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September 30, 2024

Members of the Arizona Legislature

The Honorable Katie Hobbs, Governor

Mr. Justin Bohall, Executive Director

Arizona Board of Osteopathic Examiners in Medicine and Surgery

Transmitted herewith is the report *Performance Audit and Sunset Review of the Arizona Board of Osteopathic Examiners in Medicine and Surgery*. This audit was conducted by the independent CPA firm Walker & Armstrong, LLP under contract with the Arizona Auditor General and was in response to a November 21, 2022, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Osteopathic Examiners in Medicine and Surgery agrees with all the findings and plans to implement all the recommendations. My Office has contracted with Walker and Armstrong, LLP to follow up with the Arizona Board of Osteopathic Examiners in Medicine and Surgery in 6 months to assess its progress in implementing the recommendations. I express my appreciation to the Board's members, Executive Director Bohall, 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 Osteopathic Examiners in Medicine and Surgery members

September 30, 2024

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

Dear Ms. Perry:

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

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

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

Sincerely,



Walker & Armstrong, LLP
Phoenix, Arizona

Arizona Board of Osteopathic Examiners in Medicine and Surgery

Board timely issued initial and renewal licenses, but did not timely resolve complaints, consistently suspend licenses for violations involving imminent public health, safety, or welfare concerns, or verify some applicants met all initial license and permit requirements, potentially affecting patient safety

Performance Audit and Sunset Review

September 2024
Report 24-112



Walker & Armstrong

CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

Arizona Board of Osteopathic Examiners in Medicine and Surgery (Board)

Board timely issued initial and renewal licenses, but did not timely resolve complaints, consistently suspend licenses for violations involving imminent public health, safety, or welfare concerns, or verify some applicants met all initial license and permit requirements, potentially affecting patient safety

Audit purpose

To assess whether the Board issued and renewed licenses, permits, and registrations in accordance with statute and rule requirements, investigated and resolved complaints within its jurisdiction in a timely manner and imposed disciplinary action consistent with the nature and severity of violations, provided information to the public as required by statute, and complied with State conflict-of-interest requirements, and to provide responses to the statutory sunset factors.

Key findings

The Board:

- Is responsible for regulating osteopathic medical professionals including issuing and renewing licenses, permits, and registrations; investigating and resolving complaints; and providing information to the public about licensees.
- Reviewed and approved or denied initial and renewal applications within required time frame and complied with conflict-of-interest requirements we reviewed.
- Did not resolve 60 percent of complaints it closed in fiscal year 2023 within 180 days, and 72 percent of open complaints had been open for more than 180 days as of June 2023. Untimely complaint resolution may impact patient safety when licensees alleged to have violated Board statutes and rules continue to practice while under investigation even though they may be unfit to do so. The Board's failure to use its statutory authority to issue subpoenas and timely obtain consultants to review complaints contributed to untimely complaint resolution.
- Did not consistently use its authority to suspend licenses until complaints were resolved for violations involving imminent public health, safety, or welfare concerns.
- Did not verify that 3 license/permit applicants we reviewed had not engaged in unprofessional conduct.

Key recommendations

The Board should:

- Investigate and resolve complaints within 180 days.
- Use its statutory authority to issue subpoenas and develop a list of outside medical consultants with varying specialties to more timely resolve complaints.
- Consistently use its statutory authority to temporarily suspend licenses when necessary to protect the public.
- Develop and implement policies and procedures for verifying that permit applicants have not engaged in unprofessional conduct.

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BOARD OVERVIEW

Arizona Board of Osteopathic Examiners in Medicine and Surgery

The Arizona Board of Osteopathic Examiners in Medicine and Surgery (Board) regulates the osteopathic health profession by issuing and renewing licenses, permits, and registrations; investigating and resolving complaints; and providing information to the public about license, permit, and registration holders. As required by statute, the Board consists of 7 Governor-appointed members. One member is appointed each year for a 5-year term beginning and ending on April 15. As of May 2024, all 7 Board member positions were filled. In fiscal year 2023, the Board was authorized 10 full-time equivalent (FTE) staff positions. The Board does not receive any State General Fund appropriations. Rather, the Board’s revenues consist primarily of licensing, permit, and registration fees.

Active licenses, permits, and registrations as of May 2024: 6,209

Business inspections conducted in fiscal year 2023: 1

Complaints opened in fiscal year 2023: 198

Audit results summary

Key regulatory areas reviewed	Results			
Individual licenses —Process initial applications within 120 days. Key qualifications include education, experience, and a criminal history records check.	Issued timely?	✓	Ensured qualifications met?	✗
License, permit, and registration renewals —Process renewal applications within 120 days and licensees must complete 40 hours of continuing education every 2 years.	Issued timely?	✓	Continuing education met?	✓
Complaint handling —Investigate complaints it receives and take action to address violations within 180 days.	Resolved complaints in a timely manner?	✗	Followed statutory requirements for adjudication?	✗
Public information —Provide specific complaint and licensee information to the public on request and on its website.	Provided via website?	✗	Provided via phone?	✓

Audit results summary (continued)

Other responsibilities reviewed	Results			
Fee setting —Establish fees based on the actual costs of providing services.	Assessed costs?	✓	Based fees on actual costs?	✓
Conflicts of interest —Sign a disclosure form, maintain substantial interest disclosures in a special file, and recuse oneself from decisions involving substantial interests.	Board members/ staff signed annual disclosures and Board maintained special file?	✓	Board members with conflicts recused selves during Board meetings?	✓
Rulemaking and open meeting law — Requirements include involving the public in rulemaking and making meeting minutes available in 3 working days.	Involved public in rulemaking?	✓	Meeting minutes available in 3 working days?	✓

INTRODUCTION

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

Board mission and responsibilities

The Board was established in 1949 and according to its website, the Board’s mission is to protect the public by setting educational and training standards for licensure, and by reviewing complaints made against osteopathic physicians (see textbox), interns, and residents to ensure that their conduct meets the standards of the profession.

The Board’s statutory responsibilities include:

- Issuing and renewing licenses, post-graduate training permits, and registrations to qualified applicants. As shown in Table 1 (see page 4), the Board had 5,439 active licenses, 732 active permits, and 38 active registrations as of May 2024.
- Investigating and adjudicating complaints against licensees, permit holders, and registration holders. The Board is statutorily authorized to take various disciplinary and nondisciplinary actions if it determines that a statutory violation has occurred, including license revocation and civil penalties (see textbox). In fiscal year 2023, the Board opened 198 complaint investigations, including complaints received from the public and those opened as a result of background checks or other issues identified during the Board’s review of license applications (see Finding 1, pages 8 through 13, and Sunset Factor 6, page 19, for more information on our findings related to the Board’s processes for handling complaints).

Osteopathic physician
 An individual with a post graduate medical college certification and post graduate training certification who holds a license, permit or locum tenens registration to practice osteopathic medicine, a holistic approach to healthcare.¹

¹ A person who holds a locum tenens registration may assist or substitute for an Arizona sponsoring physician. They may not practice osteopathic medicine in Arizona aside from at the facilities of the sponsoring physician.

Source: Walker & Armstrong staff analysis of information from Board statutes.

Examples of disciplinary and nondisciplinary actions the Board may take

Disciplinary actions	
* Revoke license	* Impose a probationary term
* Suspend license	* Impose civil penalty up to \$500 per violation of statute
* Issue a decree of censure	
Nondisciplinary actions	
* Issue a letter of concern	* Require continuing education

Source: Walker & Armstrong staff review of Arizona Revised Statutes (A.R.S.) §32-1855

- Providing information to the public, including licensees’ disciplinary and nondisciplinary histories (see Sunset Factor 5, pages 17 and 18, for more information on public information requirements).

Table 1: Board license, registration, and permit types; number of active licenses, registrations, and permits; and education and experience requirements

As of May 2024
(Unaudited)

License, registration, or permit type	Active licenses, registrations, or permits	Education and experience requirements for license, registration, or permit ¹
License		
Osteopathic Physician	5,438	Graduation from an approved osteopathic school of medicine and successful completion of an approved internship or first year of residency or maintain a full, unrestricted license in a state other than Arizona and is authorized by the IMLC to work in other states. ²
Teaching license ³	1	Graduation from an approved osteopathic school of medicine, successful completion of an approved internship or first year of residency.
Registration		
Dispensing registration	26	Currently a registered osteopathic physician in Arizona.
Telehealth registrations	10	Maintains a full, unrestricted license in a state, territory, or possession of the United States.
Pro bono registrations ⁴	2	Maintains a full, unrestricted license in a state, territory, or possession of the United States.
Permit		
Post graduate training permit	731	Graduate at a school approved by the American Osteopathic Association.
Transitional training permit ⁵	1	Graduate at a school approved by the American Osteopathic Association.
Total active licenses	6,209	

¹ In addition to education and experience requirements, osteopathic professionals must also pass professional exams to obtain a license.

² An osteopathic practitioner can practice in Arizona as part of an agreement between the State and other states participating in the Interstate Medical Licensure Compact (IMLC). This compact addresses licensing of physicians across state lines. The Board’s licensees included 400 active licensees under the IMLC.

³ A doctor of osteopathic medicine who is not licensed in Arizona may be employed as a full-time faculty member by a school of osteopathic medicine if approved by the American Osteopathic Association or an Arizona teaching hospital's accredited graduate medical education program to provide professional education through lectures, clinics, or demonstrations if the doctor holds a teaching license.

⁴ A registration that allows a practitioner from a state other than Arizona to practice for a period of up to 60 days without fully registering in Arizona.

⁵ A.R.S. §32-1829.01 authorizes a transitional training permit holder to train at a facility other than a teaching hospital under certain circumstances.

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

Organization and staffing

A.R.S. §32-1801 requires the Board to consist of 7 Governor-appointed members with one member of the Board appointed each year for a term of 5 years, to begin and end on April 15. The Board shall consist of 2 public members with no connections to the medical field and 5 actively licensed osteopathic physicians who have been practicing medicine in Arizona for the prior 5 years. As of May 2024, all 7 Board member positions were filled.

The Board was authorized 10 full-time equivalent (FTE) staff positions for fiscal year 2023. As of May 2024, the Board reported that 9 of 10 authorized FTE positions were filled, including an executive director, deputy director, medical consultant, operations coordinator, 2 licensing officers, and 3 investigators.¹

The Board president is responsible for appointing Board members to committees. As of May 2024, the Board has 3 active committees:

- Case Review Committee—reviews substantive complaints and recommends action to the Board (3 members, all positions filled as of May 2024).
- Compliance Committee—reviews physician compliance with Board’s confidential monitoring program, disciplinary orders, non-disciplinary orders, consent agreements, interim consent agreements, and interim orders and recommends action to the Board (3 members, all positions filled as of May 2024).²
- Statute and Legislative Committee—reviews statutes, rules, and regulations and recommends changes or actions to the Board (3 members, all positions filled as of May 2024).

Meetings of the committees are open to the public.

Budget

The Board does not receive any State General Fund appropriations. Instead, the Board’s revenues consist of licensing and other fees. The Board is statutorily required to remit all civil penalties and 10 percent of all fees, fines, and other revenues received to the State General Fund and to deposit the remaining 90 percent into the Osteopathic Examiners Board Fund. As shown in Table 2, page 6, in fiscal years 2022 through 2024, between 96 and 99 percent of the Board’s expenditures or estimated expenditures were for personnel costs, professional services such as legal fees paid to the Arizona Attorney General’s Office, temporary staffing, and investigation services, and other operating expenses, such as such as rent, software support and maintenance, and financial services. Between fiscal years 2022 and 2023, the Board’s fiscal year ending fund balance increased from about \$3.4 to \$3.6 million. Based on the Board’s fiscal year 2024 estimated revenues and expenditures, its fiscal year 2024 ending fund balance is estimated at \$757,000, or about 52 percent of its annual expenditures for the fiscal year. The State approved budget for fiscal year 2025 includes a transfer of \$2.8 million of the Board’s fund balance to the State’s General Fund.

¹ As of May 2024, the Board had 1 vacancy for a licensing specialist.

² The Board’s confidential monitoring program is authorized under A.R.S. §32-1861 for the treatment and rehabilitation of licensees who are impaired by substance abuse.

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

	2022	2023	2024
	(Actual)	(Actual)	(Estimated)
Revenues			
Licensing and fees ¹	\$1,731,653	\$1,693,019	\$1,510,400
Charges for goods and services			
Publications and reproductions	11,316	16,295	12,400
Other ²	1,920	9,814	8,000
Fines, forfeits, and penalties	43,229	48,250	30,800
Other ^{3,7}	13,380	13,339	12,042
Total gross revenues	1,801,498	1,780,717	1,573,642
Remittances to the State General Fund ⁴	(178,620)	(175,756)	(155,360)
Total net revenues	1,622,878	1,604,961	1,418,282
Expenditures and transfers			
Payroll and related benefits	673,348	858,516	923,200
Professional and outside services ⁵	82,006	99,128	172,700
Travel	2,556	4,744	15,333
Other operating ^{6,7}	287,114	364,211	343,142
Furniture, equipment, and software ⁸	771	46,420	-
Transfers to other agencies ⁹	548	983	-
Transfers to State General Fund ¹⁰	-	-	2,800,000
Total expenditures	1,046,343	1,374,002	4,254,375
Excess of revenues over (under) expenditures	576,535	230,959	(2,836,093)
Fund balance, beginning of year	2,785,275	3,361,810	3,592,769
Fund balance, end of year	\$3,361,810	\$3,592,769	\$ 756,676

¹ The Board reported that licensing and fees have decreased because of its elimination and reduction in fees based on its continued assessment of fees and fund balance.

² Other charges for goods and services consist of pass-through fees for background checks through the Arizona Department of Public Safety.

- ³ Other revenues primarily consist of credit card convenience fees and public record request copying fees.
- ⁴ The Board is required to remit to the State General Fund all civil penalties and 10 percent of all fees, fines, and other revenue received by the Board in accordance with A.R.S. §32-1805. Laws 2024, Ch. 222 requires the Board to remit 15 percent of all fees, fines, and other revenue received by the Board to the State General Fund effective September 14, 2024, through June 30, 2028.
- ⁵ Professional and outside services expenditures primarily consist of legal, project management, temporary or contract staffing, and investigation services. The Board reported the significant increase in fiscal year 2024 was to pay for more legal services and temporary or contract staffing.
- ⁶ Other operating expenditures consist of various expenditures such as rent, software support and maintenance, postage and delivery, financial services, supplies, and insurance.
- ⁷ The Board reported that it charges only a portion of the \$4.50 cost for convenience fees per credit card transaction, so the Board has expenses in excess of fees charged. The Board classifies credit card transaction fees paid as other operating expenses.
- ⁸ The Board reported purchases of computers, equipment, and software in fiscal year 2023 and no significant purchases or estimated purchases in fiscal years 2022 and 2024.
- ⁹ Transfers to other agencies primarily consist of transfers under interagency agreements with the Arizona Department of Administration to make improvements to the Board's office space or to the Office of Administrative Hearings for conducting formal hearings.
- ¹⁰ The State approved budget for fiscal year 2025 includes a transfer of \$2.8 million of the Board's fund balance to the State's general fund.

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

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

Board is responsible for investigating and resolving complaints against licensees

The Board is responsible for investigating and resolving complaints against licensees. Specifically, statute authorizes the Board to investigate and resolve complaints alleging that a licensee has engaged in unprofessional conduct, is incompetent, or is mentally or physically unable to safely engage in the practice of medicine.³ Although the Board has not established time frames for investigating and resolving complaints, the Arizona Auditor General has determined that Arizona health regulatory boards should investigate and resolve complaints within 180 days of receiving them.

Complaints that are outside the family practice expertise of the Board's medical consultant, such as neurology, require the Board to contract with a specialist. The Board's medical consultant will use the Board's internal list of previously used practitioners in the specified field to find someone who can assist with consulting on the case. If there are no previously used practitioners in the specified field, the Board's medical consultant will look in its database or reach out to the Arizona Medical Board or other boards who have specialists in the field or expertise pertaining to the case.⁴

Board's process for handling complaints

- 1) Board receives complaint from the public or opens one internally¹
- 2) Investigations manager determines if Board has jurisdiction and assigns priority level (1-3)
 - 1—sexual misconduct, drug or alcohol abuse, severe standard of care violation
 - 2—deviation from standard of care, prescription violation, behavioral complaint
 - 3—advertisements, records, or other complaints unrelated to patient care
- 3) Subpoena issued to licensee and notices sent to involved parties
- 4) Administrator assigns investigation to senior investigator or Board's medical consultant
 - Board contracts with specialists for issues outside the expertise of Board's medical consultant
- 5) Investigation
- 6) Close upon dismissal of complaint, issuance of nondisciplinary/disciplinary order, or referral to the Office of Administrative Hearings (OAH) for a formal hearing

¹ The Board opens complaints as a result of the initial application process when an applicant self-reports an act of unprofessional conduct or when something comes back on an applicant's background check that was not disclosed and is considered an act of unprofessional conduct or during the renewal application process when an applicant self-reports an act of unprofessional conduct.

Source: Walker & Armstrong staff review of the Board's procedures and information provided by Board staff.

³ A.R.S. §32-1855.

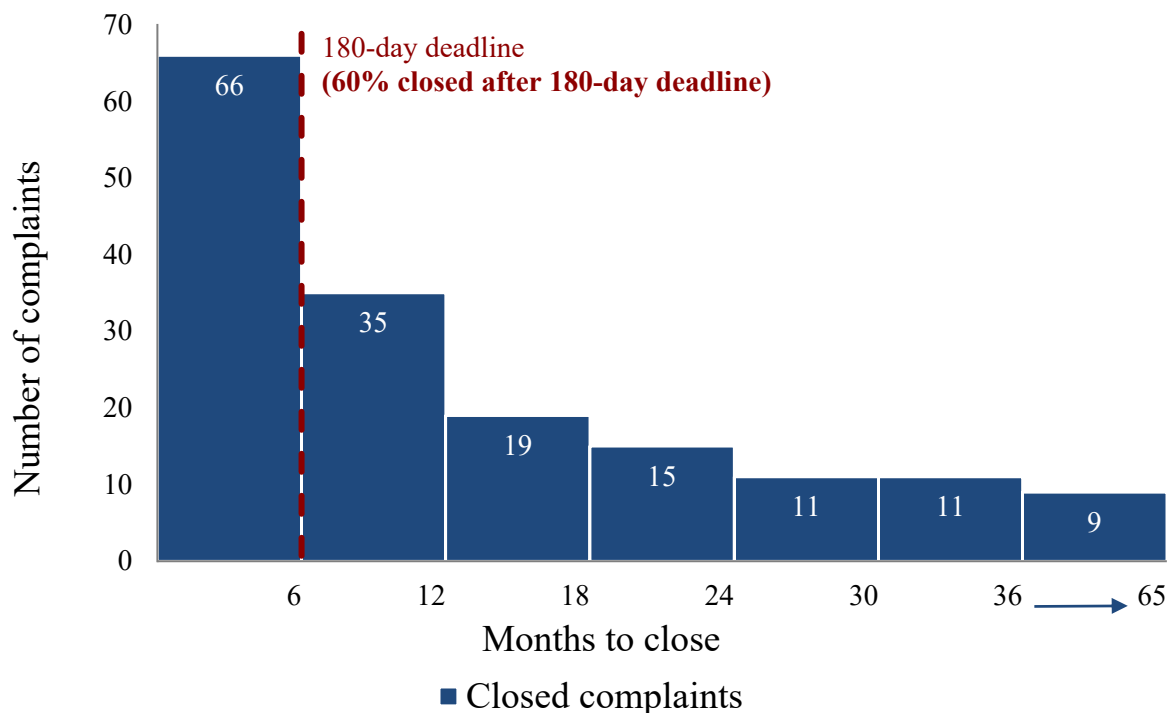
⁴ The Board requires medical consultants to sign a confidentiality agreement and attest to having no conflicts-of-interest in cases they review.

Board did not resolve within 180 days 60 percent of complaints it closed in fiscal year 2023 and 72 percent of open complaints had been open for more than 180 days as of June 2023

Similar to the Board’s previous performance audit and sunset review in 2016, in which the Arizona Auditor General found the Board did not timely resolve complaints, our review of the information in the Board’s complaint database found:

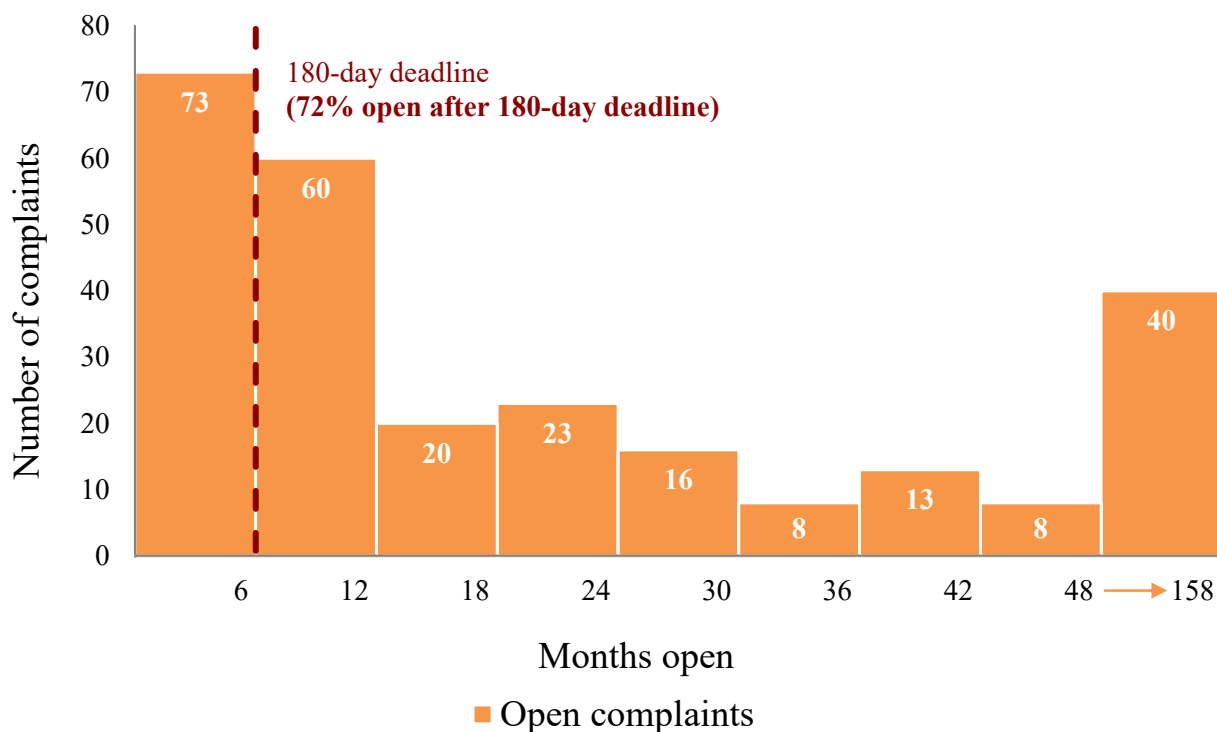
- 100 of 166 complaints the Board closed in fiscal year 2023, or 60 percent, took more than 180 days to resolve (see Figure 1), including 1 priority 1 and 95 priority 2 complaints. The Board took between 194 and 1,946 days to investigate and resolve or refer these 100 complaints to the OAH for a formal hearing. These complaints included allegations such as a licensee failing to close a wound after performing surgery and a licensee that overprescribed opioids to a patient who was subsequently incarcerated for an opioid-related crime.
- As of June 30, 2023, 188 of the Board’s 261 open complaints, or 72 percent, had been open for more than 180 days (see Figure 2, page 10), including 11 priority 1 and 162 priority 2 complaints. These 188 complaints had been open between 192 days and 4,746 days—more than 13 years as of June 30, 2023. These complaints included allegations such as a licensee not conducting routine urine drug screenings when prescribing regulated medications to patients with a history of testing positive for illicit drugs, a licensee conducting an inferior plastic surgery, and a licensee failing to document medications prescribed including dosages in several patients’ medical records.

Figure 1: Board took more than 180 days to resolve 60 percent of complaints closed in fiscal year 2023



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

Figure 2: Board had not resolved 72 percent of complaints open as of June 30, 2023, within 180 days



Source: Walker & Armstrong staff analysis of complaints indicated as open in the Board’s database.

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

Although the Board can and does suspend licensees if a complaint involves an imminent public health, safety, or welfare concern or at the time the license is subject to renewal, as reported in Sunset Factor 2, pages 14 through 16, it has not always suspended licenses for complaints that appear to involve these types of concerns.^{5,6} As a result, untimely complaint resolution may negatively impact patient safety when delays allow licensees to continue to practice while under investigation for allegedly violating standards of care or committing other violations indicating that they may be unfit to do so. For example:

- In one instance, a licensee failed to comply with the standard of care by not keeping medical records. The Board took 1,946 days, or more than 5 years, to resolve the complaint and eventually revoked the physician’s license for unprofessional conduct for failing or refusing to

⁵ A.R.S. §32-1855(C) allows the Board to temporarily suspend a license until a complaint is resolved if the complaint involves an imminent public health, safety, and welfare concern.

⁶ A.R.S. §32-3202 authorizes the Board to provide written notice to a licensee, at the time the license is due to expire, that an investigation is pending, and the license is then suspended until the investigation has been resolved.

establish and maintain adequate records on patients and engaging in the practice of medicine in a manner that harms or may harm patients. The licensee was allowed to continue to practice for more than a year before having their license suspended and thus may have continued to provide patient services that fell below the standard of care during that time, leaving the public at risk.

- In another instance, the Board took 385 days to resolve a complaint alleging the licensee deviated from the standard of care by not documenting physical exams and not reviewing and communicating laboratory results to patients in a timely manner resulting in the potential of a missed diagnosis. During the investigation process, the licensee held an active license and was permitted to continue practicing and thus may have continued to provide patient services that fell below the standard of care, leaving the public at risk. The Board substantiated the claim and issued a letter of concern as a result of its investigation.
- In another instance, a complaint alleging multiple standard of care violations against a licensee, including failing to document prescribed medications and dosages in several patients' medical records, prescribing potentially harmful medication combinations for several patients, and failing to perform required examinations for patients prescribed testosterone had been open for 256 days as of June 30, 2023.

In addition, even when the Board does not substantiate and dismisses complaints, untimely complaint handling subjects licensees to unproven allegations of professional or harmful conduct for longer than necessary. Untimely complaint handling may also create an undue burden for licensees who are under investigation, as they may be required to be responsive to Board requests for information or documentation for a lengthy period of time. For example, the Board's Executive Director took 476 days to dismiss a complaint alleging that the licensee failed to diagnose stage 4 cancer after the investigation found that allegation unsubstantiated. Finally, while licensees are under investigation, statute does not permit the Board to make information available to the public regarding complaints involving a licensee.⁷

Board's failure to use its statutory authority and timely obtain outside consultants contributed to untimely complaint resolution

Although the Board has implemented and sustained several changes in response to recommendations from the Arizona Auditor General's 2016 performance audit and sunset review, it continues to experience issues timely investigating and resolving complaints. For example, the Board improved preparations to efficiently address complaints at Board meetings by including thorough case reviews; comprehensive evidence and case file collection; preparing detailed briefing materials; having committees review cases in advance; and executively dismissing complaints without merit after the Board's investigation.⁸ Our review of the Board's database found that 60 percent of complaints were executively dismissed as allowed by statute and thus did not require review by Board members. Additionally, the Board analyzed its workload and successfully supported its need for additional staffing. Since the time of its 2016 performance audit and sunset review, the Board has added 2 full-time investigators to its staff.

⁷ A.R.S. §32-3214.

⁸ A.R.S. §32-1804(B)(18) authorizes the Board to delegate authority to its Executive Director to dismiss unsubstantiated complaints after the Board's investigation.

However, our review of 9 of 26 complaints open for more than 180 days identified 2 common factors that have led to the Board’s continued inability to timely investigate and resolve complaints.⁹ Specifically, the Board:

- **Failed to request the court enforce subpoenas when licensees or third parties failed to respond to information requests/subpoenas**—Statute authorizes the Board to issue subpoenas to licensees or others involved in or with information on an investigation, and these subpoenas can be enforced by the Superior Court of Arizona.¹⁰ For 5 of 9 complaints we reviewed, although the licensee did not timely respond to the complaint notice and subpoena and/or the licensee or a third party related to the case did not respond to Board requests for information, the Board:
 - Did not request the Superior Court to enforce its subpoenas when licensees did not respond by the deadline provided in the subpoenas. For example, in 1 case the Board received a complaint on October 15, 2022 with an allegation of deviations in standard of care and issued a notice and subpoena to the physician with a deadline for a response and records of October 28, 2022, but despite multiple attempts to follow up, as of July 2024, there has been no response or information from the licensee and the case remains open. Contrary to statute, the Board allowed the license to expire in January 2024.¹¹ The Board reported that it allowed the license to expire because the licensee was not responding to the subpoena.
 - Did not issue subpoenas to third parties, such as hospitals and clinics, to obtain information it needed for the investigations, including when these third parties were nonresponsive to multiple requests. For example, in 1 case the Board received a complaint with an allegation of a missed diagnosis and issued a request for information from a third-party healthcare institution with a response deadline 22 days after the request, but did not receive a response until 5 months after its initial request.
- **Failed to timely obtain outside consultants**—Two of 9 complaints we reviewed were delayed because the Board needed to obtain an outside medical consultant to review the case, but reported difficulty in finding a consultant. Board staff reported that they maintain a limited list of consultants. When the Board does not have an available consultant, they must identify and contract with a new consultant, which the Board reports can take a significant amount of time.¹² However, our review found that the Board does not begin determining the need for an outside medical consultant until after it receives the information requested for the investigation

⁹ We reviewed 26 complaints including a random sample of 20 of 166 complaints recorded in the Board’s database as closed in fiscal year 2023 and a judgmental sample of 6 of 133 complaints that were open for the longest time period from those recorded in the Board’s database as open, but not yet closed in fiscal year 2023. Nine of the 26 complaints we reviewed were open for longer than 180 days.

¹⁰ A.R.S. §32-1855.01.

¹¹ A.R.S. §32-3202 states that a license does not expire or terminate until the investigation is resolved if the licensee has been advised in writing that an investigation is pending at the time the license is due to expire.

¹² The Board employs 1 medical consultant, an osteopathic physician who specializes in family medicine. However, because osteopathic physicians can have various specialties, the Board reported it sometimes contracts with outside medical consultants who work in the same field as a licensee who is the subject of a complaint. For example, if a complaint alleged that a physician specializing in neurology misdiagnosed a patient’s symptoms as a migraine instead of a stroke, the Board may obtain an outside medical consultant who specializes in neurology to help determine whether the physician’s actions were appropriate based on the patient’s medical records.

and the Board's medical consultant has reviewed the case file which can impact the timeliness of the investigation. For example, in 1 case the Board took 217 days to close a complaint alleging that a licensee performed an unnecessary procedure because after receiving responses and documentation for its investigation, the Board then took 2 months to find an outside consultant to review the case.

Additionally, Board staff reported that 2 of 9 complaints were delayed because higher priority complaints had come in that caused other complaints that were in-process to be set aside. However, if the Board addresses our previous concerns relating to failing to request court enforcement of subpoenas and not timely obtaining outside consultants, that may allow the Board time to work on other complaints. In addition, the Board reported delays because its database system conversion made it difficult for Board staff to track complaint progress/status because staff were unable to run reports. As of May 2024, the Board reported that it can run reports in its new database to track complaint progress/status.

Recommendations

The Board should:

1. Investigate and resolve complaints within 180 days.
2. Use its statutory authority such as issuing subpoenas to third parties.
3. Request the Superior Court of Arizona enforce subpoenas when licensees and/or third parties miss deadlines for providing information.
4. Continue to develop a list of outside medical consultants with varying specialties to more timely resolve complaints requiring these services.
5. After opening a complaint, determine whether an outside medical consultant may be needed, based on the allegations of a complaint, and begin searching for a suitable consultant, if the Board does not already have a consultant available on its list.
6. Ensure its database system can produce reports on the progress/status of open complaints.

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

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

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

The Board's key statutory responsibilities include licensing, permitting, and registering qualified practitioners of osteopathic medicine; investigating and adjudicating complaints about licensees; and providing licensee information to the public.

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

The Board complied with statutory and rule requirements related to its statutory objective and purposes for 2 areas we reviewed. Specifically, the Board:

- **Reviewed and approved initial and renewal applications within required time frames**—The Board's administrative rules require it to approve or deny initial and renewal applications for licensure, permit, or registration within 60 to 120 days, depending on the type of license, permit, or registration.¹³ Our review of a stratified random sample of 14 of 1,039 initial applications and a random sample of 11 of 2,688 renewal applications the Board approved or denied in fiscal year 2023 found that the Board approved all initial and renewal applications we reviewed within the required time frames.
- **Aligned its fees with costs**—Statute requires the Board to establish fees that approximate the cost of maintaining the Board.¹⁴ Based on our review of the Board's financial information, Board fees, and the Board's fee-setting practices, we found that the Board has reduced fees to align more closely with its costs of providing services as shown by its decrease in revenues exceeding operational costs in Table 2 (see pages 6 and 7).

However, we identified 3 areas in which the Board can improve its effectiveness and efficiency in fulfilling its statutory objectives and purposes. Specifically, the Board:

- **Verified applicants we reviewed met most initial licensure and training permit requirements, with 3 exceptions**—For 1 of 13 licenses and 2 of 3 permits we reviewed, the Board could not demonstrate that it verified that applicants had not engaged in unprofessional conduct. The Board uses reports from the National Practitioner Data Bank, American Osteopathic Association, and Federation of State Medical Boards to determine whether an

¹³ Arizona Administrative Code (AAC) R4-22-104.

¹⁴ A.R.S. § 32-1826(C).

applicant has a license that was revoked in another state or has any disciplinary action that would disqualify them from qualifying for a license or permit in Arizona. However, the Board was unable to provide documentation to support that it obtained these reports in all cases. Specifically:

- For 1 license applicant, Board staff believe the reports were stored on a former employee's device and not uploaded to the cloud.
- For 2 permit applications received through medical schools, Board staff indicated they believe the schools are verifying the applicants' backgrounds. However, there is no requirement or agreement in place for schools to conduct background checks or verify whether an applicant has engaged in unprofessional conduct.

After we brought this missing documentation to the Board's attention, Board staff obtained these reports and based on our review of the reports, the applicants had no reported instances of unprofessional conduct.

- **Did not take consistent enforcement action in response to licensee violations, putting the public at risk**—Statute authorizes the Board to temporarily suspend a license until a complaint is resolved if the Board determines the complaint involves an imminent public health, safety, or welfare concern.¹⁵ Our review of 26 complaint files found that the Board did not consistently use its authority for cases that met the statutory criteria. For example, in one case, the Board temporarily suspended a license within 39 days of a complaint alleging sexually explicit comments by a physician. However, in another case, the Board received multiple complaints from patients alleging sexual misconduct by a licensee, who the Board had previously taken action against and which the Board investigated and found the allegations to be substantiated. Despite these circumstances, the Board did not suspend the physician's license until 1 of the complaints was in court and the Board continued to receive similar complaints about the licensee. As a result, the physician was able to continue seeing patients for approximately 6 years after the Board received its first complaint against the licensee until March 2023 when the Board ordered the temporary suspension and resulted in the licensee voluntarily surrendering their license 6 months later.
- **Ceased conducting continuing education audits**—Statute requires the Board's licensees to complete at least 40 hours of continuing education programs approved by the Board in the 2 preceding years before their license renewal date and authorizes the Board to require licensees to submit continuing education documentation.¹⁶ In addition, the Board's rules outline Board-approved continuing education programs and specify the documentation the Board will accept as evidence of compliance with its continuing education requirement.¹⁷ Our review of a random sample of 5 of 101 continuing education audits conducted by the Board in fiscal year 2023 found that, for the continuing education audits we reviewed, the Board verified all 5 licensees met the Board's continuing education requirements. However, during our review of renewals that were selected for audit, the Board reported it ceased conducting continuing education

¹⁵ A.R.S. §32-1855(C) allows the Board to temporarily suspend a license until a complaint is resolved.

¹⁶ A.R.S. §32-1825.

¹⁷ AAC R4-22-207.

audits beginning in fiscal year 2024 because it did not believe it has the statutory authority to do so. Although the Board's statutes and rules do not require that the Board conduct continuing education audits as part of its renewal process, statute states that the Board shall not renew the license of a licensee who does not fully document compliance with its continuing education requirement.¹⁸ Further, our review of rules established by similar Boards, such as the Arizona Board of Chiropractic Examiners, Arizona Board of Behavioral Health Examiners, and Arizona Board of Respiratory Care Examiners, found these Boards' rules outline the authority for continuing education audits.¹⁹

Recommendations

The Board should:

7. Develop and implement policies and procedures for permit applications received through medical schools to review reports from the National Practitioner Data Bank, American Osteopathic Association, and Federation of State Medical Boards to verify that permit applicants have not engaged in unprofessional conduct.
8. Use its statutory authority consistently to temporarily suspend a license timely and when necessary to protect the public.
9. Work with its Assistant Attorney General to determine whether conducting continuing education audits of license renewal applicants requires a change to its rules or statute, and as applicable, resume conducting continuing reduction audits, revise and implement its rules to include a continuing education audit process, or work with the Legislature to revise Board statutes to require the Board to conduct continuing education audits and implement the statutory revisions.
10. Conduct continuing education audits if the Board changes its rules or the Legislature passes legislation requiring the Board to do so.

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 with the same key statutory objectives and purposes as the Board. For example, we did not identify any federal agency or private entity with authority to regulate the licenses overseen by the Board. Specifically, according to the U.S. Bureau of Labor Statistics and the Federation of State Medical Boards, all 50 states require osteopathic practitioners to be licensed by a state regulatory entity.^{20,21}

¹⁸ A.R.S. §32-1825.

¹⁹ AAC R4-7-802; R4-6-801; and R4-45-211.

²⁰ Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Physicians and Surgeons, at <https://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm> (visited February 18, 2024).

²¹ Federation of State Medical Boards, About Physician Licensure, How physicians gain licenses to practice medicine, <https://www.fsmb.org/u.s.-medical-regulatory-trends-and-actions/guide-to-medical-regulation-in-the-united-states/about-physician-licensure/> (visited on February 18, 2024).

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

Our review of the Board’s statutes and rules found that the Board had adopted rules when required to do so.

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

The Board has encouraged input from the public before adopting its rules and informed the public of its actions and expected impacts and provided certain information on licensees. Specifically, the Board:

- **Involved the public in adopting rules**—The Board informed the public of its rulemaking and their expected impacts and provided opportunities for public input for rules it finalized in July 2019 and March 2022. Specifically, the Board published notices of its proposed rulemakings in the Arizona Administrative Register and included a statement detailing these proposed rules’ impact on the public. Additionally, the Board provided contact information in the notices for Board staff who would receive public input about the proposed rulemaking in the notices, as well as provided information on the time and place where a public meeting would be held. According to the Board’s Notice of Final Rulemaking, there were no public comments received for these rules.
- **Provided sufficient public information in response to anonymous phone calls we made**—Statute requires the Board to provide public information related to licensees such as the name, address of record, status of license, and disciplinary actions taken against the licensee by the Board.²² As part of our procedures, we placed 3 anonymous phone calls to the Board and found that the Board appropriately provided or withheld information requested for all questions asked.

However, we identified 3 areas in which the Board can improve its effectiveness and efficiency in providing information to the public. Specifically, the Board:

- **Did not consistently comply with open meeting law requirements for 1 meeting we reviewed**—The written and/or recorded minutes we reviewed complied with the provisions of open meeting law we tested, such as providing the date, time, and location of the meeting, members present, and description of matters considered.²³ Additionally, in accordance with State open meeting law, the Board has a statement on its website indicating that all meeting agendas will be posted physically, in the public area on the first floor at its office location, and electronically via its website.²⁴ Statute also requires the Board to post notices, including agendas, at least 24 hours prior to meetings and an audio recording of the minutes within 5 working days of meetings.^{25,26} However, we found that the Board did not consistently comply

²² A.R.S. §32-1803.

²³ A.R.S. §38-431.01(C)(1).

²⁴ A.R.S. §32-431.02(A)(1).

²⁵ A.R.S. §32-431.02(G).

²⁶ A.R.S. §32-4801(A)(2).

with open meeting law requirements for 1 of 2 Board meetings we reviewed.²⁷ Specifically, the Board posted the May 2024 meeting notice and agenda on its website, but not in the public area of its office building. Additionally, although the Board made its minutes available to the public within 3 working days of its May 2024 meeting, it had not made an audio recording of the meeting available on its website until June 2024.

- **Did not post all public disciplinary information on its website for 1 of 27 complaints we reviewed**—Statute requires the Board to publish certain information pertaining to licensee disciplinary histories, such as final nondisciplinary and disciplinary actions, on its website for 5 years.²⁸ Our review of a sample of 27 complaints found that the Board had taken nondisciplinary or disciplinary action to address 7 of these complaints.^{29,30} For 1 of 7 actions, the Board included an amended consent agreement that outlined changes to the original consent agreement, but the original consent agreement with the findings of fact that led to the consent agreement was not available on the Board’s website. Not posting complete information could impact patients’ awareness of a practitioner’s past misconduct or remedial actions required by the Board.
- **Did not provide a small business bill of rights on the Board’s website**—Statute requires the Board to clearly post a small business bill of rights on its website. Our review of the Board’s website in April 2024 found that the small business bill of rights was not available. Board staff reported that the website had been updated in the fall of 2023 and the bill of rights must have been removed in the process. Board staff uploaded the document to the website after we brought it to their attention. We subsequently reviewed the Board’s website and observed that it had posted the document. Not posting the statutorily required notice could result in small businesses being unaware of their rights and protections under the law.

Recommendations

The Board should:

11. Comply with State open meeting law by posting its meeting agenda in a public place at least 24 hours in advance of the meeting and an audio recording of the minutes within 5 working days.
12. Publish required information on its website, including 5 years of licensee disciplinary histories, such as final nondisciplinary and disciplinary actions.

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

²⁷ We reviewed the March and May 2024 Board meetings.

²⁸ A.R.S. §§32-1803 and 32-3214.

²⁹ A.R.S. §32-4801(A)(2).

³⁰ Our review of 27 complaints included a random sample of 20 of 166 complaints recorded in the Board’s database as closed in fiscal year 2023; a judgmental sample of 6 of 133 complaints that were open for the longest time period from those recorded in the Board’s database as open, but not yet closed in fiscal year 2023; and 1 with discipline selected during our April 2024 review of Board meeting minutes and our search of public information on actions taken by the Board that were posted on its website.

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

As discussed in Finding 1, pages 8 through 13, we found that the Board took longer than 180 days to resolve 100 of 166 complaints closed in fiscal year 2023. Additionally, as of June 30, 2023, 188 of the Board’s 261 open complaints had been open for more than 180 days. Although the Board can and does suspend licensees if a complaint involves an imminent public health, safety, or welfare concern or at the time the license is subject to renewal, as reported in Sunset Factor 2, pages 14 through 16, it has not always suspended licenses for complaints that appear to involve these types of concerns. As a result, untimely complaint resolution may negatively impact patient safety when delays allow licensees continue to practice while under investigation for allegedly violating Board statutes and rules, and even when the Board does not substantiate and dismisses complaints, untimely complaint resolution subjects licensees to unproven allegations of professional or harmful conduct for longer than necessary. We recommended that the Board resolve complaints within 180 days, use the full extent of its statutory authority to subpoena third parties, continue to develop a list of outside medical consultants, and ensure its database can produce reports on the progress/status of open complaints.

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

We compared Arizona’s level of regulation to all 49 other states and found that the level of regulation the Board exercises is similar to other states. Specifically:³¹

- **Education requirements**—All 50 states require applicants to have graduated from an accredited osteopathic medical school before becoming licensed. Additionally, all 50 states require post-graduate training ranging from 1 to 3 years, with 34 states, including Arizona, only requiring 1 year.
- **Examination requirements**—All 50 states require a passing score on an examination for licensure.
- **Continuing education requirements**—Arizona and 45 other states require documentation and submission of continuing education ranging from 30 to 100 hours every 2 years prior to license renewal. Additionally, Arizona and 17 other states require 40 hours of continuing education every 2 years.
- **Fingerprinting**—Arizona and 37 other states require all applicants to provide fingerprints for initial licensure, 8 states only require submission of fingerprints if the applicant wants to participate in the interstate compact, and 4 states have no requirement for fingerprinting.
- **License renewal**—All 50 states require license renewal every 1 to 3 years. Arizona and 33 other states require a biennial license renewal.
- **Malpractice insurance**—Arizona and 37 other states do not require osteopathic physicians to obtain malpractice insurance.

³¹ American Osteopathic Association. (2023). 2023 State Licensure Requirements. Retrieved 2/26/2024 from <https://osteopathic.org/index.php?aam-media=/wp-content/uploads/2023-State-Licensure-Requirements.pdf>.

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. 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. These laws require employees/public officers to disclose substantial financial or decision-making interests in a public agency’s official records, either through a signed document or the Board’s official minutes. Statute further requires that employees/public officers who have disclosed conflicts to refrain from participating in matters related to the disclosed interests. To help ensure compliance with these requirements, the ADOA’s State Personnel System Employee Handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and any time there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” Finally, A.R.S. §38-509 also requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest and to make this file available for public inspection.

Additionally, in response to conflict-of-interest noncompliance and violations investigated in the past, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, the Arizona Auditor General has recommended several practices and actions to various school districts, State agencies, and other public entities.³² The Arizona Auditor General’s recommendations are based on recommended practices for managing conflicts of interest in government and are designed to help ensure compliance with State conflict-of-interest requirements by reminding employees/public officers of the importance of complying with the State’s conflict-of-interest laws.³³ Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually to help remind them to update their disclosure form if their circumstances change and that the form include a field for the employee/public officer to provide an “affirmative no,” if applicable. These recommended practices also indicate that agencies should develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

Our review of the Board’s conflict-of-interest practices found that it complied with State conflict-of-interest requirements and implemented most recommended practices. For example, the Board’s policy

³² For example, see Auditor General reports 21-402 *Higley Unified School District Criminal Indictment— Conspiracy, Procurement Fraud, Fraudulent Schemes, Misuse of Public Monies, False Return, and Conflict of Interest* and 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*.

³³ Recommended practices we reviewed included: Organization for Economic Cooperation and Development. (2022). *Recommendation of the Council on OECD guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 6/27/2024 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative. (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 6/27/2024 from <https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining-Preventing-Identifying-Addressing.pdf>; and Controller and Auditor General of New Zealand. (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 6/27/2024 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

requires all employees and Board members to submit conflict-of-interest forms annually either disclosing or affirming no conflicts exist. We found that all Board members and employees complied with this requirement in calendar year 2023. Additionally, Board members recused themselves from voting on meeting agenda items for which they had disclosed a substantial interest during the 2 meetings we observed in March and May 2024.³⁴ Further, the Board maintained a special file of all disclosures of substantial interest. However, the Board does not provide periodic conflict-of-interest training.

Recommendation

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

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

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

This performance audit and sunset review did not identify any statutory changes that are necessary for the Board to more efficiently and effectively fulfill its key statutory objectives and purpose. Nor did we identify any statutory responsibilities that are no longer necessary.

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

Terminating the Board would affect the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. As stated in Sunset Factor 1 (see page 14), the Board is responsible for ensuring that practitioners of osteopathic medicine are qualified to provide medical services and for investigating and adjudicating complaints against licensees alleging incompetence or unprofessional conduct. Additionally, the Board is responsible for disclosing pertinent information, including disciplinary history, about licensees to the public. The combination of these functions helps to protect the public from potential harm.

³⁴ The Board documented members' recusals within its meeting minutes.

SUMMARY OF RECOMMENDATIONS

Walker & Armstrong makes 13 recommendations to the Board

The Board should:

1. Investigate and resolve complaints within 180 days (see Finding 1, pages 8 through 13, for more information).
2. Use its statutory authority such as issuing subpoenas to third parties (see Finding 1, pages 8 through 13, for more information).
3. Request the Superior Court of Arizona enforce subpoenas when licensees and/or third parties miss deadlines for providing information (see Finding 1, pages 8 through 13, for more information).
4. Continue to develop a list of outside medical consultants with varying specialties to more timely resolve complaints requiring these services (see Finding 1, pages 8 through 13, for more information).
5. After opening a complaint, determine whether an outside medical consultant may be needed, based on the allegations of a complaint, and begin searching for a suitable consultant, if the Board does not already have a consultant available on its list (see Finding 1, pages 8 through 13, for more information).
6. Ensure its database system can produce reports on the progress/status of open complaints (see Finding 1, pages 8 through 13, for more information).
7. Develop and implement policies and procedures for permit applications received through medical schools to review reports from the National Practitioner Data Bank, American Osteopathic Association, and Federation of State Medical Boards to verify that permit applicants have not engaged in unprofessional conduct (see Sunset Factor 2, pages 14 through 16, for more information).
8. Use its statutory authority consistently to temporarily suspend a license timely and when necessary to protect the public (see Sunset Factor 2, pages 14 through 16, for more information).
9. Work with its Assistant Attorney General to determine whether conducting continuing education audits of license renewal applicants requires a change to its rules or statute, and as applicable, resume conducting continuing reduction audits, revise and implement its rules to include a continuing education audit process, or work with the Legislature to revise Board statutes to require the Board to conduct continuing education audits and implement the statutory revisions (see Sunset Factor 2, pages 14 through 16, for more information).
10. Conduct continuing education audits if the Board changes its rules or the Legislature passes legislation requiring the Board to do so (see Sunset Factor 2, pages 14 through 16, for more information).

11. Comply with State open meeting law by posting its meeting agenda in a public place at least 24 hours in advance of the meeting and an audio recording of the minutes within 5 working days (see Sunset Factor 5, pages 17 and 18, for more information).
12. Publish required information on its website, including 5 years of licensee disciplinary histories, such as final nondisciplinary and disciplinary actions (see Sunset Factor 5, pages 17 and 18, for more information).
13. Provide periodic training on conflicts-of-interest for staff and Board members (see Sunset Factor 8, pages 20 and 21, for more information).

Scope and methodology

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

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

- **License issuance and renewal**—To determine whether the Board issued and renewed licenses in accordance with statute and rule requirements, we reviewed information from the Board's files and database for several samples of license applications, including initial and renewal applications approved or denied in fiscal year 2023. Our work included reviewing the application files and associated documents, such as transcripts, exam scores, proof of background check, and other applicable documents. The applications we reviewed were as follows:
 - 14 initial applications consisting of a stratified random sample of 10 licenses, 3 permits, and 1 registration from 1,039 initial applications approved by the Board in fiscal year 2023.
 - A random sample of 6 of 2,688 license renewal applications approved by the Board in fiscal year 2023.
 - A random sample of 5 of 101 license renewal applications selected by the Board for a continuing education audit in fiscal year 2023.
- **Complaint-handling and timeliness of resolution**—We reviewed the Board's complaint files and database information and selected a random sample of 20 of 166 complaints recorded in the Board's database as closed in fiscal year 2023. The 20 complaints were selected based on the percentage of complaints closed per month to the total population, then selected randomly from each month's population. Additionally, we judgmentally selected 6 of 133 complaints that were open for the longest time period from those recorded in the Board's database as opened, but not yet closed in fiscal year 2023. Since the Board's database did not contain enforcement action taken by the Board, we reviewed complaint files to ensure we had a variation of enforcement action to ensure varying levels of enforcement were included in our sample, including complaints that resulted in disciplinary and nondisciplinary action.
- **Public information**—We reviewed the nondisciplinary and disciplinary information on the Board's website for complaints selected for testing and placed 3 anonymous phone calls from personal phone numbers between February and March 2024 to assess whether the information provided was accurate and consistent with statutory requirements. We assigned 3 Walker & Armstrong staff to call the Board during business hours over the course of 2 months in 2024 and ask a series of

questions to determine whether Board staff would provide public information and/or non-public information. We created 9 questions related to 3 licensees (three questions per licensee) to ask Board staff; some of the questions were items the Board staff should provide and others were items they should not provide. To keep the calls anonymous and not associated with Walker & Armstrong, the calls were made from our personal phones, instead of using our business lines.

- **Fee setting**—To assess the Board’s fee-setting practices, we interviewed the Board’s Executive and Deputy Directors; reviewed and compared the Board’s statutes, rules, and policies; and reviewed the Board’s revenues, expenditures, and fund balance for fiscal years 2022 and 2023 and estimates for fiscal year 2024.
- **Conflicts of interest**—To assess the Board’s compliance with State conflict-of-interest requirements, we reviewed the Board’s sunset factor response and evaluated whether the Board’s conflict-of-interest practices comply with the State’s conflict-of-interest statutes (A.R.S. §38-501 et seq. and the Arizona Attorney General’s Agency Handbook, Ch. 8) and recommended practices by: reviewing the Board’s policies, procedures, and processes for ensuring the Board complies with the State’s conflict-of-interest statutes and recommended practices; and reviewing the Board’s compliance with State conflict-of-interest requirements and its policies and procedures by reviewing employee/Board member conflict-of-interest disclosure forms for 2023, reviewing the Board’s special file of conflict-of-interest forms, reviewing Board meeting minutes for fiscal year 2023, and observing Board meetings held in March and May 2024 to observe the Board’s process during meetings.
- **Introductory information**—To obtain information for the introductory section of our report, we reviewed the Board’s website, information provided by the Board regarding staffing, and active licenses as of May 2024. In addition, we compiled and analyzed unaudited financial information from the ADOA prepared monthly financial reporting files and the State of Arizona *Annual Financial Report* for fiscal years 2022 and 2023, and Board and ADOA provided estimates for fiscal year 2024.
- **Other information for sunset factors**—To obtain additional information for the sunset factors section of our report, we reviewed the Arizona Administrative Register regarding the Board’s proposed rulemaking in fiscal year 2022 and assessed the Board’s compliance with various provisions of the State’s open meeting law for 2 Board meetings held in March and May 2024. In addition, we reviewed the level of regulation for osteopathic physicians in all 50 states by reviewing the American Osteopathic Association’s 2023 report.³⁵

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

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

³⁵ American Osteopathic Association. (2023). 2023 State Licensure Requirements. Retrieved 2/26/2024 from <https://osteopathic.org/index.php?aam-media=/wp-content/uploads/2023-State-Licensure-Requirements.pdf>.

We conducted this performance audit and sunset review in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

BOARD RESPONSE

Katie Hobbs
Governor



Justin Bohall
Executive Director

**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

1740 West Adams Street • Suite 2410
Phoenix, Arizona 85007
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September 20, 2024

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

***Re: Arizona Board of Osteopathic Examiners in Medicine and Surgery - Sunset Review:
ARSS41-2951 et seq.***

Dear Ms. Perry,

The Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board") has reviewed and provided responses to the Performance Audit and Sunset Review.

The Board's staff, as well as the Board itself, appreciated the professionalism and thoroughness of the Auditor General's staff as well as the staff of Walker & Armstrong. The Board has already begun addressing the findings as well as implementing the recommendations.

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

Kind Regards,

A handwritten signature in black ink, appearing to read "J. Bohall".

Justin Bohall
Executive Director

Enclosure: Board's Response

Cc: Jonathan Maitem, DO - Board President

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

Recommendation 1: Investigate and resolve complaints within 180 days.

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

Response explanation: The Board continually strives to investigate and resolve complaints within 180 days. However, the Board has not been able to do so for all complaints due to a lack of resources, staff, Outside Medical Consultants (“OMC”), and support. Due to the Board’s 66% increase in licensees since the 2016 Audit and increasingly complex investigations, the Board’s FY25 operating budget request included a funding issue to increase the number of our licensing and investigative staff. The Board did not receive the requested increase in the FY25 budget; however, it has updated the request for FY26. The Board hopes to be successful in obtaining additional staff to address the high complaint processing times. Additionally, the Board has recently implemented three action items to allow for the processing of complaints to be completed in a more expedited manner. First, the Board is actively recruiting OMCs through our renewal process as well as a mailed flyer campaign. Second, the Board has begun identifying the need for an OMC at the early stage of investigation and begun connecting with potential OMCs earlier in the case’s progress. Third, a discipline matrix was developed to be utilized by the Board members to help identify allegations and enable decisions to be more consistent while adjudicating cases.

Recommendation 2: Use its statutory authority such as issuing subpoenas to third parties.

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

Response explanation: The Board will work with the Arizona Attorney General’s office to encourage compliance with Board subpoenas issued to third parties.

Recommendation 3: Request the Superior Court of Arizona enforce subpoenas when licensees and/or third parties miss deadlines for providing information.

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

Response explanation: The Board will work with the Arizona Attorney General’s office to request the Superior Court of Arizona to enforce Board subpoenas issued to its licensees and third parties.

Recommendation 4: Continue to develop a list of outside medical consultants with varying specialties to more timely resolve complaints requiring these services.

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

Response explanation: The Board is actively recruiting Outside Medical Consultants through our renewal process to identify those willing and qualified to review cases for the Board. The Board has also begun a mailed flyer campaign to target physicians in specialized areas of practice.

Recommendation 5: After opening a complaint, determine whether an outside medical consultant may be needed, based on the allegations of a complaint, and begin searching for a suitable consultant, if the Board does not already have a consultant available on its list.

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

Response explanation: The Board has implemented this recommendation. The Board is now identifying complaints that may require the review of an Outside Medical Consultant as they are received and attempting to secure a suitable consultant.

Recommendation 6: Ensure its database system can produce reports on the progress/status of open complaints.

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

Response explanation: The Board has contracted with a third-party vendor who has already completed the work regarding new reports in our database.

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

Recommendation 7: Develop and implement policies and procedures for permit applications received through medical schools to review reports from the National Practitioner Data Bank, American Osteopathic Association, and Federation of State Medical Boards to verify that permit applicants have not engaged in unprofessional conduct.

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

Response explanation: The Board has implemented this recommendation and begun gathering the reports for the post-graduate training permits.

Recommendation 8: Use its statutory authority consistently to temporarily suspend a license timely and when necessary to protect the public.

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

Response explanation: The Board is implementing this recommendation. The Board has approved a Sexual Misconduct Investigations Policy that clearly outlines when temporary suspension of license is necessary to protect the public.

Recommendation 9: Work with its Assistant Attorney General to determine whether conducting continuing education audits of license renewal applicants requires a change to its rules or statute, and as applicable, resume conducting continuing education audits, revise and implement its rules to include a continuing education audit process, or work with the Legislature to revise Board statutes to require the Board to conduct continuing education audits and implement the statutory revisions.

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

Response explanation: The Board will work with the Arizona Attorney General's office to determine our statutory authority to conduct continuing education audits and will pursue legislative changes or changes to the Board's Administrative Rules as applicable.

Recommendation 10: Conduct continuing education audits if the Board changes its rules or the Legislature passes legislation requiring the Board to do so.

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

Response explanation: The Board will work with the Arizona Attorney General's office to determine our statutory authority to conduct continuing education audits and will pursue legislative or changes to the Board's Administrative Rules as applicable.

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 11: Comply with State open meeting law by posting its meeting agenda in a public place at least 24 hours in advance of the meeting and an audio recording of the minutes within 5 working days.

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

Response explanation: The Board has worked to streamline the process of crafting minutes of the Board's meetings. The Board will implement this recommendation.

Recommendation 12: Publish required information on its website, including 5 years of licensee disciplinary histories, such as final nondisciplinary and disciplinary actions.

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

Response explanation: The Board has implemented this recommendation. The Board has worked with its database developer to ensure that all appropriate discipline is displayed on the Board website.

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

Recommendation 13: The Board should provide periodic training on conflicts-of-interest for staff and Board members.

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

Response explanation: The Board has implemented this recommendation and will be conducting annual conflict of interest training for Board members and staff.

