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September 30, 2024

Members of the Arizona Legislature

The Honorable Katie Hobbs, Governor

Mr. Jack Confer, Interim Executive Director  
Arizona Board of Respiratory Care Examiners

Transmitted herewith is the report *Performance Audit and Sunset Review of the Arizona Board of Respiratory Care Examiners*. This audit was conducted by the independent firm Sjoberg Evashenk Consulting, Inc. 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 Respiratory Care Examiners agrees with all the findings and plans to implement all the recommendations. My Office has contracted with Sjoberg Evashenk Consulting, Inc. to follow up with the Arizona Board of Respiratory Care Examiners in 6 months to assess its progress in implementing the recommendations. I express my appreciation to Interim Executive Director Confer, the Board's members, 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 Respiratory Care Examiners members



September 26, 2024

Lindsey A. Perry, Auditor General  
State of Arizona  
2910 N. 44<sup>th</sup> Street, Ste. 410  
Phoenix, AZ 85018

Dear Ms. Perry:

Sjoberg Evashenk Consulting is pleased to submit our report containing the results of the 2024 Performance Audit and Sunset Review of the Arizona Board of Respiratory Care Examiners (Board). We conducted this audit on behalf of the Arizona Office of the Auditor General pursuant to a November 21, 2022, resolution of the Joint Legislative Audit Committee.

The objectives of this audit were to assess whether the Board timely issued licenses in accordance with statute and rule requirements; investigated and resolved complaints within its jurisdiction and in a timely manner; and provided information to the public as required by statute. This report also provides responses to the statutory sunset factors and our recommendations for improvement.

We appreciate the professionalism and cooperation exhibited throughout the course of this audit by the Board, its Interim Executive Director, and staff. Also, we thank you for the opportunity to have been of service to the Office of the Auditor General as it has been our pleasure to work with you and your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Skiles", is written over a light blue horizontal line.

George Skiles, Partner  
Sjoberg Evashenk Consulting, Inc.

# Arizona Auditor General

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## Performance Audit and Sunset Review of the Arizona Board of Respiratory Care Examiners

**September 2024**



### Arizona Board of Respiratory Care Examiners (Board)

The Board issued licenses to qualified applicants we reviewed, but did not timely do so, potentially delaying applicants' ability to work or impacting the availability of practitioners to treat patients, and did not investigate or timely investigate and resolve all complaints or prioritize them based on risk, increasing public safety risk.

#### 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, and provided information to the public as required by statute, and to respond to the statutory sunset factors.

#### Key findings

The Board:

- Is responsible for regulating the respiratory care profession in Arizona by issuing and renewing licenses, investigating and resolving complaints, and providing information to the public about licensees.
- Issued initial licenses to qualified applicants for the applications we reviewed.
- Did not always issue licenses within time frames established in its rules, which could delay applicants' ability to work and impact the availability of respiratory care practitioners to treat patients.
- Did not investigate 2 of 11 complaints we reviewed, including an allegation open for 529 days that a practitioner had been administering unnecessary treatments to 2 patients.
- Took more than 180 days to investigate and resolve 5 of 11 complaints we reviewed, including 1 that was open for 316 days alleging a licensee who tested positive on a drug screening was being investigated for missing medication by their employer, and had 5 additional complaints that had been open for between 421 and 1,095 days.
- Did not document its investigative findings for 8 of 11 complaints we reviewed.
- Reported it had not been prioritizing complaint investigations based on risk as required by Board policy.
- Used multiple databases and spreadsheets that were incomplete or contained inaccurate information to monitor initial license applications, license renewals, and complaints, and its new database lacked important functionalities for overseeing licensing and complaint handling timeliness.

#### Key recommendations

The Board should:

- Issue or deny licenses within the time frames established in the Board's rules.
- Investigate and resolve complaints within 180 days, ensure Board staff provide the Board with complete investigative reports, and prioritize complaints for investigation as required by its policy.
- Develop and implement monitoring processes to comply with its licensing time frames and track complaint investigations, including recording dates of key licensing application and complaint handling steps.
- Complete implementation of its new database including ensuring that the database contains complete and accurate information for monitoring and overseeing its licensing and complaint handling processes.

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## Board Overview











### BOARD OVERVIEW

#### Arizona Board of Respiratory Care Examiners (Board)

The Board regulates respiratory care practice in Arizona by issuing licenses to qualified applicants, investigating and resolving complaints against licensees, and providing information to the public about the status of licensees. Statute requires the Board to consist of 7 Governor-appointed members who serve 3-year terms. As of June 2024, the Board had 5 filled and 2 vacant Board member positions. In fiscal year 2023, the Board was authorized 4 full-time equivalent staff positions. The Board does not receive any State General Fund appropriations. Rather, its revenues consist primarily of licensing fees.

Active Licenses as of June 2024	Complaints Received in Calendar Year 2022	Complaints Received in Calendar Year 2023
3,374	34	74

#### Audit results summary

Key regulatory areas reviewed	Results	
<b>Initial licenses</b> —Process initial license applications within 105 days as required by rule. Key qualifications include education, national registration as a respiratory therapist, and a criminal history records check.	Issued timely? 	Ensured qualifications met? 
<b>Renewal licenses</b> —Process license renewal applications within 67 days and licensees must complete 20 continuing education hours every 2 years.	Issued timely? 	Ensured continuing education met? 
<b>Complaint handling</b> —Investigate complaints it receives and take action to address violations within 180 days.	Investigated all complaints? 	Resolved complaints within 180 days? 
<b>Public Information</b> —Provide specific complaint and licensee information to the public on request and on its website.	Provided via website? 	Provided via phone? 
Other responsibilities reviewed	Results	
<b>Fee setting</b> —Establish fees based on the actual cost of providing services consistent with recommended practices.	Assessed costs? 	Based fees on actual costs? 

<p><b>Conflicts of interest</b>—Board members/staff sign a disclosure form, Board maintains substantial interest disclosures in a special file, and Board members recuse selves from decisions involving substantial interests.</p>	<p>Board members/ staff signed disclosure form and Board maintained special file?</p> <p style="text-align: center;">✗</p>	<p>Board members with conflicts recused selves during board meetings?</p> <p style="text-align: center;">✓</p>
<p><b>Public records requests and open meeting law</b>— Requirements include responding to public records requests and posting Board meeting recordings on website in 5 working days.</p>	<p>Responded to public records requests?</p> <p style="text-align: center;">✓</p>	<p>Meeting recordings posted on website within 5 working days?</p> <p style="text-align: center;">✗</p>

# Introduction

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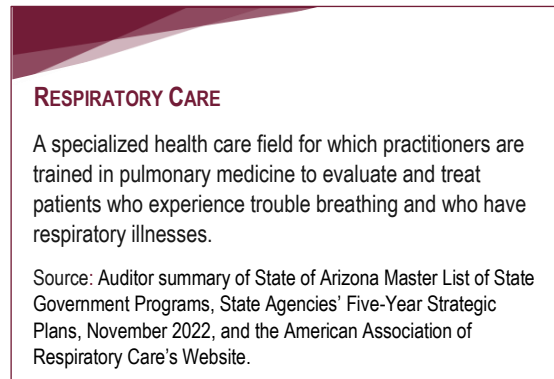
On behalf of the Arizona Auditor General, Sjoberg Evashenk Consulting has completed a performance audit and sunset review of the Arizona Board of Respiratory Care Examiners (Board). This performance audit and sunset review determined whether the Board (1) timely issued licenses in accordance with statute and rule requirements, (2) investigated and resolved complaints within its jurisdiction, and (3) provided information to the public as required by statute. This report also provides responses to the statutory sunset factors.

## History, mission, and responsibilities

The Board was established in 1990 to regulate and control the practice of respiratory care in Arizona and protect the public from unauthorized and unqualified practice of respiratory care and unprofessional conduct by licensees.

The Board's key responsibilities include:

- Issuing licenses to qualified applicants (see Sunset Factor 2, page 16, for more information on licensing requirements). Licenses must be renewed every 2 years. According to the Board's database, as of June 2024, there were 3,374 actively licensed respiratory care practitioners. See Finding 1, pages 7 through 10, for more information on our findings related to the Board's untimely processing of license applications.
- Investigating and resolving complaints against licensees. According to Board records, the Board received 34 complaints in calendar year 2022 and 74 complaints in calendar year 2023. See Finding 2, pages 11 through 14, for more information on problems we identified with the Board's complaint handling.
- Providing information about licensees to the public, including licensees' disciplinary and nondisciplinary histories. See Sunset Factor 5, pages 18 through 20, for more information on problems we identified with the Board's provision of public information.



**RESPIRATORY CARE**

A specialized health care field for which practitioners are trained in pulmonary medicine to evaluate and treat patients who experience trouble breathing and who have respiratory illnesses.

Source: Auditor summary of State of Arizona Master List of State Government Programs, State Agencies' Five-Year Strategic Plans, November 2022, and the American Association of Respiratory Care's Website.

## Organization and staffing

A.R.S. §32-3502 requires the Board to consist of 7 Governor-appointed members who serve 3-year terms. Three members must be licensed respiratory care practitioners, 2 members must represent the public, 1 member must be a physician, and 1 member must be a hospital administrator. As of June 2024, the Board had 5 filled and 2 vacant Board member positions.<sup>1</sup>

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<sup>1</sup> The 2 vacant positions—1 licensed respiratory practitioner and 1 public member—had been vacant since June 2022 and August 2023, respectively.



The Board was appropriated 4 full-time equivalent (FTE) positions for fiscal year 2024 and as of June 2024, 3.5 FTE positions were filled by a part-time Interim Executive Director, a part-time Interim Deputy Director, 1 full-time licensing specialist, and 1 full-time and 1 part-time administrative assistant.<sup>2</sup>

## **Budget**

The Board does not receive any State General Fund appropriations. Instead, its revenues consist primarily of licensing and related fees. A.R.S. §32-3505 requires the Board to remit 10 percent of all monies received to the State General Fund and to deposit the remaining 90 percent of these revenues into the Board of Respiratory Care Examiners Fund. As shown in Exhibit 1, page 6, for fiscal year 2024 most of the Board's revenues consisted of licensing fees, and most of its expenditures were for payroll and related benefits and other operating expenses, such as rent, information technology, and shared services. The Board's fund balance was \$352,236 at the end of fiscal year 2024.

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<sup>2</sup> In April 2023, the Board hired an Interim Executive Director and an Interim Deputy Director on a part-time basis after the previous Director and licensing specialist resigned.

**EXHIBIT 1: SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES**  
**FISCAL YEARS 2022 THROUGH 2024 (UNAUDITED)**

	2022 (Actual)	2023 (Actual)	2024 (Estimated)
<b>Revenues</b>			
Licensing and fees	\$469,254	\$438,035	\$379,888
Remittances to the State General Fund <sup>A</sup>	(48,387)	(44,356)	(38,227)
<b>Total net revenues</b>	420,867	393,679	341,661
<b>Expenditures</b>			
Payroll and related benefits	245,188	291,401	243,331
Professional and outside services <sup>B</sup>	208	0	2,000
Travel	566	1,100	428
Other operating <sup>C</sup>	48,207	46,365	87,828
Equipment	37,237	18,236	6,689
<b>Total expenditures</b>	331,406	357,102	340,276
Net change in fund balances	89,461	36,577	1,385
Fund balances, beginning of year	<b>211,337</b>	<b>300,798</b>	<b>337,375</b>
Prior year adjustments <sup>D</sup>			<b>13,476</b>
<b>Fund balances, end of year</b>	<b>\$300,798</b>	<b>\$337,375</b>	<b>\$352,236</b>

Source: Auditor staff analysis of the Arizona Financial Information System's *June Financial Reports*, 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 as of July 25, 2024.

Notes:

<sup>A</sup> The Board is required to remit to the State General Fund 10 percent of all monies received by the Board in accordance with A.R.S. §32-3505. However, effective September 14, 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>B</sup> In fiscal year 2024, the Board incurred professional and outside services expenditures for payments to a consultant needed as it migrated to a new database.

<sup>C</sup> Other operating expenses increased in fiscal year in 2024 primarily because of higher costs for rent, shared services, and accounting support from the Arizona Department of Administration Central Services Bureau.

<sup>D</sup> According to the Board, the fiscal year 2024 prior year adjustments included several adjusting entries made in the Arizona Financial Information System including correcting an overpayment to a vendor in fiscal year 2022 and refunded in fiscal year 2023. According to the State of Arizona Accounting Manual, an adjusting entry is an entry made to correct a former error.

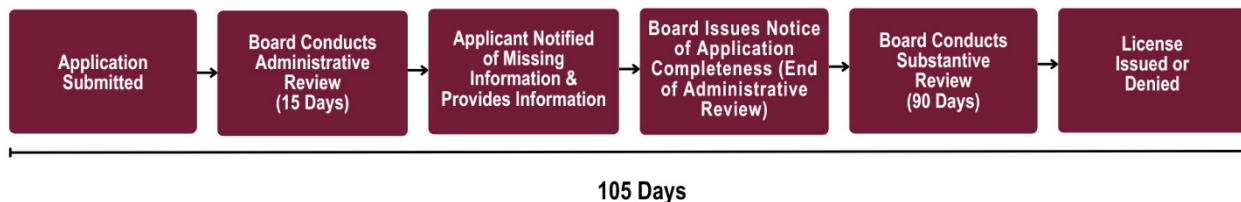
# Finding 1: Board did not issue licenses in a timely manner, potentially delaying applicants' ability to work, impacting availability of practitioners to treat patients, and resulting in the Board potentially paying unnecessary penalties

## Board is responsible for issuing licenses within time frames established in its rules

The Board's administrative rules require it to issue licenses within 105 days which is comprised of 2 interim time frames, as follows:<sup>3</sup>

- **Administrative review**—The Board has 15 days to conduct an administrative review to determine if the application is complete. Pursuant to statute, during the 15-day administrative review time frame, if the Board determines the application is incomplete, it must send a deficiency notice to the applicant informing the applicant of what documentation is missing.<sup>4</sup> Once the deficiency notice is sent to the applicant, the licensing time frames are suspended until the Board receives all requested documents. Once the Board determines an application is complete, the Board's rules require that it send the applicant a notice of completeness which ends the administrative review time frame.<sup>5</sup> Pursuant to the Board's rules, if the licensee does not submit missing information within 210 days from the date of deficiency notice, the Board shall close the application, and the applicant must submit a new application if they wish to reapply.<sup>6</sup>
- **Substantive review**—The Board has 90 days to conduct a substantive review of a complete application, determine if the applicant is qualified, and either issue a license or deny the application (see Exhibit 2 for initial licensing process and review time frames).

### EXHIBIT 2: INITIAL LICENSING PROCESS AND TIME FRAME OVERVIEW



Source: Auditor staff review of Arizona Administrative Code, Arizona Revised Statutes, and Board Internal Policies and Procedures.

## Board did not issue licenses within 105 days in calendar year 2023

In calendar year 2023, the Board did not issue licenses within 105 days as required by rule. Specifically, in April 2023, the Board's newly appointed Interim Executive Director reported to the Board during a public

<sup>3</sup> Arizona Administrative Code (AAC) R4-45-215.

<sup>4</sup> AAC R4-45-215, A.R.S. §41-1074.

<sup>5</sup> AAC R4-45-215(E)

<sup>6</sup> AAC R4-45-215(F)

Board meeting that it had more than 400 initial licensing applications dating back to November 2022 that had not yet been processed, which included both online applications and paper applications that had not yet been entered into the Board's database. In addition, the April 2023 Board meeting included discussion regarding concerns from licensees and stakeholders about the Board's untimely issuance of initial licenses. As of August 2024, the Board reported that it no longer had a backlog of license applications; however, it reported that it was unable to provide a report from its new database demonstrating that the backlog had been addressed (see page 9 for more information about issues with its new database).

As of January 2024, when we began the audit, the Board's spreadsheet that it uses to track licensing time frames lacked key dates for approximately two-thirds of the initial license applications included on the spreadsheet.<sup>7</sup> As a result, we reviewed a judgmental sample of 11 licenses the Board issued in calendar year 2023, and found that the Board took more than 105 days to issue 7 of 11 licenses we reviewed.<sup>8</sup> The Board took between 131 and 324 days to issue these 7 licenses.<sup>9</sup> Although the files for these 7 licenses all included a deficiency notice which would have allowed the Board to suspend the licensing time frames until it received all requested documents, all 7 files lacked a notice of application completeness indicating when the applications were complete and the time frames should have resumed. Absent these notices, the Board cannot demonstrate that it issued these 7 licenses in less than the 105-day time frame established in its rules.

### **Failure to timely issue licenses and notify applicants of key licensing steps can delay applicants' ability to work and result in the Board potentially paying unnecessary penalties**

The Board's untimely issuance of licenses can negatively impact applicants' livelihoods, as licensure is necessary for employment. For example, at the previously mentioned April 2023 Board meeting, the director from a college spoke about how some of its students had received job offers but could not accept the positions because their license applications had not yet been Board-approved.

Finally, by not notifying applicants that their applications are complete as required by its rules, the Board cannot accurately calculate its licensing time frames, which could result in it untimely processing license applications, refunding applicant fees, and paying a 2.5 percent penalty to the State General Fund for each month that the Board does not issue or deny the license (see Sunset Factor 2, pages 15 through 18, for more information on these penalties).<sup>10</sup>

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<sup>7</sup> The Board's tracking spreadsheet did not include all applications the Board received in calendar years 2022 and 2023. In addition, of the 306 applications included in the spreadsheet, 197, or 64 percent, were missing key dates needed to calculate the Board's timeliness in issuing licenses, such as the date the application was received or the date the license was issued.

<sup>8</sup> We selected a judgmental sample of 11 of 319 licenses the Board issued in calendar year 2023 based on time periods with high-risk characteristics, such as licenses processed during staff turnover and leadership changes.

<sup>9</sup> These 7 licenses were issued in 131 days, 163 days, 170 days, 183 days, 209 days, 277 days, and 324 days, respectively.

<sup>10</sup> A.R.S. §41-1077 requires the Board to refund the applicant's licensing fees and pay a 2.5 percent penalty to the State General Fund for each month that the Board does not issue or deny the license within the 105-day time frame established in its rules.

## **Board's lack of a comprehensive system to track and monitor its licensing process and leadership/staff turnover likely contributed to untimely license issuance**

The Board has not consistently monitored its licensing time frames, despite a previous recommendation from the Auditor General in 2016 that it implement policies and procedures requiring its staff to track the Board's compliance with all licensing time frames.<sup>11</sup> Although the Board had implemented the recommendation at the time of the Auditor General's 24-month followup in August 2018, it has not sustained this improvement. For example, the Board does not have a comprehensive system to intake, record, track, or monitor the receipt and processing of initial license applications. Rather, since 2018, the Board has used 2 different databases and a spreadsheet to store licensing information and track licensing time frames, but none of the 3 was complete or accurate. In January 2024, the Board reported that it was in the process of transitioning to a new database that would help address these issues. However, as of August 2024, the Board's new database had not been fully implemented. For example, the new database did not yet have the functionality to run management reports to monitor and oversee licensing time frames and demonstrate that the Board had addressed the backlog of license applications reported in April 2023.

Turnover in the Board's executive leadership and staff may also have contributed to untimely license issuance. Specifically, from the end of February to the beginning of April of 2023 the Board had no Executive Director and licensing specialist to monitor and oversee Board staff's processing of license applications (see Introduction, page 5, for more information). The Board also reported that its staff had not consistently notified licensees and/or maintained notification documentation or were unable to locate files during calendar year 2023 due to staff turnover in calendar years 2022 and 2023, insufficient training provided to newer staff, and staff's focus on processing the backlog of applications.

### **Recommendations**

The Board should:

1. Issue or deny licenses within the 105-day time frame established in the Board's administrative rules.
2. Determine the status of its licensing application backlog, develop a written plan to reduce any backlog it identifies, and report monthly the status of the backlog to the Board until the backlog has been eliminated.
3. Send and maintain documentation of required application notifications, including notices of completeness.
4. Develop and implement a process to monitor its licensing application process and compliance with its licensing time frames until its new database is fully implemented and functional, including steps to record dates when it receives license applications, sends deficiency letters and notices of completeness to applicants, and issues licenses or denies/closes applications.
5. Complete implementation of its new database including ensuring that the database includes complete and accurate licensing information and can generate management reports necessary for monitoring and overseeing compliance with licensing time frames.

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<sup>11</sup> See Arizona Auditor General report 16-103, *Arizona State Board of Respiratory Care Examiners*.

6. Regularly review management reports for all in-process applications and track compliance with its time frames for issuing licenses.

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

## Finding 2: Board did not investigate or timely investigate, document, or review all complaints it received, increasing public safety risk

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

The Board is statutorily responsible for investigating and resolving complaints alleging violations of statute or rule by licensees.<sup>12</sup> The Auditor General has determined that Arizona health regulatory boards should investigate and resolve complaints within 180 days of receiving them. In addition, the Board has established a policy to prioritize complaints based on potential harm to the public that includes time frames for processing complaints based upon the assigned priority level (see textbox).

### Board did not investigate or timely investigate, document, or review all complaints it received

Our review of a judgmental sample of 11 of 108 complaints the Board received in calendar year 2022 and calendar year 2023 identified several problems with its complaint handling.<sup>13</sup> Specifically, the Board:

- **Did not investigate 2 of the 11 complaints we reviewed**—The Board received a complaint in November 2022 and a complaint in January 2023 but had not investigated either complaint as of June 2024. The first complaint was self-reported and informed the Board that the licensee had gotten into a verbal altercation with a nurse, and the second complaint alleged that a respiratory care practitioner had been administering unnecessary treatments to 2 patients.<sup>14</sup> As of June 30, 2024, these complaints had been open and uninvestigated for 591 and 529 days, respectively.
- **Did not investigate and resolve 5 of 11 complaints within 180 days**—For 2 complaints, the Board took 223 and 316 calendar days, respectively, to investigate and resolve or refer the complaints to the Office of Administrative Hearings for a formal hearing. The first complaint alleged that the licensee had not completed the required number of continuing education units and the second complaint involved a licensee who tested positive on a drug screening and was being investigated for missing medication by the hospital for which the licensee worked. In addition, 1 complaint had been investigated but had not

#### COMPLAINT PRIORITIZATION DESCRIPTIONS

**Priority 1 complaints (20 days to complete investigation)**—Complaints involving a high probability of harm or potential harm to the public, such as complaints alleging sexual misconduct, illegal use of narcotics, or incompetence resulting in injury to a patient.

**Priority 2 complaints (40 days to complete investigation)**—Complaints involving a medium probability of harm or potential harm to the public, such as complaints alleging termination from employment for absenteeism or continual patient charting deviations.

**Priority 3 complaints (65 days to complete investigation)**—Complaints involving a low probability of harm or potential harm to the public, such as complaints alleging incomplete continuing education hours.

Source: Board of Respiratory Care Examiners internal policies and procedures.

<sup>12</sup> A.R.S. §32-3553.

<sup>13</sup> We selected a judgmental sample of complaints received in calendar year 2023 based on type of allegation and the date the complaint was submitted.

<sup>14</sup> We were unable to determine the priority level of these complaints because the Board was not assigning priority levels to its complaints as required by its policy (see page 13 for more information).

yet been resolved and was open for 400 days. Further, as previously discussed, as of June 30, 2024, 2 of the complaints we reviewed had been open and uninvestigated for 591 and 529 days, respectively.

- **Did not document key complaint information for 8 of 11 complaints we reviewed**—The Board did not document the findings of its investigation for 8 complaints that it investigated. Specifically, for 4 of 8 complaints the Board was missing the investigative reports altogether, and for the other 4 complaints the Board had the investigative reports but the reports were missing information on the investigation's findings. Absent this documentation, we could not assess the appropriateness of the Board's investigations and the Board potentially lacked important information to inform its resolution of these complaints. Two of the complaints with incomplete reports included self-reported violations, of which 1 was for driving under the influence and the other for administering medicine outside the scope of practice.

In addition to these 11 complaints we reviewed, we also identified 5 complaints that were awaiting Board review but had not been added to a Board agenda for review for between at least 421 and 1,095 days. One of these complaints alleged that a licensee was arrested for domestic violence and 4 alleged that the licensees had not completed the required number of continuing education units.

As of August 2024, the Board reported it had 167 open complaints, but it was unable to provide a report from its new database demonstrating how long these complaints had been open (see page 13 for more information on issues with the new 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**

When the Board does not investigate complaints or is slow to resolve complaints it may be allowing unfit licensees alleged to have violated Board statutes and rules to continue to practice, and thus placing public safety at risk. For example, the Board had not investigated 1 complaint alleging that a licensee had been administering unnecessary albuterol treatments without a prescription, and as of June 2024 had allowed the licensee to continue to practice for more than a year after the complaint was submitted.

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, in 1 of 11 complaints we reviewed, the licensee had been under investigation for unprofessional conduct involving a verbal altercation with a nurse; however, as of June 2024 the complaint had been open and uninvestigated for 591 days. Finally, while licensees are under investigation, statute does not permit the Board to make information available to the public regarding complaints involving a licensee.



## **Board did not prioritize investigating and resolving complaints, follow its complaint handling policies and procedures, track and monitor complaint resolution timeliness, or sustain previous process improvements**

During the audit, the Board's Interim Executive Director reported that the Board had not been prioritizing complaint investigations based on risk as required by Board policy and had instead been prioritizing complaints for investigation in the order in which they were received. In addition, in the 2016 performance audit and sunset review of the Board, the Auditor General found that the Board did not timely resolve all complaints and made several recommendations to improve the Board's timeliness in handling complaints, such as ensuring that accurate complaint resolution dates are recorded so complaint timeliness could be monitored. Although the Board fully implemented these recommendations 24 months after the initial report was issued, we found that the Board has not sustained these process improvements. For example, although the Board developed a spreadsheet to track complaint timeliness, Board staff did not always fill in the spreadsheet nor did the spreadsheet capture key dates needed to determine timeliness, such as the date the complaint was resolved.

The Board's Interim Executive Director attributed these and other issues we identified with its complaint handling processes to staff turnover, a lack of experienced staff, and to prioritizing clearing a licensing backlog over investigating and resolving complaints (see Finding 1, pages 7 through 10, for more information on the licensing backlog).

Finally, as of August 2024, similar to the database issues identified in Finding 1, the Board's new database was not yet configured to track and provide reports on complaint resolution timeliness to Board staff and the Board.

### **Recommendations**

The Board should:

7. Investigate and resolve complaints within 180 days.
8. Determine the status of its complaint investigation backlog, develop a written plan to reduce any backlog it identifies, and report monthly the status of the backlog to the Board until the backlog has been eliminated.
9. Ensure Board staff provide the Board with a complete investigative report that includes all the Board required information for every complaint the Board reviews.
10. Prioritize and investigate complaints within specified time frames, as required by its policy.
11. Train staff on how to investigate complaints.
12. Develop and implement a process to track and monitor its complaint investigation process and timeliness until its new database is fully implemented and functional, including steps to record dates that key complaint handling steps are completed to help ensure it timely investigates and resolves complaints.
13. Complete implementation of the Board's new database including ensuring that the database includes complete and accurate complaint information and can generate management reports necessary for monitoring and overseeing complaint handling timeliness.

14. Regularly review management reports for all in-process complaints and track compliance with its time frames for investigating and resolving complaints.

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

## Sunset factors

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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 continuation or termination of the agency. 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 was established in 1990 to regulate and control the practice of respiratory care in Arizona and protect the public from unauthorized and unqualified practice of respiratory care and unprofessional conduct by licensees. Specifically, the Board is statutorily responsible for:

- Issuing licenses to qualified respiratory care practitioners.<sup>15</sup>
- Investigating and adjudicating complaints against licensees, including authorization to deny, revoke, or suspend a license and take disciplinary action as needed.<sup>16</sup>
- Providing information to the public.<sup>17</sup>

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

The Board has developed processes and/or taken steps to mostly fulfill its key statutory objectives and purposes for 2 areas we reviewed but could improve some of its processes. Specifically, the Board:

- **Issued initial licenses to qualified applicants for the applications we reviewed**—Our review of a sample of 11 of 319 initial applications the Board issued in calendar year 2023 found that the Board ensured applicants met statutory and rule licensure requirements for education, examination, and background checks, prior to issuing initial licenses (see textbox, page 16, for examples of licensing requirements).<sup>18</sup>
- **Timely issued license renewals we reviewed with 1 exception**—Our review of a judgmental sample of 20 license renewals the Board issued in calendar year 2023 found that 19 were issued within 67 days of receiving the renewal application as required by the Board's rules.<sup>19,20</sup> The 1 license renewal the Board issued untimely took 72 days, 5 days longer than required. Board staff reported that this license renewal may have been delayed because of State holidays that occurred during this time frame; however, rules define "days" as calendar days and thus, the Board must issue license renewals

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<sup>15</sup> A.R.S. §32-3504.

<sup>16</sup> A.R.S. §§32-3552 – 32.3555.

<sup>17</sup> A.R.S. §§32-3214, 32-4304, and 32-4801.

<sup>18</sup> A.R.S. §§32-3522 – 32-3524, 32-3504, and 32-3526, and AAC R4-45-105, R4-45-201- R4-45-202, and R4-45-205.

<sup>19</sup> AAC R4-45-217.

<sup>20</sup> We selected a judgmental sample of 20 of 1,726 license renewals issued in calendar year 2023 based on time periods with high-risk characteristics, such as licenses processed during staff turnover and leadership changes.

within 67 calendar days from the date applications are received, including holidays. Board staff did not provide additional explanation for why the renewal was processed late.

However, we identified 4 areas where the Board could better meet its statutory objective and purpose and/or improve its efficiency. Specifically, the Board:

- **Did not determine and may not have refunded fees owed to applicants or paid penalties to the State for licenses issued late**—If the Board does not issue a license within the 105-day time frame established in its rules, statute requires it to refund the applicant’s licensing fees and pay a 2.5 percent penalty to the State General Fund for each month that the Board does not issue or deny the license.<sup>21</sup> As reported in Finding 1, see pages 7 through 10, the Board cannot demonstrate that it issued licenses in a timely manner, and therefore, it may owe refunds to applicants and penalties to the State General Fund. However, because the Board has not monitored its licensing timeliness, it also has not determined if it should refund fees and pay penalties. According to the Board’s Interim Executive Director, the Board is aware of the statutory requirement to refund license and processing fees to applicants and pay penalty fees to the State for untimely licensing, but its priority was processing the backlog of applications. However, due to lack of resources, it does not know when it will have time to identify, calculate, and issue refunds and pay penalty fees.
- **Did not always ensure respiratory care practitioners met continuing education requirements**—Although Board rules require it to conduct continuing education audits, Board staff reported that between January and September 2023, the Board did not perform any continuing education audits.<sup>22</sup> By not conducting continuing education audits, licensees may be continuing to practice without being qualified to do so and public safety may be at risk. The Board reported that it had stopped performing continuing education audits because it needed to prioritize its licensing application backlog and work on other areas impacted by the licensing backlog, such as investigating complaints.

### KEY RESPIRATORY CARE PRACTITIONER LICENSURE REQUIREMENTS<sup>1</sup>

#### Regular licensure

- Complete an accredited respiratory therapy training program.<sup>2</sup>
- Pass the national respiratory examination as part of National Board of Respiratory Care (NBRC) registration or providing proof of being equivalently qualified.<sup>3</sup>
- Registered Respiratory Therapist certification.<sup>3</sup>
- Lawful presence documentation.

#### Licensure based on a diploma from a foreign respiratory therapy school or a certificate of license by another state

- Provide evidence that completed courses of study are at least equivalent to the minimum standards established by the Board.
- Provide a statement about whether any certification, registration, or license held in another state has been the subject of discipline, censure probation, practice restriction, suspension, revocation, or cancellation.

#### Licensure renewal

- 20 hours of continuing education biennially.

<sup>1</sup>Applicants for initial licensure must undergo a criminal background check. The Board reviews each case individually and considers the severity of the crime, the time elapsed since the conviction, and other relevant factors.

<sup>2</sup>The training program must be accredited by the Commission on Accreditation for Respiratory Care.

<sup>3</sup>Applicants must demonstrate that they are NBRC registered by providing a copy of their NBRC registration; Registered Respiratory Therapist examination results; if grandfathered, Certified Respiratory Therapist examination results; or provide other acceptable evidence of completion of an approved respiratory therapy training program that provides the date of the applicant’s successful completion.

Source: A.R.S. §§32-3522 – 32-2526 and 32-3504, and AAC R4-45-105, R4-45-201, R4-45-202, and R4-45-205.

<sup>21</sup> A.R.S. §41-1077.

<sup>22</sup> AAC R4-45-211 requires Board staff to audit a random sample of renewal licenses to check for compliance with continuing education requirements. However, Board policy specifies that Board staff must audit 100 percent of renewals.

- **Has not evaluated the appropriateness of its fees**—The Board is statutorily authorized to establish fees, and although it has established these fees, it has not revised most of its fees since prior to 2017.<sup>23,24</sup> Further, the Board has not established policies and procedures for periodically reviewing fees and performing a cost analysis to determine if it should adjust fees. Although statute does not specifically direct the Board to review fees periodically, it does not expressly prohibit the Board from reviewing them, and government fee-setting standards and guidance state that fees should be based on the cost of providing a service and reviewed periodically to ensure they are based on these costs.<sup>25</sup> By not evaluating the appropriateness of its fees to help ensure they are commensurate with the cost of its regulatory activities, the Board may be collecting more or less revenue than it needs to operate.<sup>26</sup>
- **Did not issue licenses in a timely manner, potentially delaying applicants' ability to work, impacting availability of practitioners to treat patients, and resulting in applicants and the Board potentially paying unnecessary fees and penalties**—The Board is responsible for issuing licenses within the 105-day time frame established in its rules. However, as reported in Finding 1, in calendar year 2023, the Board did not issue licenses within the 105-day time frame required by its rules. Not timely issuing licenses and notifying applicants of key licensing steps can delay an applicant's ability to work and negatively impact the availability of licensed practitioners to treat patients. It can also result in the Board potentially paying unnecessary penalties. The Board does not have a comprehensive system to track and monitor its licensing process. We made several recommendations to the Board, including that it issue or deny licenses within the 105-day time frame established by the Board's administrative rules and that it develop a system for tracking and monitoring key licensing time frame dates. See Finding 1, pages 7 through 10, for more information.

## Recommendations

The Board should:

15. Assess license applications received in calendar years 2022, 2023, and 2024 to determine if any were issued/denied beyond the 105-day time frame for issuing licenses.
16. For any license applications it received in calendar years 2022, 2023, and 2024 that were issued beyond the 105-day time frame, refund the licensing fees to the applicants, calculate the amount of time beyond the 105-day time frame the licenses were issued, and remit a 2.5 percent penalty to the State General Fund for each month beyond the 105-day time frame that the Board did not issue or deny the license.
17. Develop and implement policies and procedures outlining a process for identifying licenses that are issued beyond the 105-day time frame, refunding licensing fees to applicants, calculating the amount of time beyond the 105-day time frame the licenses were issued, and remitting a 2.5

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<sup>23</sup> A.R.S. §32-3526.

<sup>24</sup> The Board revised its license renewal fee in 2017.

<sup>25</sup> The Auditor General has reviewed fee-setting recommended practices from the Arizona State Agency Fee Commission, the Government Finance Officers Association, the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review, and the U.S. Government Accountability Office.

<sup>26</sup> At the end of fiscal year 2024, the Board had a fund balance of approximately \$352,000 or 104 percent of its total expenditures.

percent penalty to the State General Fund for each month beyond the 105-day time frame that the Board did not issue or deny a license.

18. Perform continuing education audits on license renewals.
19. Develop and implement policies and procedures for periodically reviewing fees and performing a cost analysis to determine if fees should be adjusted.

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

**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.**

Our review did not identify any other governmental agencies or private enterprises that duplicate the Board’s key statutory objectives and purposes.

**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 has adopted rules when required to do so.<sup>27</sup>

**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.**

As of June 2024, the Board has not initiated any rulemaking in the previous 5 years. Therefore, it has not needed to encourage input from the public before adopting rules.

The Board provided public information as required in some instances we reviewed, but not in other instances. Specifically, the Board:

- **Did not always answer anonymous calls we made and did not provide all required information over the phone in 1 instance**—Board staff did not answer the phone for 12 of 18 anonymous calls we placed. Of the 6 anonymous calls answered by Board staff, we were informed that the Interim Executive Director was not available to provide information in 2 calls. The Board’s Interim Executive Director correctly provided information about licensee’s disciplinary and nondisciplinary history for 3 of our 4 anonymous calls he answered but did not disclose information about a licensee’s 2 resolved complaints for 1 anonymous call.
- **Provided requested information for 9 public records requests it received, but did not maintain a listing of all public records requests it received to track how many public records requests it received and lacks policies and procedures for how to respond to requests**—Between April 2023 and December 2023, the Board recorded receiving 9 public records requests and Board staff not only acknowledged receiving all 9 requests within 5 business days, as required by A.R.S. §39-171(B), but also provided the requested information within 5 business days after receiving the requests. However, the Board could not provide information on whether it complied with public record request requirements

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<sup>27</sup> In conducting this assessment, we relied, in part, upon Board-reported information.

prior to April 2023 because it lacked a comprehensive listing of all public records requests it received during calendar year 2023. Additionally, the Board lacked written policies and procedures for how its staff should respond to public records requests.

- **Has not included all required information on its website and incorrectly posted other information longer than allowed by statute**—The Board had not included on its “Recent Decisions” webpage many of the Board decisions, orders, and actions from calendar years 2022 through 2023, as of May 2024, despite statutory requirements for licensing boards to post such information no later than 5 days after the meeting where the decision was made.<sup>28</sup> In addition, contrary to statute, information more than 5 years old could still be accessed by using the “license lookup” feature and on the “Recent Board Actions” webpage.<sup>29</sup> For example, our review of the Board’s “Recent Board Actions” webpage identified at least 45 disciplinary and nondisciplinary actions/orders that may have been publicly accessible for more than 5 years prior because the complaints were filed in 2018. The Board’s Interim Executive Director reported that updating the website has been a low priority and instead staff are focused on addressing its licensing and complaint backlogs.

Finally, we reviewed the Board’s compliance with open meeting law requirements for all meetings held in calendar years 2022 and 2023 and found that the Board complied with some open meeting law requirements we reviewed, such as posting meeting notices at least 24 hours in advance of the meeting time. However, the Board:

- Did not post the digital recordings of any calendar year 2022 meetings as required by statute.<sup>30</sup>
- Did not always capture what occurred in the meetings in its written meeting minutes and available recording. For example, the calendar 2022 written meeting minutes did not always capture whether Board members stated they had a conflict with any of the agenda items or whether anyone spoke at the meetings during the Call to the Public. In addition, the digital recordings from the June 2023 meeting did not cover the full meeting.
- Neither the written minutes nor the digital recordings stated the location of the meeting for 3 calendar year 2023 meetings.

## Recommendations

The Board should:

20. Provide the public with information over the phone as required by statute.
21. Develop and implement a tracking mechanism to track requests for public information and its responses to public records requested to ensure it complies with statutes.
22. Develop and implement policies and procedures for responding to public records requests in compliance with statutes.

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<sup>28</sup> A.R.S. §32-4801.

<sup>29</sup> A.R.S. §§32-3214, 32-4801(3).

<sup>30</sup> A.R.S. §32-4801(1)(2) requires licensing authorities to post digital recordings of each meeting within 5 days after the meeting.

23. Post all final Board decisions, orders, and actions to its website no later than 5 days after the meeting during which the decision was made, as required by statute.
24. Review all final Board decisions, orders, and actions from calendar years 2022 and 2023 to ensure they are posted to its website as required by statute.
25. Remove all Board disciplinary and nondisciplinary actions/orders from its website after 5 years as required by statute.
26. Post complete audio recordings of all its Board meetings on its website within 5 business days, as required by statute.
27. Ensure its written meeting minutes and audio recordings capture all details of the meetings, including ensuring that audio recordings cover the entire meeting.
28. Ensure its written meeting minutes and audio recordings include the location of the Board meeting.

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

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

As reported in Finding 2, the Board has not resolved some complaints in a timely manner. For example:

- The Board did not investigate 2 of 11 complaints we reviewed and these complaints had been open and uninvestigated for 591 and 529 days, respectively.
- The Board did not investigate and resolve 5 of 11 complaints we reviewed within 180 days. For example, the Board took between 223 and 316 calendar days, respectively, to investigate and resolve or refer 2 complaints to the Office of Administrative Hearings for formal hearing. Another complaint had been open for 400 days and was investigated but not yet resolved.
- The Board did not document key complaint information for 8 of the 11 complaints we reviewed, limiting our ability to assess the Board's handling of these complaints.
- We identified 5 additional complaints that were awaiting Board review but had not been added to a Board agenda for review.
- As of August 2024, the Board reported it had 167 open complaints; however, it reported it was unable to provide evidence for how long these complaints had been open because of issues with its complaint investigation tracking and monitoring process.

The Board's failure to timely resolve complaints may negatively affect patient safety and may cause an undue burden for licensees under investigation for lengthy periods of time. We recommended that the Board investigate and resolve complaints within 180 days, determine the status of its complaint investigation backlog and develop a written plan to reduce any backlog identified, prioritize and investigate complaints within specified time frames as required by its policy, develop and implement a process for tracking and monitoring its complaint investigation process and timeliness until its new database is fully functional, complete implementation of the Board's new database, and regularly review management



reports for all in-process complaint investigations and track compliance with its time frames for investigating and resolving complaints. See Finding 2, pages 11 through 14, for more information.

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

Every state, except Alaska, regulates the practice of respiratory care.<sup>31</sup> We compared Arizona's level of regulation to all 48 other states that regulate the practice of respiratory care in 2 areas and found that as of June 2022, the level of regulation the Board exercises is generally similar to other states. Specifically:

- **Applicants must be certified by the National Board of Respiratory Care or other certifying body**—Before being licensed, individuals seeking to practice respiratory care for the first time must be certified or registered by a certifying body. The National Board of Respiratory Care is the main certifying body and its credentialing examinations are recognized in all 49 states that regulate respiratory care, including Arizona. Although the National Board of Respiratory Care offers several different certifications, Arizona and 43 other states explicitly require applicants for licensure to have either a Certified Respiratory Therapist or a Registered Respiratory Therapist certificate.<sup>32,33</sup>
- **Education**—As previously discussed, Arizona and at least 43 other states specifically require license applicants to either be certified as a Registered Respiratory Therapist or a Certified Respiratory Therapist. To be eligible for either a Registered Respiratory Therapist certificate or a Certified Respiratory Therapist certificate, applicants new to the profession must possess an associate's degree from a respiratory care program accredited by the Commission on Accreditation for Respiratory Care or other specified accrediting organization. As a result, applicants in Arizona and at least 43 other states must have an associate's degree from a respiratory care program accredited by the Commission on Accreditation for Respiratory Care.

In addition, we compared Arizona's level of regulation to 8 states—California, Colorado, Idaho, Nevada, New Mexico, Ohio, Texas, and Utah—for 2 areas and found that Arizona's level of regulation is generally similar to these states.<sup>34</sup> Specifically:

- **Fingerprints/background check required**—Arizona requires applicants to submit fingerprints for conducting a criminal history background check prior to initial licensure. We found that 4 of the 8 states—California, Nevada, Ohio, and Texas—require applicants to obtain a fingerprint clearance card or submit fingerprints for conducting a criminal history background check prior to initial licensure. The

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<sup>31</sup> According to the National Board for Respiratory Care and the U.S. Bureau of Labor Statistics.

<sup>32</sup> Arizona and 8 other states require applicants, new to the profession, to have a Registered Respiratory Therapist certification for licensure and 27 states require applicants to have either a Registered Respiratory Therapist certification or a Certified Respiratory Therapist certificate.

<sup>33</sup> The remaining 13 states allow applicants with a Registered Respiratory Therapist certification to obtain a license, but do not require them to have a Registered Respiratory Therapist certification and instead 8 require applicants to have a Certified Respiratory Therapist certificate and 5 do not specify the certification received by the National Board of Respiratory Care.

<sup>34</sup> We judgmentally selected these states based on similarities and differences identified during interviews with Board staff and information from national organizations. Three states—California, New Mexico, and Ohio—require a Registered Respiratory Therapist certification like Arizona and the other 5 states—Colorado, Idaho, Nevada, Texas, and Utah—require either a Certified Respiratory Therapist certificate or Registered Respiratory Therapist certificate.

other 4 states require applicants to answer various questions regarding criminal histories, pending complaints or action taken by professional licensing organizations or in other jurisdictions, and fitness to practice, or must show evidence of a good moral character.

- **Continuing education**—Arizona and 6 of the 8 states we reviewed—California, Idaho, Nevada, New Mexico, Ohio, and Texas—require applicants renewing their licenses to complete some form of continuing education as part of license renewal, ranging from an average of 10 to 15 hours annually. Colorado and Utah do not require applicants to complete continuing education.

### **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>35</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 agency’s official minutes. Statute further requires that employees/public officers who have disclosed conflicts refrain from participating in matters related 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 anytime 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 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 course of the Auditor General’s work, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, they have recommended several practices and actions to various school districts, State agencies, and other public entities. The 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>36</sup> Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually. Recommended practices also indicate that the form include a field for the individual to

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<sup>35</sup> See, for example, Arizona 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*, 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*, and 17-405 *Pine-Strawberry Water Improvement District—Theft and misuse of public monies*.

<sup>36</sup> Recommended practices the Arizona Auditor General reviewed included: Organization for Economic Cooperation and Development (OECD). (2022). *Recommendation of the council on OECD guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 3/5/2024 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 3/5/2024 from 2016-ECI-WP-Conflicts-of-Interest.pdf (ethics.org); and Controller and Auditor General of New Zealand (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 3/5/2024 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

provide an “affirmative no,” if applicable. These recommended practices also indicate that agencies 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 some State conflict-of-interest requirements we reviewed and adopted some recommended practices. For example, the Board adopted a conflict-of-interest policy in August 2022 and beginning in April 2023, the Board maintained a special file of all documents necessary to memorialize all disclosures of substantial interest. Further, all Board members and staff signed conflict-of-interest forms in calendar year 2023 that included an affirmative no. In addition, in accordance with its policy, Board members and staff received conflict-of-interest training during a Board meeting in May 2022. However, we found that the Board’s special file did not have any disclosures from 2022, nor could Board staff provide any signed conflict-of-interest statements from 2022. Finally, although Board policy states that Board members and staff shall take conflict-of-interest training annually, there was no formal training provided in calendar year 2023.

## Recommendations

The Board should:

29. Continue to store all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.
30. Continue to have all Board members and employees complete conflict-of-interest disclosure forms upon appointment/hire and remind them at least annually to update their form when their circumstances change.
31. Provide conflict-of-interest training annually to Board members and staff, as required by its policy.

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

## **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 did not identify any statutory changes that are necessary to help the Board more efficiently and effectively fulfill its key statutory objectives and purposes, nor did we identify any of the Board’s statutory responsibilities that are no longer necessary.

However, the Board identified 2 statutory changes that it believes would help it to more efficiently and effectively fulfill its key statutory objectives and purposes. First, the Board has the authority to issue temporary licenses for practitioners who hold an active and unrestricted license in another state and reported that it would like to expand the ability to issue temporary licenses to new respiratory care graduates to be able to practice while waiting for the Board to process their application and issue their license.<sup>37</sup> Second, the Council of State Governments is working on an interstate compact that would facilitate licensed respiratory therapists ability to practice in multiple states and the Board reported that

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<sup>37</sup> A.R.S. §32-3124.

Arizona entering into this compact would benefit the State, in particular cities and towns that are bordering other states. The Board reported that once this compact is finalized, it would need statutory authority to enter into the compact.

Finally, the Board identified a statutory change that it believes is needed to align statute with the current practices of respiratory care therapists. Specifically, A.R.S. §32-3501 indicates that licensees may only practice at the direction of a licensed medical or osteopathic physician; however, according to the Board, other healthcare professionals, such as physician assistants and nurse practitioners, sometimes also prescribe respiratory care treatments and it indicated statute could be revised to clarify that these other healthcare professionals are authorized to do so.

### **Recommendations**

The Board should:

32. Work with the Legislature to revise statute to address the needed changes it has identified.

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

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

Terminating the Board could affect public health, safety, and welfare if its regulatory responsibilities were not transferred to another agency. The Board's regulations are intended to help protect the public through licensing respiratory care practitioners, investigating and resolving complaints against licensees, and providing information to the public about licensees, including disciplinary history. However, we found that the Board did not issue licenses in a timely manner, potentially delaying applicants' ability to work, impacting the availability of practitioners to treat patients, and resulting in the Board potentially paying unnecessary penalties (see Finding 1, pages 7 through 10). In addition, we found that the Board did not investigate or timely investigate, document, or review all complaints it received, increasing the public safety risk (see Finding 2, pages 11 through 14).

## Summary of recommendations

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### Sjoberg Evashenk Consulting makes 32 recommendations to the Board

The Board should:

1. Issue or deny licenses within the 105-day time frame established in the Board's administrative rules (see Finding 1, pages 7 through 10, for more information).
2. Determine the status of its licensing application backlog, develop a written plan to reduce any backlog it identifies, and report monthly the status of the backlog to the Board until the backlog has been eliminated (see Finding 1, pages 7 through 10, for more information).
3. Send and maintain documentation of required application notifications, including notices of a completeness (see Finding 1, pages 7 through 10, for more information).
4. Develop and implement a process to monitor its licensing application process and compliance with its licensing time frames until its new database is fully implemented and functional, including steps to record dates when it receives license applications, sends deficiency letters and notices of completeness to applicants, and issues licenses or denies/closes applications (see Finding 1, pages 7 through 10, for more information).
5. Complete implementation of its new database including ensuring that the database includes complete and accurate licensing information and can generate management reports necessary for monitoring and overseeing compliance with licensing time frames (see Finding 1, pages 7 through 10, for more information).
6. Regularly review management reports for all in-process applications and track compliance with its time frames for issuing licenses (see Finding 1, pages 7 through 10, for more information).
7. Investigate and resolve complaints within 180 days (see Finding 2, pages 11 through 14, for more information).
8. Determine the status of its complaint investigation backlog, develop a written plan to reduce any backlog it identifies, and report monthly the status of the backlog to the Board until the backlog has been eliminated (see Finding 2, pages 11 through 14, for more information).
9. Ensure Board staff provide the Board with a complete investigative report that includes all the Board required information for every complaint the Board reviews (see Finding 2, pages 11 through 14, for more information).
10. Prioritize and investigate complaints within specified time frames, as required by its policy (see Finding 2, pages 11 through 14, for more information).
11. Train staff on how to investigate complaints (see Finding 2, pages 11 through 14, for more information).
12. Develop and implement a process to track and monitor its complaint investigation process and timeliness until its new database is fully implemented and functional, including steps to record

dates that key complaint handling steps are completed to help ensure it timely investigates and resolves complaints (see Finding 2, pages 11 through 14, for more information).

13. Complete implementation of the Board's new database including ensuring that the database includes complete and accurate complaint information and can generate management reports necessary for monitoring and overseeing complaint handling timeliness (see Finding 2, pages 11 through 14, for more information).
14. Regularly review management reports for all in-process complaints and track compliance with its time frames for investigating and resolving complaints (see Finding 2, pages 11 through 14, for more information).
15. Assess license applications received in calendar years 2022, 2023, and 2024 to determine if any were issued/denied beyond the 105-day time frame for issuing licenses (see Sunset Factor 2, pages 15 through 18, for more information).
16. For any license applications it received in calendar years 2022, 2023, and 2024 that were issued beyond the 105-day time frame, refund the licensing fees to the applicants, calculate the amount of time beyond the 105-day time frame the licenses were issued, and remit a 2.5 percent penalty to the State General Fund for each month beyond the 105-day time frame that the Board did not issue or deny the license (see Sunset Factor 2, pages 15 through 18, for more information).
17. Develop and implement policies and procedures outlining a process for identifying licenses that are issued beyond the 105-day time frame, refunding licensing fees to applicants, calculating the amount of time beyond the 105-day time frame the licenses were issued, and remitting a 2.5 percent penalty to the State General Fund for each month beyond the 105-day time frame that the Board did not issue or deny a license (see Sunset Factor 2, pages 15 through 18, for more information).
18. Perform continuing education audits on license renewals (see Sunset Factor 2, pages 15 through 18, for more information).
19. Develop and implement policies and procedures for periodically reviewing fees and performing a cost analysis to determine if fees should be adjusted (see Sunset Factor 2, pages 15 through 18, for more information).
20. Provide the public with information over the phone as required by statute (see Sunset Factor 5, pages 18 through 20, for more information).
21. Develop and implement a tracking mechanism to track requests for public information and its responses to public records requested to ensure it complies with statutes (see Sunset Factor 5, pages 18 through 20, for more information).
22. Develop and implement policies and procedures for responding to public records requests in compliance with statutes (see Sunset Factor 5, pages 18 through 20, for more information).
23. Post all final Board decisions, orders, and actions to its website no later than 5 days after the meeting during which the decision was made, as required by statute (see Sunset Factor 5, pages 18 through 20, for more information).

24. Review all final Board decisions, orders, and actions from calendar years 2022 and 2023 to ensure they are posted to its website as required by statute (see Sunset Factor 5, pages 18 through 20, for more information).
25. Remove all Board disciplinary and nondisciplinary actions/orders from its website after 5 years as required by statute (see Sunset Factor 5, pages 18 through 20, for more information).
26. Post complete audio recordings of all its Board meetings on its website within 5 business days, as required by statute (see Sunset Factor 5, pages 18 through 20, for more information).
27. Ensure its written meeting minutes and audio recordings capture all details of the meetings, including ensuring that audio recordings cover the entire meeting (see Sunset Factor 5, pages 18 through 20, for more information).
28. Ensure its written meeting minutes and audio recordings include the location of the Board meeting (see Sunset Factor 5, pages 18 through 20, for more information).
29. Continue to store all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection (see Sunset Factor 8, pages 22 through 23, for more information).
30. Continue to have all Board members and employees complete a conflict-of-interest disclosure forms upon appointment/hire and remind them at least annually to update their form when their circumstances change (see Sunset Factor 8, pages 22 through 23, for more information).
31. Provide conflict-of-interest training annually to Board members and staff, as required by its policy (see Sunset Factor 8, pages 22 through 23, for more information).
32. Work with the Legislature to revise statute to address the needed changes it has identified (see Sunset Factor 9, pages 23 through 24, for more information).

## Appendix A. Scope and methodology

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Sjoberg Evashenk Consulting 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 objectives of this performance audit and sunset review of the Board. These methods included reviewing applicable State statutes and rules; evaluating Board policies and procedures; interviewing Board staff and Board members; reviewing Board records and information, the Board's annual reports, and website; and reviewing guidance and reports from the Arizona Ombudsman - Citizens' Aide Office, Arizona Governor's Office, Arizona Attorney General's Office, and Arizona Department of Administration. In addition, we used the following specific methods to meet the audit objectives:

- To evaluate if the Board reviews applications for and issues and/or denies initial and renewal licenses/certificates based on applicant qualifications as required by statute and rule and in accordance with statutory time frames, we selected a judgmental sample of 11 of 319 initial applications that were issued in calendar year 2023. We also selected a sample of 20 of nearly 1,730 renewals issued in 2023.
- To assess the Board's complaint investigation and resolution processes, including the timeliness of complaint resolution, we reviewed a sample of 11 of 108 complaints the Board received in calendar years 2022 and 2023.
- To assess whether the Board provided information to the public as required by statute and its policies and procedures, we placed 18 anonymous calls to the Board in April and May 2024. Additionally, we reviewed the Board's website to assess whether the Board provides information to the public on its website consistent with statutory requirements.
- To obtain information for the Introduction, we reviewed the Governor's Budget and Agency Detail for the Board, Board-prepared information regarding budgets, information about Board members and vacancies, and statistics for number of active licenses, renewals, and complaints as of June 2024. In addition, we compiled and analyzed unaudited financial information from the AFIS *June Financial Reports* for fiscal years 2022, 2023, and 2024 and the State of Arizona *Annual Financial Report* for fiscal years 2022 and 2023, and Board- and Arizona Department of Administration-provided actual information for fiscal year 2024.
- To obtain additional information for the Sunset Factors, we reviewed the Arizona Administrative Register and assessed the Board's compliance with various provisions of the State's open meeting law for all Board meetings held between January 2022 and December 2023. To assess the Board's compliance with the State's conflict-of-interest laws and alignment with recommended practices, we reviewed statute, Board policy and disclosure forms, and recommended practices. To determine the Board's fee-setting practices and authority, we interviewed Board staff and reviewed Board statutes, fee-setting standards, and guidance developed by government and professional organizations. We also



reviewed information from various national organizations for respiratory care practitioners and 8 other states to compare the level of regulation exercised by the Board as compared to other states or determine best practices in the profession.<sup>38</sup>

Our work on internal controls included reviewing relevant policies and procedures, statutes, and recommended practices and, where applicable, testing compliance and/or alignments with these requirements and recommended practices. We reported our conclusions on applicable internal controls in Sunset Factors 2, 5, 6, and 8.

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

We conducted this performance audit 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's members, Interim Executive Director, and staff for their cooperation and assistance throughout the audit.

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<sup>38</sup> We judgmentally selected these states based on similarities and differences identified based on interviews with Board staff and information from national organizations. Three states—California, New Mexico, and Ohio—require a Registered Respiratory Therapist certification like Arizona and the other 5 states—Colorado, Idaho, Nevada, Texas, and Utah—require either a Certified Respiratory Therapist certificate or Registered Respiratory Therapist certificate.

# Board response

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Katie Hobbs  
Governor



State of Arizona  
Board of Respiratory Care Examiners  
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(602) 542-5995  
[www.rb.az.gov](http://www.rb.az.gov)

Jack Confer  
Interim Executive Director

September 18, 2024

**VIA ELECTRONIC MAIL**

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

RE: Arizona Board of Respiratory Examiners – Sunset Review: ARS §41-2951 et seq.

Dear Auditor General Perry,

The Arizona Board of Respiratory Care Examiners (“Board”) has received the revised final report draft of the performance audit and sunset review. As requested, we are forwarding our final response.

The Board’s staff, as well as the Board itself, appreciated the professionalism and courtesy extended during this audit process. In addition, I would like to extend our gratitude to you, your office and the team at Sjoberg-Evashenk Consulting, Inc., Thank you!

The Board has already begun addressing the finding(s) identified in this report and plans to have the majority of the recommendations implemented in the near future.

We look forward to meeting with the Joint Health Committee of Reference this fall and look forward to working with you and your team during the follow-up.

Respectfully,

A handwritten signature in black ink, appearing to read "Jack Confer", written over a horizontal line.

Jack Confer  
Interim Executive Director

Copy: Jeff Gove, Performance Audit Director, Arizona Auditor General  
George Skiles, Partner, Sjoberg Evashenk Consulting Inc.  
File

Attachment: Final Response to Revised Final Report

**Finding 1:** Board did not issue licenses in a timely manner, potentially delaying applicants' ability to work, impacting availability of practitioners to treat patients, and resulting in the Board potentially paying unnecessary penalties

**Recommendation 1:** Issue or deny licenses within the 105-day time frame established by the Board's administrative rules.

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

**Recommendation 2:** Determine the status of its licensing application backlog, develop a written plan to reduce any backlog it identifies, and report monthly the status of the backlog to the Board until the backlog has been eliminated.

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

**Recommendation 3:** Send and maintain documentation of required application notifications, including notices of completeness.

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

**Recommendation 4:** Develop and implement a process to monitor its licensing application process and compliance with its licensing time frames until its new database is fully implemented and functional, including steps to record dates when it receives license applications, sends deficiency letters and notices of completeness to applicants, and issues licenses or denies/closes applications.

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

**Recommendation 5:** Complete implementation of its new database including ensuring that the database includes complete and accurate licensing information and can generate management reports necessary for monitoring and overseeing compliance with licensing time frames.

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

**Recommendation 6:** Regularly review management reports for all in-process applications and track compliance with its time frames for issuing licenses.

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

**Finding 2:** Board did not investigate or timely investigate, document, or review all complaints it received, increasing public safety risk

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

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

**Recommendation 2:** Determine the status of its complaint backlog, develop a written plan to reduce any backlog it identifies, and report monthly the status of the backlog to the Board until the backlog has been eliminated.

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

**Recommendation 3:** Ensure Board staff provide the Board with a complete investigative report that includes all the Board required information for every complaint the Board reviews.

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

**Recommendation 4:** Prioritize and investigate complaints within specified time frames, as required by its policy.

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

**Recommendation 5:** Train staff on how to investigate complaints.

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

**Recommendation 6:** Develop and implement a process to track and monitor its complaint investigation process and timeliness until its new database is fully implemented and functional, including steps to record dates that key complaint handling steps are completed to help ensure it timely investigates and resolves complaints.

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

**Recommendation 7:** Complete implementation of the Board's new database including ensuring that the database includes complete and accurate complaint information and can generate management reports necessary for monitoring and overseeing complaint handling timeliness.

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

**Recommendation 8:** Regularly review management reports for all in-process complaints and track compliance with its time frames for investigating and resolving complaints.

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

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

**Recommendation 1:** Assess license applications received in calendar years 2022, 2023, and 2024 to determine if any were issued/denied beyond the 105-day time frame for issuing licenses.

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

**Recommendation 2:** For any license application it received in calendar years 2022, 2023, and 2024 that were issued beyond the 105-day time frame, refund the licensing fees to the applicants, calculate the amount of time beyond the 105-day time frame the licenses were issued, and remit a 2.5 percent penalty to the State General Fund for each month beyond the 105-day time frame that the Board did not issue or deny the license.

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

**Recommendation 3:** Develop and implement policies and procedures outlining a process for identifying licenses that are issued beyond the 105-day time frame, refunding licensing fees to applicants, calculating the amount of time beyond the 105-day time frame the licenses were issued, and remitting a 2.5 percent penalty to the State General Fund for each month beyond the 105-day time frame that the Board did not issue or deny a license.

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

**Recommendation 4:** Perform continuing education audits on license renewals.

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

**Recommendation 5:** Develop and implement policies and procedures for periodically reviewing fees and performing a cost analysis to determine if fees should be adjusted.

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

**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 1:** Provide the public with information over the phone as required by statute.

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

**Recommendation 2:** Develop and implement a tracking mechanism to track requests for public information and its responses to public records requested to ensure it complies with statutes.

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

**Recommendation 3:** Develop and implement policies and procedures for responding to public records requests in compliance with statutes.

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

**Recommendation 4:** Post all final Board decisions, orders, and actions to its website no later than 5 days after the meeting during which the decision was made, as required by statute.

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

**Recommendation 5:** Review all final Board decisions, orders, and actions from calendar years 2022 and 2023 to ensure they are posted to its website as required by statute.

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

**Recommendation 6:** Remove all Board disciplinary and nondisciplinary actions/orders from its website after 5 years as required by statute.

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

**Recommendation 7:** Post complete audio recordings of all its Board meetings on its website within 5 business days, as required by statute.

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

**Recommendation 8:** Ensure its written meeting minutes and audio recordings capture all details of the meetings, including ensuring that audio recordings cover the entire meeting.

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

**Recommendation 9:** Ensure its written meeting minutes and audio recordings include the location of the Board meeting.

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

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

**Recommendation 1:** Continue to store all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

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

**Recommendation 2:** Continue to have all Board members and employees complete conflict-of-interest disclosure forms upon appointment/hire and remind them at least annually to update their form when their circumstances change.

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

**Recommendation 3:** Provide conflict-of-interest training annually to Board members and staff, as required by policy.

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

**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.

**Recommendation 1:** Work with the Legislature to revise statute to address the needed changes it has identified.

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