/or non-public information. We created 9 questions related to 3 licensees (3 questions per licensee) to ask Board staff; some of the questions were items the Board staff should provide and others were items they should not provide. To keep the calls anonymous and not associated with Walker & Armstrong, the calls were made from our personal phones, instead of using our business lines.
- **Fee setting**—To assess the Board’s fee-setting practices, we interviewed the Board’s executive and deputy directors; reviewed the Board’s statutes, rules, and policies; and reviewed the Board’s revenues, expenditures, and fund balances for fiscal years 2022 and 2023 and estimates for fiscal year 2024.
- **Conflicts of interest**—To assess the Board’s compliance with State conflict-of-interest requirements, we reviewed the Board’s sunset factor response and evaluated whether the Board’s conflict-of-interest practices comply with the State’s conflict-of-interest statutes (A.R.S. §38-501 et seq. and the Arizona Attorney General’s Agency Handbook, Ch. 8) and recommended practices by: reviewing the Board’s policies, procedures, and processes for ensuring the Board complies with the State’s conflict-of-interest statutes and recommended practices; and reviewing employee/Board member conflict-of-interest disclosure forms for 2023, reviewing the Board’s special file of conflict-of-interest forms, reviewing Board meeting minutes for fiscal year 2023, and observing Board meetings held in February and March 2024 to observe the Board’s process during meetings.
- **Introductory information**—To obtain information for the introductory section of our report, we reviewed the Board’s website, information the Board provided regarding staffing, and the Board’s database for active licenses as of May 2024. In addition, we compiled and analyzed unaudited financial information from the AFIS *Accounting Event Transaction File* and the State of Arizona *Annual Financial Report* for fiscal years 2022 and 2023, and Board and ADOA-provided estimates for fiscal year 2024.
- **Other information for sunset factors**—To obtain additional information for the sunset factors section of our report, we reviewed the Arizona Administrative Register regarding the Board’s proposed rulemaking in fiscal years 2020-2022 and assessed the Board’s compliance with various provisions of the State’s open meeting law for 2 Board meetings held in February and March 2024. In addition, we judgmentally selected 4 states—Colorado, Idaho, Montana, and New Mexico—and reviewed their level of regulation.

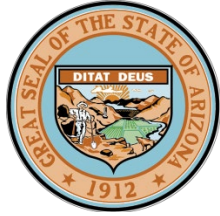
Our evaluation of the Board’s internal controls included reviewing the Board’s policies and procedures for ensuring compliance with Board statutes and rules and, where applicable, testing its compliance with these policies and procedures. We reported our conclusions on any internal control deficiencies in our findings and responses to the statutory sunset factors.

We selected our audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing of these samples are not intended to be projected to the population as a whole.

We conducted this performance audit and sunset review 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.

We express our appreciation to the Board, its executive director, and staff for their cooperation and assistance throughout the audit, as well as the Arizona Auditor General’s Office for their support.

# BOARD RESPONSE



STATE OF ARIZONA  
BOARD OF BEHAVIORAL HEALTH EXAMINERS  
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KATIE HOBBS  
Governor

TOBI ZAVALA  
Executive Director

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August 22, 2024

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

**Re: Arizona Board of Behavioral Health Examiners – Sunset Review: ARS §41-2951 et seq.**

Dear Ms. Perry:

The Arizona Board of Behavioral Health Examiners (“Board”) has reviewed and provided responses to the Performance Audit and Sunset Review.

The Board’s staff, as well as the Board itself, appreciated the professionalism and courtesy of the Auditor General’s staff as well as the staff of Walker & Armstrong; and believes that we developed a transparent and professional working relationship. The Board has already begun addressing the finding as well as implementing the recommendations.

The Board looks forward to meeting with the Committees of Reference in both chambers of Arizona government with positive changes already made.

Respectfully,

A handwritten signature in black ink, appearing to read "Tobi Zavala".

Tobi Zavala  
Executive Director

Enclosure: Board’s Response(s)

Cc: Ms. Adalesa Meek, Board Chair



**Finding 1:** Board has not resolved some complaints in a timely manner, which may affect patient safety

**Recommendation 1:** Investigate and resolve complaints within 180 days.

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

Response explanation: The Board continually strives to investigate and resolve complaints within 180 days. However, the Board has not been able to do so due to the lack of resources, staff and support. The Board has experienced a 97% increase in complaints and a 101% increase in background investigations since 2018 with the same number of staff. Due to the Board's 34% increase in licensees and increase of investigations, the Board's FY 2025 operating budget request including a funding issue which included 7 more FTE and we were successful in obtaining. Additionally, the Board has recently implemented three plans to allow for the processing of complaints to be processed quicker. First, a discipline matrix was developed to be utilized by the members to help identify allegations and enable decisions to be made more quickly in a meeting which will allow more complaint matters to be heard. Second, the Board has implemented the standard that cases that appear to be dismissals can be completed without an interview and transcription of the interview which will complete cases quicker. Lastly, the Board has developed a hybrid approach to cases that present an opportunity to be settled beforehand with non-disciplinary or disciplinary action which will allow these cases to be placed on the consent agenda which again will allow more time in the meeting for complaint matters to be heard.

**Recommendation 2:** Hire additional investigators for which it received funding in fiscal year 2025.

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

Response explanation: The Board's 2025 budget request approval included 7 additional staff members, 3 of which were going to be hired in the investigations unit. Due to this finding, that number has changed to 4 to ensure we can meet the 180 day timeframe. The Board has already hired 2 of the 4 investigators and the other two are currently posted.

**Recommendation 3:** Develop a process, supported by written policies and procedures, for annually assessing whether its staffing level is sufficient to handle its workload and work with the Legislature to obtain additional staffing resources as appropriate.

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

Response explanation: The Board regularly assesses the staffing needs with the continual growth. However, moving forward the Board will develop a more formalized process that can be reviewed quarterly at its Board meeting to memorialize and analyze the success as well as improvements needed.

**Recommendation 4:** Discontinue its practice of prioritizing complaints its opens related to licensing investigations over lower-priority public complaints.

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

Response explanation: The Board has already implemented this. An application that needs reviewed at the Board meeting will be viewed in the order it is received.

**Sunset Factor 2:** The Board's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.

**Recommendation 5:** The Board should establish fees that align with its operating costs as required by statute.

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

Response explanation: The Board will continue to assess their fees on an annual basis to determine fees needed based on growth of licensees. In the last 5 years, the Board has eliminated 3 fees and reduced 1. The Board recognizes the main revenue is from renewal fees which is dependent on the number of licensees. The Board will monitor the necessary fees more closely based on both the social work and counseling compacts passing legislation. This will have a huge impact on revenue depending on the use of compacts.

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

**Recommendation 6:** Finalize its proposed rulemakings to be consistent with statutory changes for the number of hours of experience required for each license.

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

Response explanation: Pursuant to A.R.S. § 41-1039, the Board requested permission to proceed with rulemaking and were approved on May 24<sup>th</sup>. On 7/1/24, a Notice of Rulemaking was filed. The Board is targeted to complete the rulemaking process by 12/31/24.

**Recommendation 7:** Update AAC R4-6-304 to be consistent with current practices for processing applications for licensure by endorsement.

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

Response explanation: The Board has notified a policy advisor with the House of Representatives for the need of a change and will continue to work legislation to ensure that this happens.

**Sunset Factor 5:** The extent to which the Board has provided appropriate public access to records, meetings, and rulemakings, including soliciting public input in making rules and decisions.

**Recommendation 8:** The Board should develop and implement procedures to ensure that it removes disciplinary actions, both stored on the Board's website server and available directly from its website after 5 years as required by statute.

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

Response explanation: This has been completed. The Board's new database has the ability to have this happen automatically.

**Sunset Factor 8:** The extent to which the Board has established safeguards against possible conflicts of interest.

**Recommendation 9:** The Board should provide periodic training on conflicts-of-interest for staff and Board members.

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

Response explanation: The Board will provide annual training on conflicts of interest with both staff and members as well as initial trainings with new staff and members.

