

ARIZONA STATE SENATE

RESEARCH STAFF



TO: JOINT LEGISLATIVE AUDIT COMMITTEE
Senator Robert Blendu, Chairman
Representative John Nelson, Cochair

HEATHER OWENS
LEGISLATIVE RESEARCH ANALYST
HEALTH COMMITTEE
Telephone: (602) 926-3171
Facsimile: (602) 926-3833

DATE: December 3, 2007

SUBJECT: Sunset Review of the Board of Behavioral Health Examiners

Attached is the final report of the sunset review of the Board of Behavioral Health Examiners, which was conducted by the Senate Health and House of Representatives Health Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Tim Bee

Speaker of the House of Representatives
Representative James Weiers

Senate Members
Senator Tom O'Halleran, Cochairman
Senator Barbara Leff
Senator Paula Aboud
Senator Thayer Verschoor
Senator Amanda Aguirre

House Members
Representative Bob Stump, Cochairman
Representative Nancy Barto
Representative Rick Murphy
Representative David Bradley
Representative Linda Lopez

Board of Behavioral Health Examiners
Arizona State Library, Archives & Public Records
Office of the Auditor General

Senate Majority Staff
Senate Research Staff
Senate Minority Staff
Senate Resource Center

House Majority Staff
House Research Staff
House Minority Staff
Chief Clerk

HO/jas
Attachment

***Senate Health and House of Representatives Health
Committee of Reference Report***

BOARD OF BEHAVIORAL HEALTH EXAMINERS

Background

Pursuant to Arizona Revised Statutes (A.R.S.) § 41-2953, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Board of Behavioral Health Examiners (Board) to the Senate Health and House of Representatives Health Committee of Reference.

The Board was originally established in 1988 to provide voluntary certification to professionals in the fields of counseling, marriage and family therapy, social work and substance abuse. In 2003, the Legislature converted this process into mandatory licensure for these four professions. The duties of the Board are to adopt rules, issue licenses to qualified individuals, establish and collect fees, conduct investigations and take disciplinary actions as necessary, and establish and enforce compliance with professional standards and rules of conduct for licensees.

Pursuant to A.R.S. § 32-3254, the State Treasurer collects all monies received by the Board and deposits ten percent of the monies and all civil penalties imposed on licensees into the state General Fund. The remaining 90 percent of monies received are deposited in the Board of Behavioral Health Examiners Fund and are used by the Board for all necessary Board expenses.

Committee of Reference Sunset Review Procedures

The Committee of Reference held one public meeting on November 6, 2007, to review the Board's responses to the sunset factors as required by A.R.S. § 41-2954, subsections D and F, and to hear public testimony. The Board's responses to the 12 sunset factors and four additional questions are attached.

Committee of Reference Recommendations

The Committee of Reference recommends continuing the Board for five years and recommends that the Joint Legislative Audit Committee consider scheduling a performance audit as soon as possible with a legislative committee review at the end of such audit.

Attachments

1. Staff memo.
2. Sunset report requirements pursuant to A.R.S. § 41-2954, subsections D and F.
3. Meeting notice.
4. An excerpt of the minutes of the Committee of Reference meeting relating to the Board.

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE HOUSE AND SENATE
HEALTH COMMITTEE OF REFERENCE

HEATHER OWENS
ASSISTANT ANALYST
HEALTH COMMITTEE
Telephone: (602) 926-3171
Facsimile: (602) 926-3833

DATE: October 25, 2007

SUBJECT: Sunset Review of the Board of Behavioral Health Examiners

The Arizona State Board of Behavioral Health Examiners (Board) is scheduled to sunset on July 1, 2008. The following is a brief description of the history and duties of the Board, as well as the Board's response to the sunset questionnaire. In addition to the sunset response, the Board submitted copies of its adverse action reports, administrative rules, newsletter, meeting minutes and performance summary. These documents are on file with the Senate Research Staff, should you wish to see them.

A public meeting is scheduled for November 6, 2007, to review, discuss and make a final recommendation on the Board's continuation. If you have any questions or need further assistance, please feel free to contact me.

BOARD HISTORY

The Board was originally established in 1988 to provide voluntary certification to professionals in the fields of counseling, marriage and family therapy, social work and substance abuse. In 2003, the Legislature converted this process into mandatory licensure for these four professions.

ORGANIZATION AND DUTIES

The Board consists of eight members – four professional members and four public members, all appointed by the Governor for three-year terms. A Board member may not serve for more than two full consecutive terms. Each of the four professional members of the Board represents one of the four behavioral health licensing areas (social work, counseling, marriage and family therapy, and substance abuse counseling and treatment) and are appointed from each of the four credentialing committees. The four credentialing committees consist of four professional members and one public member, all appointed by the Governor for three-year terms.

The duties of the Board are to adopt rules, issue licenses to qualified individuals, establish and collect fees, conduct investigations and take disciplinary actions as necessary, and establish and enforce compliance with professional standards and rules of conduct for licensees. The four credentialing committees review license applications and make recommendations to the Board regarding licenses and disciplinary matters.

Since the enactment of mandatory licensure, the Board has issued a total of 8,281 licenses. The Board has received an average of 161 complaints per year since 2004. During the first six months of 2007, the Board took disciplinary action against 38 licensed professionals. The Board currently has a

MEMORANDUM

October 25, 2007

Page 2

backlog of complaints received and was authorized to hire additional investigative staff beginning in FY 2007-2008. With the additional staff, the Board estimates eliminating the backlog by the end of FY 2008-2009.

FISCAL ISSUES

The Board's total operating budget for FY 2007-2008 is \$1,229,300. The Board currently has 17 full-time equivalent (FTE) positions. Pursuant to A.R.S. § 32-3254, the State Treasurer collects all monies received by the Board and deposits ten percent of the monies and all civil penalties imposed on licensees into the state General Fund. The remaining 90 percent of monies received are deposited in the Board of Behavioral Health Examiners Fund and are used by the Board for all necessary Board expenses.

LEGISLATIVE ISSUES

The Board requests three legislative changes in its sunset response. First, the Board requests an increase in the maximum licensing fee it may charge. The current maximum fee is \$250 and was established in 1989. The Board states that its workload has increased significantly, resulting in increased expenses. Because the Board's revenues come from licensing fees, the Board anticipates requesting an increase in the maximum allowed licensing fee. The Board does not indicate the desired amount of the increase.

Secondly, the Board states that it will seek statutory authority to establish a confidential impaired professionals' program for licensees. Currently, licensees with substance abuse or dependency issues may self-report to the Board and are investigated and reviewed through a public process. The Board wishes to implement a confidential monitoring program for these licensees.

The third item the Board will request is the authority to issue provisional licenses to applicants who are licensed in another state but do not qualify for licensure in Arizona. The Board states that education and supervision requirements vary significantly among states for marriage and family therapy, professional counseling and substance abuse counseling. The Board states that it wishes to grant a provisional license so that these applicants may practice under supervision for up to two years while they complete the necessary education or supervision requirements for Arizona licensure.

ADDITIONAL BACKGROUND

Senate staff received additional input on the Board from Josefina Ahumada, Chair of the Arizona Behavioral Health Professionals Coalition, and Terry Gray, a licensed substance abuse counselor. Both indicated support of continuing the Board. (Please see letters attached with the sunset response for more information).

HO/jas

Attachments



STATE OF ARIZONA
BOARD OF BEHAVIORAL HEALTH EXAMINERS
3443 N. CENTRAL AVE., SUITE 1700
PHOENIX, AZ 85012
PHONE: 602.542.1882 FAX: 602.364.0890
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JANET NAPOLITANO
Governor

CEDRIC E. DAVIS
Chair

DEBRA RINAUDO
Executive Director

September 4, 2007

The Honorable Tom O'Halleran
Arizona State Senate
Chairman, Senate Health Committee of Reference
1700 W. Washington
Phoenix, AZ 85007

The Honorable Bob Stump
Arizona House of Representatives
Chairman, House Health Committee of Reference
1700 W. Washington
Phoenix, AZ 85007

RE: Sunset Review of Arizona State Board of Behavioral Health Examiners

Dear Senator O'Halleran and Representative Stump:

The Arizona Board of Behavioral Health Examiners is pleased to provide you with its response to your letter and questionnaire of June 20, 2007. In addition, we respectfully encourage the Joint Health Committee of Reference to recommend that this agency be renewed for a ten year period, as previously provided in past sunset reviews. We are pleased to attach a letter of support from the Arizona Behavioral Health Professionals Coalition.¹ See Attachment 2.

In response to sunset factors posed under A.R.S. § 41-2954:

1. The objective and purpose in establishing the agency.

The Board of Behavioral Health Examiners ("Board") was established in 1988 (Laws 1988, Chapter 313), and became effective July 1, 1989. Under the original statutes, the Board provided a voluntary certification in the disciplines of professional counseling, marriage and family therapy, social work, and substance abuse. Accordingly, the Board

¹ The Arizona Behavioral Health Professionals Coalition is comprised of four state professional associations, the Arizona Counselors Association, the Arizona Association of Drug and Alcohol Abuse Counselors, the Arizona Marriage and Family Therapy Association, and the Arizona chapter of the National Association of Social Workers. These four associations represent the four disciplines regulated by the Board.

was responsible for protecting the public by investigating complaints and ensuring that those behavioral health professionals that voluntarily became certified met minimum standards for education, expertise and competency.

In 2003 (Laws 2003, Chapter 65), the Board was converted from a voluntary certification model to mandatory licensure, consistent with virtually all other health related regulatory boards in Arizona. Since June 30, 2004, state law has required social workers, professional counselors, marriage and family therapists and substance abuse counselors engaged in the practice of psychotherapy to be licensed by the Board and made numerous changes to the regulatory functions of the Board. See Attachment 3.

2. ***The effectiveness with which the agency has met its objective and purpose, and the efficiency with which it has operated.***

Since the onset of licensure in 2004, the Board has issued 8,281 licenses. In issuing new licenses, the Board meets its overall objective to protect public health and safety, while processing license applications and complaints against licensees in a fair and expedient manner.

The Board's effectiveness and efficiency in carrying out its mandated duties is demonstrated by the following:

- a. The Board received 866 licensure applications in FY 2007. The Board exceeded its application processing timeframe in only 15 cases.
- b. The Board received 3,008 renewal applications in FY 2007. None of the renewal applications processed exceeded the renewal application timeframe.
- c. The Board received 696 requests for written license verifications in FY 2007. The average processing time for verifications was 4 days.
- d. The Board's average customer satisfaction rating for FY 2007 was 6.3.

3. ***The extent to which the agency has operated within the public interest.***

The Board has a continuous commitment to operating in the public interest. The Legislature created the Board to simultaneously provide a fair and effective regulatory environment for both the behavioral health professionals it regulates and the general public. The Board is comprised of one professional member from each of its four credentialing committees and four members of the public.

The licensed professional community is treated fairly by the Board. Allegations of unprofessional conduct against licensees that are proven to be without merit are dismissed. When the Board determines that allegations of unprofessional conduct against professionals are substantiated, professionals are treated in a consistent manner to effect the rehabilitation of the professional and to protect the public. The Board offers Interim Consent Agreements to professionals when a time-out from practice is considered appropriate to best rehabilitate the professional and safeguard the public. On occasion, the Board, like other health regulatory boards in Arizona, has found it necessary to

revoke a license following a formal hearing and rights of appeal.

The Board's Adverse Action Reports regarding disciplinary measures taken against professionals and applicants are available for public review at the Board's web site, www.bbhe.state.az.us. The Board took disciplinary action against 36 professionals in 2005, 54 in 2006, and 38 during the first 6-months of 2007. See Attachment 4.

4. *The extent to which rules adopted by the agency are consistent with the legislative mandate.*

The Board has established 11 Articles of rules at A.A.C. R4-6-101 *et seq.* under the exemption to rulemaking provision that was included Laws of 2003, Chapter 65. Each rule is supported by statutory authority provided to the Board by the legislature. While the Board received an exemption from the formal rulemaking process, as referenced above, the Board proactively obtained and received stakeholder input from the regulated community. See Attachment 5.

In July 2009, the Board is required to submit a Five-Year Review Report of all of its rules to the Governor's Regulatory Review Council for review and approval. The Board is committed to meeting that requirement within the specified time period.

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

Prior to adopting its licensure rules, the Board worked extensively with all of the state behavioral health professional associations. The Board also conducted statewide public hearings to solicit comments from the public. Each comment was considered before the rules were adopted. The Board received no opposition to adoption of its proposed rules.

In order to properly advise behavioral health professionals about its statutory and rule changes, the Board mailed a newsletter explaining these changes to all licensees. See Attachment 6. Currently, the Board provides a copy of the rules to all new licensees.

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

During FY 2004, the last year during which behavioral health practitioners had the option of voluntary certification with the Board, the Board received 42 complaints.

Since July 1, 2004, the effective date of licensure, the Board has averaged 161 new complaints in each of the following three fiscal years. This represents a fourfold annual increase in complaints opened per licensure fiscal year versus each certification fiscal year. The Board expects that the number of new complaint filings will remain constant.

While the legislation establishing licensure was enacted in 2003, a delayed effective date

of July 1, 2004, was provided to behavioral health professionals that did not participate in the voluntary certification program established in 1988. This delayed effective date was purposely intended to provide such individuals with the opportunity to meet the state's minimum qualifications for certification, as individuals that held certification as of July 1, 2004, were automatically grandfathered in under the legislation that converted the Board from voluntary certification to compulsory licensure.

As a result, the Board experienced a significant surge in applications, with a large number of applications being filed towards the very end of the July 1, 2004, deadline. In order for the Board to accommodate the increase in applications during the delayed effective date period, Board resources were diverted to concentrate on licensure applications.

In addition, during this period, the Board also experienced a large and unanticipated increase in complaints. With Board resources diverted to the address the surge in last minute applications, a significant backlog in resolving complaints was experienced by the Board.

The Board triages complaints to provide priority to professionals who pose a significant risk to the health and safety of the public. As a result, some of the Board's older complaints remain pending with longer processing times. The Board recognizes that this dynamic has had a significant negative effect on the Board's overall timeframes for resolving complaints.

In response to the backlog in complaints, the Board was authorized in FY 2006 and FY 2007 to hire independent contractors to address the complaint backlog. The Board's experience with the use of independent contractors was not positive. The investigators approved to conduct investigations for the Board did not have any expertise in behavioral health or regulatory issues. As a result, the Board was only able to assign simple investigations to the independent contractors and even these simple investigations required a high degree of Board oversight. In addition, the independent contractors took significantly longer to complete investigations as compared to the Board's internal investigative staff. Because of their lack of expertise and the resulting cost inefficiencies, the Board stopped assigning complaint investigations to independent contractors.

Beginning in FY 2008, the Board was authorized to hire additional internal investigative staff. New investigative staff, once properly trained, will provide significant increases in Board resources available to address the complaints backlog. With this increase in resources, the Board anticipates that that it will be able to eliminate the current complaints backlog by the end of FY 2009.

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

A.R.S. § 41-192 authorizes the Attorney General's Office to prosecute actions and represent the Board. The Board is currently represented by one full-time Assistant

Attorney General and has established an interagency service agreement for FY 2008 to ensure consistent and adequate representation to carry out its mandated duties.

In addition, A.R.S. § 32-3286(C) provides that a person who engages in the unlicensed practice of behavioral health or claims to be licensed by the Board is guilty of a class 2 misdemeanor. In FY 2007, in response to a referral by the Board, the Pima County Attorney's Office obtained a criminal conviction in the Pima County Justice Court based on the court's determination that the individual referred by the Board engaged in the unlicensed practice of behavioral health.

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

Prior to July 1, 2004, the Board was only authorized to provide voluntary certification to qualified behavioral health professionals. Because certification was voluntary, unqualified or unethical individuals were allowed to practice psychotherapy absent any state oversight or review.

In recognition of the inadequate level of public protection available under voluntary certification, the Arizona Legislature, in 2003, effective from and after June 30, 2004, significantly modified the Board's authority and established mandatory licensure for professional counselors, social workers, marriage and family therapists, and substance abuse counselors engaged in the practice of psychotherapy. Depending upon education and experience, the Board now provides qualified applicants with nine opportunities for licensure as technicians, supervisees, or independent practitioners. Unlicensed individuals are prohibited from engaging in the practice of psychotherapy unless they are exempt from licensure pursuant to A.R.S. § 32-3271.

The statutory modifications made in 2003 have addressed the problems created under the voluntary certification model that prohibited the Board from providing an appropriate level of public protection to consumers of behavioral health services in Arizona.

9. *The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.*

Fee Increase:

As a 90/10 state regulatory agency, all of the Board's revenues are derived from fees it charges to applicants, licensees, and others. The overwhelming majority of the Board's revenues result from fees charged for licensure and renewal applications. Pursuant to A.R.S. § 32-3272, the Board must establish fees to produce monies that approximate the cost of maintaining the Board and its four credentialing committees. Because the Board has no other source of revenue, the fees it charges must be sufficient to pay necessary Board expenses, as determined through the legislative appropriation process.

The Board's maximum statutory fee of \$250 for licensure and renewal applications was set in statute in 1989. That fee has never been increased. For the large majority of the

Board's existence since 1989, it has charged the maximum statutory fee of \$250 for licensure and renewal applications.

The Board's workload increased significantly under licensure, as indicated by the following:

- a. Under certification, the Board regulated approximately 6,000 certified behavioral health professionals. As of FY 2007, the Board was responsible for regulating over 8,100 licensed behavioral health professionals.
- b. Under certification, the Board processed approximately 650 certification applications annually. Under licensure, the Board has received an average of 800 annual licensure applications.
- c. Under certification, the Board received an average of 56 complaints annually. Under licensure, the Board has received an average of 161 complaints annually.
- d. Under licensure, the Board has been required to absorb a number of new responsibilities not mandated under certification. For example, the Board is now required to complete a state and federal criminal history records check on all applicants (A.R.S. § 32-3280). The Board is also required to process temporary license applications, a process not available under certification.
- e. The number of approved FTE's for the Board was increased from 13 in FY 2003 to 17 in FY 2008 to address this increased workload.

The cost of providing the increased services required under licensure has resulted in a significant increase in the Board's expenses. The Board's revenue has not increased as rapidly as its expenses. As a result, the Board's expenses exceeded its revenue by \$309,365 in FY 2007. Because of the \$250 maximum statutory fee, the Board has no statutory authority to generate sufficient revenue to pay for its current expenses. During the 2008 legislative session, the Board anticipates requesting the consideration of an increase in its maximum statutory fee. This will allow the Board to generate sufficient revenue to pay for increased services and workload required as a result of licensure.

Confidential Impaired Professionals Program:

A significant number of professionals impaired by substance abuse/dependency problems self-report to the Board. Investigation and Board review of these issues are currently reviewed through a public process. During the 2008 legislative session, the Board will seek statutory authority to establish a confidential impaired professional's program similar to that available through the nursing, pharmaceutical, and medical boards. This will allow the Board to implement a confidential monitoring program for licensees who voluntarily report substance abuse/dependency problems.

Provisional Licenses:

The Board's minimum licensure requirements are set forth in statute and rule. Applicants must demonstrate that they meet these requirements in order to obtain licensure in Arizona.

Education and supervision requirements for social work licensure are relatively similar throughout the country. As a result, applicants licensed as a social worker in another state face relatively few obstacles in qualifying for licensure in Arizona.

Conversely, education and supervision requirements for marriage and family therapist, professional counselor, and substance abuse counselor licensure can vary significantly between the states. In addition, state licensure requirements have changed rapidly during the last 20 years. As a result, applicants licensed in one of these disciplines in another state may not necessarily qualify for licensure in Arizona.

In addition, licensure for behavioral health professionals is relatively recent throughout the country. Large numbers of practicing professionals, regardless of academic and other professional credentials, were grandfathered into licensure in other states as those states adopted mandatory licensure laws. Typically, professionals grandfathered into licensure are not required to comply with education, supervision, or examination requirements in order to obtain a license.

For a variety of reasons, Arizona attracts large numbers of professionals licensed in another state who have practiced for a number of years and who now want to obtain licensure in order to practice in Arizona.

The Board currently offers limited reciprocity to such professionals and requires them to demonstrate that they substantially meet current requirements. Some professionals are unable to meet even the Board's substantial equivalency standard and can not obtain a license until education and/or supervision deficiencies are resolved. At present, professionals licensed in another state, but not in Arizona, can practice psychotherapy as long as they work in agencies licensed by the Office of Behavioral Health licensure.

Of the 46 states that regulate behavioral health professionals, none provide for a straight reciprocity, as all states require the applicant, regardless of status in other jurisdictions, to demonstrate that they meet minimum requirements.

A number of concerns have been raised about the difficulty professionals face as they try to transfer their licensure status from one state to another. The Board recognizes the need to balance these concerns against its mandate to protect the public by ensuring that licensed professionals have sufficient education and supervision to provide services safely and competently.

The Board participated in a number of stakeholder meetings addressing these issues. As a result of these meetings, during the 2008 legislative session, the Board will also request authority to issue provisional licenses to applicants who seek licensure through

reciprocity, but who fail to substantially meet minimum qualifications. A provisional license will enable such applicants to practice in Arizona under supervision as a licensed professional for up to two years while they cure the existing deficiencies in their education or supervision.

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

The Board was authorized to offer voluntary certification to qualified professionals through June 30, 2004. In recognition of the fact that voluntary certification provided an inadequate level of public protection to an often vulnerable population, as of July 1, 2004, the Arizona Legislature modified the Board's authority to require mandatory licensure for all those engaged in the practice of psychotherapy.

Termination of state regulation of behavioral health professionals would significantly endanger the public. In order to obtain licensure, applicants must demonstrate competency by meeting minimum requirements in education, supervision, and examination. Once licensed, professionals remain within the Board's jurisdiction. This allows the Board to review and take appropriate action on complaints filed against licensees. Finally, mandatory licensure laws allow the Board to review and take appropriate action with regard to individuals practicing psychotherapy in Arizona without being licensed to do so. Without the Board's regulatory authority, there would be no mechanism for ensuring that only qualified behavioral health professionals engage in the practice of psychotherapy. Similarly, without the Board's regulatory authority, the Board would have no ability to review and take disciplinary action against unlicensed individuals who engage in inappropriate or unethical behavior.

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

The Board believes that the current level of regulation as amended and added in Laws 2003, Chapter 65, Section 40, is appropriate. Mandatory licensure for behavioral health professionals ensures that applicants demonstrate competency to practice by meeting minimum requirements in education, supervision, and examination in order to obtain licensure in this state. Mandatory licensure also allows the Board to review complaints filed against those practicing psychotherapy. This provides a mechanism for the Board to take appropriate disciplinary action against incompetent or unethical licensees. It also provides a mechanism for the Board to take action against non-licensed individuals who engage in the practice of psychotherapy.

12. *The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.*

In FY 2006 and FY 2007, the Board was authorized to hire independent contractors to address the complaints backlog. The Board's experience with the use of independent contractors was not positive. The investigators approved to conduct investigations for the

Board did not have any expertise in behavioral health or regulatory issues. As a result, the Board was only able to assign simple investigations to the independent contractors and even these simple investigations required a high degree of Board oversight. In addition, the independent contractors took significantly longer to complete investigations as compared to the Board's internal investigative staff. Because of their lack of expertise and the resulting cost inefficiencies, the Board stopped assigning complaint investigations to independent contractors. (See answer #6 of this section).

In response to agency factors posed under A.R.S. § 41-2954(F):

1. *An identification of the problem or the needs that the agency is intended to address.*

The Board's function is to license and investigate complaints against behavioral health professionals to ensure that they meet minimum qualifications and practice safely and competently.

2. *A statement to the extent practicable, in quantitative and qualitative terms, of the objectives of the agency and its anticipated accomplishments.*

FY 2007 OBJECTIVES:	ACCOMPLISHMENTS:
Process licensure applications on a timely basis	866 applications received. 15 exceeded applicable timeframes
License qualified behavioral health professionals	747 new licenses issued.
Process renewal applications on a timely basis.	3,008 applications received. None exceeded applicable timeframes
Process requests for written license verifications on a timely basis	696 verification requests received. Average number of days to process verifications is 4 days.
Initiate investigations and resolve complaints on a timely basis	515 investigations were initiated. 169 complaints were filed with the Board. Average number of days to process complaints is 471 days. ²
Obtain positive customer satisfaction on a scale of 1 – 8.	Average satisfaction of 6.3 was achieved.

3. *An identification of any other agencies having similar, conflicting or duplicative objectives, and an explanation of the manner in which the agency avoids duplication or conflict with such other agencies.*

² See explanation at paragraph 6, above.

The Board has not identified any specific conflicts and/or duplication of services with other state agencies. The Board appropriately refers complaints to other state agency or jurisdictions when necessary. The Board also shares information regarding complaints and investigative matters with other state agencies as appropriate.

4. *An assessment of the consequences of eliminating the agency or of consolidating it with another agency.*

The Board first received licensure authority as of July 1, 2004. The need for this level of state regulation was clearly addressed and deemed appropriate at that time. The elimination or termination of the Board would have a severe negative impact on the public as individuals would be free to practice psychotherapy without any state oversight of their qualifications or practice.

In recognition that the licensure requirements and practice standards for the master's level social workers, marriage and family therapists, professional counselors, and substance abuse counselors are somewhat similar, regulation of these four disciplines was consolidated under the Board's authority. It is not clear what benefit, if any, would be realized by consolidating the Board with another state agency.

The only other regulatory agencies in Arizona that regulate behavioral health professionals are the Medical Board, which licenses psychiatrists, and the Board of Psychologist Examiners, which licenses psychologists. Given the significant differences in minimum education and training required for psychiatrists, psychologists, and this Board's licensees, it is not clear that any efficiencies would be realized by consolidation of the regulatory functions for these professions.

In addition, given the distinctly different professional identities of psychiatrists and psychologists from the master's and lower level behavioral health professionals regulated by this Board, any attempt to consolidate the regulation of any of these different disciplines would likely produce significant opposition from these licensees and their professional associations.

5. *Copies of FY 2007 minutes for the agency's following meetings are attached (see Attachment 7):*

1. The Arizona State Board of Behavioral Health Examiners
2. The Counseling Credentialing Committee
3. The Marriage and Family Therapy Credentialing Committee
4. The Social Work Credentialing Committee
5. The Substance Abuse Credentialing Committee

6. *Include a copy of the agency's most recent annual report.*

While the Arizona Board of Behavioral Health Examiners does not have a statutory

requirement to prepare an annual report, please see Attachment 8 for information that would typically be provided in an annual report.

I would like to personally thank the Committee of Reference and staff for their assistance during this review. If you require any questions or clarifications, please do not hesitate to contact me at (602) 542-1884 or debra.rinaudo@bbhe.state.az.us.

Thank you in advance for your consideration.

Respectfully,

A handwritten signature in cursive script that reads "Debra Rinaudo". The signature is written in black ink and is positioned above the printed name and title.

Debra Rinaudo
Executive Director

Arizona Behavioral Health Professionals Coalition

August 6, 2007

Tom O'Halleran
State Senator
Chair, Senate Health Committee of Reference
1700 W. Washington
Phoenix, AZ 85007

Bob Stump
State Representative
Chair, House Health Committee of Reference
1700 W. Washington
Phoenix, AZ 85007

RE: Sunset Review of Arizona State Board of Behavioral Health Examiners

Gentlemen:

On behalf of the Arizona Behavioral Health Professionals Coalition, I submit this letter in support of the continuation of the Arizona State Board of Behavioral Health Examiners for the next ten years, following the Legislature's Sunset Review.

The Coalition consists of representatives from the four regulated occupations of social work, counseling, marriage and family therapy, and substance abuse counseling that comprise the practice of behavioral health in Arizona. The Coalition worked closely with the Board to require mandatory licensure for behavioral health professionals who are often responsible for treating some of the most vulnerable populations. Mandatory licensure was effective on July 1, 2004. Following the establishment of licensure, the Board has assisted a growing base of behavioral health professionals maintain their credentials and serve the public safely and competently.

We acknowledge that there are occasions when, in the interest of public health and safety, it is necessary to suspend, revoke, or deny licensure. The Board's efforts to provide a fair and consistent regulatory process in reviewing complaints against problem practitioners has afforded the profession and the public the safety levels we sought when mandatory licensure was established.

We look forward to the continued progress of the behavioral health profession in cooperation with the Arizona State Board of Behavioral Health Examiners over the next 10 years.

Thank you in advance for your consideration.

Sincerely,



Josefina Ahumada, LCSW
Chairperson
Arizona Behavioral Health Professionals Coalition

(The following is an email received on October 1, 2007 by Senate Research staff)

I am a Licensed Independent Substance Abuse Counselor (#0089) in Arizona who owns and operates an Outpatient Treatment facility in Tucson. I was active in developing the legislation that established licensure for behavioral health professionals in this state.

Since licensure became law, a great many people have been affected and influenced by the BBHE, who monitors the licensees and ultimately provide screening and protection for the vulnerable general public. A number of issues have been raised about the BBHE's performance and about the mission being addressed.

While I believe that some issues with the BBHE may be valid, the overall performance of this vital Board has been excellent.

The behavioral health professionals in Arizona need an agency/board that determines minimal levels of competency, outlines ethical guidelines, and evaluates the skills and appropriateness of training for those professionals. These are functions that the BBHE performs.

The public needs an agency/board that can be responsive to complaints, that will assess the validity and severity of any professional's (alleged) misconduct. The BBHE is essential to be the main organ of defense and of punitive sanctions for any misdeeds perpetrated against those persons who are in need and are vulnerable psychologically and emotionally.

The balanced representation on the board helps to assure that the BBHE actions are well understood, well-reviewed, and are balanced. I urge you to support retaining this important element of our State government.

Terry Gray, M.S., LISAC
7031 E. Edgemont St.
Tucson, AZ 85710
520-722-6262

ARIZONA STATE SENATE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE HEALTH AND HOUSE HEALTH COMMITTEE OF REFERENCE

Date: Tuesday, November 6, 2007

Time: 9:30 A.M.

Place: SHR 1

AGENDA

1. Call to Order
2. Opening Remarks
3. Sunset Review of the Board of Homeopathic Medical Examiners
 - Presentation by Auditor General
 - Response by Board of Homeopathic Medical Examiners
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
4. Sunset Review of the Regulatory Board of Physician Assistants
 - Presentation by Regulatory Board of Physician Assistants
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
5. Sunset Review of the Board of Behavioral Health Examiners
 - Presentation by Board of Behavioral Health Examiners
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
6. Sunset Review of the Acupuncture Board of Examiners
 - Presentation by Acupuncture Board of Examiners
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
7. Sunset Review of the Board of Occupational Therapy Examiners
 - Presentation by Board of Occupational Therapy Examiners
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference

8. Sunrise application of the Arizona Alliance of Non-Physician Surgical Assistants
 - Presentation by Arizona Alliance of Non-Physician Surgical Assistants
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
9. Sunrise application of the Southern Arizona Behavioral Health Coalition
 - Presentation by Southern Arizona Behavioral Health Coalition
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
10. Sunrise application of the Arizona Dental Association
 - Presentation by Arizona Dental Association
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
11. Sunrise application of Radiology Practitioner Assistants
 - Presentation by Radiology Practitioner Assistants
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
12. Adjourn

Members:

Senator Tom O'Halleran, Co-Chair
Senator Paula Aboud
Senator Amanda Aguirre
Senator Barbara Leff
Senator Thayer Verschoor

Representative Bob Stump, Co-Chair
Representative Nancy Barto
Representative David Bradley
Representative Linda Lopez
Representative Rick Murphy

10/18/07

10/19/07

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Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602)926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA STATE LEGISLATURE
Forty-eighth Legislature – First Regular Session

**SENATE HEALTH AND HOUSE HEALTH
COMMITTEE OF REFERENCE**

Minutes of Interim Meeting
Tuesday, November 6, 2007
Senate Hearing Room 1 – 9:30 a.m.

Chairman O'Halleran called the meeting to order at 9:32 a.m. and attendance was noted by the secretary.

Members Present

Senator Tom O'Halleran, Co-Chair
Senator Amanda Aguirre
Senator Barbara Leff
Senator Thayer Verschoor

Representative Bob Stump, Co-Chair
Representative Nancy Barto
Representative David Bradley
Representative Linda Lopez
Representative Rick Murphy

Members Absent

Senator Paula Aboud

Speakers Present

Kim Hildebrand, Performance Audit Manager, Office of the Auditor General
Todd Rowe, Board of Homeopathic Medical Examiners
Christine Springer, Board of Homeopathic Medical Examiners
Jerry Weinsheink, representing himself
Marianne Cherney, representing herself
Neil Garfield, Association for Public Access to Medicine
Barney Nugent, representing himself
Linda Heming, CHOICE
Iris Bell, Doctor, Arizona Homeopathic and Integrative Medical Association
Cliff Heinrich, Doctor, representing himself
Kathleen Fry, Doctor, representing herself
Denise Nugent, representing herself
Lee Bakunin, Attorney, representing herself
Bruce Shelton, Doctor, Arizona Homeopathic and Integrative Medical Association
Amanya Jacobs, Director of Evolution of Self School of Homeopathy
Cindy Zukerman, representing herself
Shelly Malone, representing herself
Stan Klusky, representing himself
Gladys Conroy, representing herself

Joan Reynolds, Regulatory Board of Physician Assistants
Debra Rinaudo, Board of Behavioral Health Examiners
Stuart Goodman, Board of Behavioral Health Examiners
Bev Hermon, BH Consulting
Richard Poppy, Therapeutic Practitioners Alliance of Arizona (The Alliance)
Rachael Hopkins, representing herself
Ronald Anton, representing himself
Josephine Sbrocca, representing herself
Cedric Davis, Board of Behavioral Health Examiners
Della Estrada, Arizona Acupuncture Board of Examiners
Kathryn Babits, Arizona State Board of Occupational Therapy Examiners
Eugene Smith, Arizona Alliance of Non-Physician Surgical Assistants
Susie Cannata, Arizona Alliance of Non-Physician Surgical Assistants
Rory Hays, Arizona Nurses' Association
Scott Leckie, Radiology Practitioner Assistants
Jane Van Valkenburg, Certification Board for Radiology Practitioner Assistants (CBRPA)
Mary Connell, M.D., representing herself
Christine Lung, American Society of Radiologic Technologists (ASRT)
John Gray, Grand Canyon University
Joyce Geysler, Arizona Radiological Society
James Abraham, National Society of Radiology Practitioner Assistants
Heather Owens, Senate Health Analyst
Aubrey Godwin, Medical Radiologic Technology Board of Examiners (MRTBE)
Teresa Rodgers, Behavioral Health Coalition of Southern Arizona
David Giles, Behavioral Health Coalition of Southern Arizona
Holly Baumann, Southwest Autism Research and Resource Center
John MacDonald, Arizona Dental Association (ADA)
Rick Murray, Arizona Dental Association
Anita Elliott, Arizona Dental Association
Nicole Laslavic, Arizona State Dental Hygienists' Association
Janet Midkiff, Arizona State Dental Hygienists' Association
Nicole Albo, Arizona Dental Assistants' Association
Alisa Feugate, Arizona Dental Hygienists' Association

OPENING REMARKS

Chairman O'Halleran welcomed everyone and requested that the speakers keep their comments as brief as possible, as the committee members are well-versed in the issues to be discussed today.

SUNSET REVIEW OF THE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

Presentation by Auditor General

Kim Hildebrand, Performance Audit Manager, Office of the Auditor General, gave a presentation on their findings issued in August, 2007 (Attachment 1). She described the history

Chairman O'Halleran reconvened the committee at 12:07 p.m.; all members were present except Senator Aboud.

SUNSET REVIEW OF THE REGULATORY BOARD OF PHYSICIAN ASSISTANTS

Presentation by Regulatory Board of Physician Assistants

Joan Reynolds, Regulatory Board of Physician Assistants, addressed the committee to describe the Board composition, the number of Physician Assistants in Arizona, and the two training programs in Arizona. She stated that the Board exists to protect Arizonans' health and to monitor, license, and regulate physician assistants.

Recommendations by the Committee of Reference

Cochairman Stump moved that the Senate and House Health Committee of Reference recommend the continuation of the Regulatory Board of Physician Assistants for ten years. The motion carried by a voice vote.

SUNSET REVIEW OF THE BOARD OF BEHAVIORAL HEALTH EXAMINERS

Presentation by Board of Behavioral Health Examiners

Debra Rinaudo, Board of Behavioral Health Examiners, addressed the committee to explain that the Board was originally established to offer a system of voluntary certification in four disciplines:

1. marriage and family therapy,
2. professional counseling,
3. social work, and
4. substance abuse counseling.

She stated that the Board is responsible for protecting the public by ensuring that certified professionals met minimum standards in education and training, and investigating and taking action on complaints. In 2003, mandatory licensure of psychotherapy was added to its responsibilities. She stated that grandfathering those with certification into licensed status was allowed.

Since 2004, due to licensure, there has been a dramatic increase in complaints and the Board has a complaints backlog and must triage the complaints in order to address the most serious quickly.

Senator Leff asked what happens to the less serious complaints; Ms. Rinaudo replied that all are investigated, but that those not dealing with client harm are deemed less serious. Ms. Rinaudo added that additional investigators will be hired in FY 2008 which will allow the Board to eliminate the backlog.

Ms. Rinaudo discussed the two-year provisional license granted those who are licensed in other states and who must work under direct supervision before they can obtain a full license. She described the confidential impaired professionals program designed to encourage early self-

reporting.

She stated that there are concerns from licensed agencies such as Department of Health Services, which are exempt from licensing by this Board, but in general there is widespread support for provisional licenses.

Cochairman Stump relayed that he has received many constituents' concerns about the requirement for four supervisors to signoff on supervisory hours and the difficulty meeting this requirement; Ms. Rinaudo explained that training is only required for those seeking independent licensure, that individuals coming straight out of school at the associate level do not require supervision hours.

Cochairman Stump asked about practitioners waiting on complaint resolution; Ms. Rinaudo stated that the Board is aware of the complaints, that it does have a backlog due to the grandfathering in from certification to licensure and a resultant resource problem, and that additional personnel are being added to address this.

Senator Verschoor asked about the grandfathering situation; Ms. Rinaudo replied that certification has been offered by the Board since 1988, but that since July of 2004 licensure is required and anyone with certification would be grandfathered in. Senator Verschoor asked if the rush to do this reflected a change in standards; Ms. Rinaudo replied that the qualifications for substance abuse counseling were much more strenuous for licensure and also that there was a waiver of all of the exams for the grandfathered individuals.

Senator Verschoor asked if now there are licensed individuals with a lower standard of qualifications than newer practitioners; Ms. Rinaudo replied in the affirmative. Senator Verschoor asked if there is an attempt to raise the standards for the grandfathered individuals; Ms. Rinaudo replied that there has been no attempt to do that.

Stuart Goodman, Board of Behavioral Health Examiners, addressed the board to explain the rationale and benefits of grandfathering.

Speaker Verschoor asked the cost of a license and if it might be increased; Ms. Rinaudo replied that the cost is \$250 every two years, which reflect 1989 dollars. Discussion ensued about the need for more funding, and increase in the cap, and an increase in fees in order to avoid a decrease in services.

Representative Lopez asked about provisional licenses and what is required to comply in Arizona; Ms. Rinaudo replied that some people can come into Arizona and obtain their licenses, but that some disciplines are standardized across the nation and some are not. She went on to explain that the only restriction with a provisional license is that the practitioner must work under supervision. Representative Lopez asked if Arizona has reciprocity guidelines with other states; Ms. Rinaudo replied that in general states do not have reciprocity between health care boards.

Representative Bradley asked for a remedy for practitioners who do not have their proof of supervision; Ms. Rinaudo replied that their licensure file should contain all the supervision

forms. She further stated that the provisional license is always the remedy, to provide the time to fulfill all the requirements.

Public Testimony

Bev Hermon, BH Consulting, addressed the committee to express her concerns about the Board's operations (Attachment 10). She stated she is against continuance of the Board.

Richard Poppy, Therapeutic Practitioners Alliance of Arizona (The Alliance), expressed his concerns about how licenses are granted, particularly to those who have been practicing for many years (Attachment 11). He stated that his group is working on reciprocity guidelines, supervisory setting requirements, and core course requirements (standardizing semester hours and course hours).

Rachael Hopkins, representing herself, addressed the committee to express her concerns about the Board operations. She described her difficulties with the licensing process, explaining that her application has been held up for one year due to the lack of one credit hour.

Senator Leff asked if she has taken the exam and passed it; Ms. Hopkins replied in the affirmative.

Ronald Anton, representing himself, expressed his concerns about the Board, the lack of reciprocity, and the difficult licensure process. He stated that he may not have moved to Arizona had he known of these difficulties, and that he was reluctant to testify for fear of reprisal.

Josephine Sbrocca, representing herself, stated that she was denied licensure due to one book in one course she took at Prescott College; she did state that "there is life without licensure".

Cedric Davis, Board of Behavioral Health Examiners, a member of the Board for the past six years, testified in favor of continuance of the Board, stating that the standards were set by stakeholders and are similar to those in other states.

Discussion

Cochairman Stump stated that he is strongly in favor of a performance audit, as the last one was in 1997.

Senator Leff stated that she now has concerns that she did not have before, particularly that a Board should not, under the guise of protecting the public, keep people from working. She feels that if someone has passed the exam, that should qualify them, and they should not be held back by coursework issues about a book or credit hours; she is in favor of a performance audit also.

Chairman O'Halleran stated that, even with a long sunset, if the results of an audit require the Board to be reviewed sooner that can occur; he stated his support for an audit.

Representative Murphy stated that he is in favor of a performance audit, but wondered if the Auditor General can do this in a timely fashion due to their current workload. Discussion ensued

about the length of the continuation.

Recommendations by the Committee of Reference

Cochairman Stump moved that the Senate and House Health Committee of Reference recommend the continuation of the Board of Behavioral Health Examiners for five years and that the Joint Legislative Audit Committee consider scheduling a performance audit in due haste.

Senator Leff asked if the committee could reconvene after the audit is completed.

Cochairman Stump withdrew his motion.

Cochairman Stump moved that the Senate and House Health Committee of Reference recommend the continuation of the Board of Behavioral Health Examiners for five years and that the Joint Legislative Audit Committee consider scheduling a performance audit as soon as possible with a legislative committee review at the end of such audit. The motion carried by a voice vote.

Chairman O'Halleran recessed the committee at 1:31 p.m.

Chairman O'Halleran reconvened the committee at 2:11 p.m.; all members were present except Senator Aboud and Senator Aguirre.

SUNSET REVIEW OF THE ACUPUNCTURE BOARD OF EXAMINERS

Presentation by Acupuncture Board of Examiners

Della Estrada, Arizona Acupuncture Board of Examiners, explained that the Board provides regulatory oversight of the almost 450 active licensed acupuncturists in Arizona and has successfully accomplished its mandate to ensure the safety of the general public (Attachment 12).

Recommendations by the Committee of Reference

Cochairman Stump moved that the Senate and House Health Committee of Reference recommend the continuation of the Acupuncture Board of Examiners for ten years. The motion carried by a voice vote.

SUNSET REVIEW OF THE BOARD OF OCCUPATIONAL THERAPY EXAMINERS

Presentation by Board of Occupational Therapy Examiners

Kathryn Babits, Arizona State Board of Occupational Therapy Examiners, addressed the board to stress that the Board continues to meet its statutory mandate to ensure the public health by licensing and regulating individuals who provide occupational therapy services.

Janet Midkiff, Arizona State Dental Hygienists' Association, stated that they support the concept of training community people to be dental health representatives, and that the definition of the COHR does make sense to them. She stated concerns about the education, licensing, or certification of the people who fill the COHR positions. She said that her organization would like to work with the ADA and to be a part of the access to care issue.

Nicole Albo, Arizona Dental Assistants' Association, stated her support for the COHR program provided that the positions will be filled by certified dental assistants with additional training components. She stated that she has been working with the ADA to develop a curriculum for expanded COHR training.

Representative Murphy asked if the committee could approve the concept but not specify the details, letting the Legislative process do that. Mr. Murray stated that the supervision issue is the biggest concern.

Alisa Feugate, Arizona Dental Hygienists' Association, stated that she supports the concept of the COHR but is neutral on the application at this time due to concerns about supervision and scope of practice.

Recommendations by the Committee of Reference

Cochairman Stump moved that the Senate and House Health Committee of Reference recommend that the Legislature amend the statutes of the Arizona Board of Dental Examiners to create a new certified professional, the Community Oral Health Representative, to coordinate community-based oral health promotion and provide specified dental care under the general supervision of a licensed dentist. The motion carried by a voice vote.

Without objection, the meeting adjourned at 4:15 p.m.

Jane Dooley, Committee Secretary
November 6, 2007

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov/>)