STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

AN EVALUATION
of the

STATE DENTAL BOARD COMPLAINT REVIEW PROCESS

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-4

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

February 17, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Members of the State Dental Board

Transmitted herewith is a report of the Auditor General, An Evaluation of the State Dental Board, Complaint Review Process. This report is in response to the June 10, 1980, resolution of the Joint Legislative Budget Committee.

The blue pages present a summary of the report; a response from the Members of the State Dental Board is found on the yellow pages preceding the appendix.

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

Respectfully submitted,

Douglas R. Norton

Douglas R. Norton
Auditor General

Staff: Gerald A. Silva
Steve Wallace

Enclosure

OFFICE OF THE AUDITOR GENERAL

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SUMMARY

The Office of the Auditor General has evaluated the consumer complaint process of the State Dental Board. The consumer complaint process was reviewed previously in Auditor General Report No. 79-11, A Performance Audit of the Arizona State Board of Dental Examiners.

During our review, we found that the Board has improved its complaint review process. We also found, however, that the Board still is not completely fulfilling its statutory responsibility to protect the citizens of Arizona from incompetent dental practitioners, and there is increased complainant dissatisfaction with the Board's handling of complaints.

Our review also revealed that statutory and other changes are needed to improve the complaint review process of the State Dental Board.

It is recommended that:

1. The Board formally adopt the complaint review process guidelines manual after amending it as follows:
   - Require lay member participation at complainant interviews.
   - Change the recommended sanctions so they will be in conformity with the statutes.
   - Allow complainants to appear before the Board when it renders a decision on a complaint.
   - Inform complainants of rehearings granted in decisions rendered on complaints.

2. The Board investigate and resolve all complaints in compliance with its own policy, the statutes and the legal opinions of the Legislative Council.

3. The Board inform the public of the Board's complaint review responsibilities and disciplinary actions through the use of press releases, public service announcements, public speaking engagements and television and radio coverage.

4. The Board periodically follow up cases in which persons request complaint forms, yet do not file complaints with the Board. This should be done to determine the reasons complaints are not being filed so that appropriate corrective measures may be taken.

5. The Legislature and Governor consider establishing a Health Occupations Council as outlined by the Council of State Governments. This alternative would apply to all health regulatory entities.

6. The Board consider compensating investigation committees with a consultant fee.

7. The Legislature consider the following statutory changes:
   - Define dental incompetence in A.R.S. §32-1201, using §32-1401.8 as a guide.
   - Include dental incompetence as grounds for disciplinary action in A.R.S. §32-1263.
   - Define disciplinary action in A.R.S. §32-1201, using §32-701.01.3 as a guide, and amend §32-1263.01.A accordingly.
   - Give the Board specific authority to subpoena records by adopting a statute similar to A.R.S. §32-743.E.
   - Amend A.R.S. §32-1263.02.C to require a formal hearing if a licensee refuses to cooperate in an informal hearing or investigation.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has evaluated the consumer complaint processes and procedures of the State Dental Board in response to a June 10, 1980, resolution of the Joint Legislative Budget Committee. This evaluation was prepared under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-1279 et seq.

The consumer complaint process was reviewed previously in Auditor General Report No. 79-11, A Performance Audit of the Arizona State Board of Dental Examiners. That report noted that the Board was not completely fulfilling its statutory responsibility to protect the citizens of Arizona from incompetent dental practitioners. The report also noted that the Board needed to increase public awareness of its complaint review responsibilities and make several additional changes to enhance its complaint review process.

The objectives of the evaluation were to:

1. Determine if the recommendations in Report No. 79-11 have been implemented.

2. Determine if the Board has implemented procedures to improve its complaint processes in addition to those recommended in Report No. 79-11.

3. Determine what changes, if any, are necessary for the Board to improve its complaint review process.

The Office of the Auditor General expresses gratitude to the members of the State Dental Board and the Board's administrative staff for their cooperation, assistance and consideration during the course of the evaluation.

FINDING I

SINCE AUDITOR GENERAL REPORT NO. 79-11, THE STATE DENTAL BOARD HAS IMPROVED ITS COMPLAINT REVIEW PROCESS. HOWEVER, THE BOARD STILL IS NOT COMPLETELY FULFILLING ITS STATUTORY RESPONSIBILITY TO PROTECT THE CITIZENS OF ARIZONA FROM INCOMPETENT DENTAL PRACTITIONERS, AND THERE IS INCREASED COMPLAINANT DISSATISFACTION WITH THE BOARD'S HANDLING OF COMPLAINTS.

One of the major purposes of the State Dental Board (Board) is to protect the public against those who are not qualified to engage in the practice of dentistry or its auxiliary fields. Since the Auditor General issued Report No. 79-11 in September 1979, the Board has improved its complaint investigation process, resolved complaints in a more timely manner and generally imposed more stringent penalties against dental practitioners it deemed to have provided substandard dental care. However, our review revealed that, in some cases, the Board did not: 1) adequately investigate charges of dental practitioners' providing substandard care, 2) take appropriate action when charges of substandard care were substantiated, or 3) adequately inform the public of its complaint review process. In addition, those persons who filed complaints against dental practitioners with the Board in 1980 were generally dissatisfied with the Board's handling of their complaints.

It is the intent of the Legislature that the programs administered by the Board fulfill two objectives:

1. Provide a licensing and regulatory process for dental care providers, and

2. Protect the public against those who are not qualified to engage in the practice of dentistry and its auxiliary fields.

The Board's complaint review process is the main program designed to protect the public. Auditor General Report No. 79-11 noted the following deficiencies in the complaint review process:

1. The Board consistently failed to adequately discipline dentists when allegations of substandard care have been substantiated.

2. The Board consistently failed to adequately investigate allegations of substandard care.

3. The Board has failed to adequately inform the public of its complaint review responsibilities.

4. The Board has not adequately encouraged the public to file complaints.

5. The Board has not adequately documented its investigations and subsequent disciplinary actions, and

6. The Board has not adequately utilized the services of the Attorney General's office.

Since Report No. 79-11, the Board has improved its complaint investigation process and generally imposed more stringent penalties against dental practitioners it deemed to have provided substandard dental care.

Improvements Made to the Investigation Process

Report No. 79-11 recommended that the Board investigate consumer complaints in compliance with Arizona Revised Statutes. The Board has taken the following steps to improve the investigation process during 1980:

1. Prepared a manual for the complaint review process, which outlines the duties of the Board investigators and investigation committees, procedures for processing complaints, guidelines for conducting interviews, time limits, an appeal process and recommended sanctions.

2. Appointed a lay member to each of the three original complaint review committees and established four new complaint investigation committees, each consisting of two dentists and one lay member. Additional committees became necessary because the volume of investigations became too time-consuming for the three original committees.

3. Hired two dentists as part-time investigators and a full-time clerical person to help administer the complaint review process. While the investigators do very little actual complaint investigation, as this duty still is vested with the complaint investigation committees, they are responsible for preliminary reviews of complaints, monitoring complaint progress to ensure timeliness, preparing complaints for presentation at Board meetings, following up disciplinary probations to ensure compliance and conducting office interviews and audits as required.

4. Held seminars with the complaint investigation committees to standardize the complaint review process and to ensure that investigations are conducted and documented properly.

In addition, effective in January 1981:

1. The Board established a policy that each complaint that comes before the Board for resolution should note all previous complaints against the licensee involved, how they were resolved and sanctions imposed, if any.

2. The Governor appointed two more lay members to the Board in accordance with legislation passed during the 1980 legislative session. However, one of the lay members declined the appointment.

While audit staff was unable to assess the impact of the January 1981 changes, it appears that 1980 improvements resulted in better documentation of investigations than was evident during the preparation of Report No. 79-11. In addition, our latest review indicated that, in general, complaints were investigated adequately during 1980.

More Timely Resolution of Complaints

In April 1980, the Legislature passed a statutory amendment which set time limits on the Board's complaint review process. The statutes now require the Board to resolve complaints within 90 days, including 60 days for the investigation or informal interview and 30 days for the Board to issue its preliminary findings. Our review indicated that while the Board does not meet these time limits consistently, it has improved its performance considerably, as shown in Table 1, which compares how long it took the Board to resolve complaints of alleged substandard care it received during the first and second halves of 1980.

TABLE 1

COMPARISON OF ELAPSED TIME TO RESOLVE COMPLAINTS ALLEGING SUBSTANDARD CARE DURING 1980

	Number of Complaints Resolved		
Period	0-90 Days	91-120 Days	More Than 120 Days
January-June 1980	7	10	38
July-December 1980	21	7	7

As shown in Table 1, the Board markedly improved the timeliness with which it resolved complaints during the latter part of 1980. The Board's improvement in resolving complaints promptly also is indicated when the age of unresolved complaints as of December 31, 1979 is compared to the age of those at December 31, 1980, as shown in Table 2.

Table 2

COMPARISON OF AGE OF UNRESOLVED COMPLAINTS
AS OF DECEMBER 31, 1979 AND DECEMBER 31, 1980

Date	Number of Unresolved Complaints			
	0-90 Days	91-120 Days	More than 120 Days	Total
December 31, 1979	25	6	41	72
December 31, 1980	18	4	24	46

As shown in Table 2, the Board did make some progress in 1980 toward resolving long-outstanding complaints.

The improvements shown in Tables 1 and 2 resulted primarily from the appointment of two part-time investigators, in August and October 1980, and a full-time secretary, in October 1980, to administer the complaint review process. In addition, the Board's chief investigator appointed investigation committee supervisors to monitor timeliness of investigations and he met with the committees during December 1980 to inform them of their responsibilities. It should be noted that the Board also has agreed to implement an Auditor General-recommended procedure to maintain a card file of complaints by date that action is necessary.

More Stringent Penalties

Since Report No. 79-11, the Board has imposed more stringent penalties against dental practitioners deemed by the Board to have provided substandard care. Table 3 summarizes the penalties imposed by the Board during 1978, 1979 and 1980.

TABLE 3

PENALTIES IMPOSED BY THE STATE DENTAL
BOARD IN 1978, 1979 AND 1980

	Censure	Probation	Censure and Probation	License Suspension	Total
1978	0	2	2	0	4
1979	0	3	5	0	8
1980	3	2	31	3	39

As shown in Table 3, both the number and severity of penalties imposed by the Board increased considerably in 1980. Further, while most of the penalties imposed in 1978 and 1979 involved insurance fraud or prescription abuse on the part of dental practitioners, more than 85 percent of the 1980 penalties involved allegations of substandard dental care.

In our opinion, the information presented in the preceding pages evidences a concerted Board effort during 1980 to better protect the public from incompetent dental practitioners. However, it appears that some improvements still need to be made in the areas of investigations, penalties and public information.

Failure to Adequately Investigate Allegations of Substandard Care

One of the conclusions reached during the previous performance audit of the State Dental Board was that the Board consistently failed to adequately investigate allegations of substandard care. While the Board has taken various steps to improve the investigation process, our review revealed several recent instances of incomplete or inadequate investigations.

A review of complaints resolved in 1980 disclosed nine incomplete or inadequate investigations. In most of these cases the Board dismissed the complaint without conducting a complete investigation if the dentist agreed to provide a refund or restitution. Report No. 79-11 specifically noted that resolving cases in such a manner is not in compliance with the statutes.

In addition, according to a February 12, 1981,* Legislative Council memorandum:

> "The board is statutorily obligated to investigate the verified complaint of any person which alleges substandard care of a type covered under Arizona Revised Statutes (A.R.S.) §32-1263, relating to grounds for disciplinary action. It is only after the required investigative process has been completed pursuant to an informal interview or the convening of an investigative committee and a recommendation has been forwarded to the board that the board may exercise discretion with respect to any verified complaint."

Further, Legislative Council states:

> "Whether the licensee is willing to make a refund or not should have no bearing on a decision by the board to dismiss a complaint. A complaint should be dismissed only upon a finding that the evidence submitted does not warrant license suspension or revocation or any of the other statutorily prescribed less severe disciplinary sanctions."

The following complaints are examples of inadequate investigation.

Complaint No. 113-79

The complaint alleged that the dentist made two sets of dentures, neither of which fit. An informal interview was held and the committee determined that the dentist had made a full refund to the patient. The committee did not examine the patient to determine the quality of care. The Board voted in March 1980 to dismiss the complaint. It should be noted that the informal interview committee included the following statement with their recommendation.

> "The Committee, including myself, feels uncomfortable that the patient wasn't examined and that the question of competency was never resolved. We unanimously hope that in the future, such complaints as this, this question will not be left hanging and that a file will not be closed merely because a fee was returned."

* See Appendix for the full text of the memorandum.

Complaint No. 172-80

The Board received a complaint in September 1980 charging a dentist with substandard denture care. The dentist relined the dentures in March 1979, but after a series of adjustments through October 1979, the denture remained unsatisfactory. The patient continued trying to wear the dentures until filing a complaint in September 1980. The patient stated:

> "I can not wear my bottom dentures except to eat(.) I am now having trouble with the bones in my face hurting real bad and having trouble keeping my upper dentures in(.)"

The complaint investigation committee never evaluated the quality of the dentures. When the dentist refunded the fees for the denture the committee recommended dismissing the case. The Board dismissed the case in December 1980. It should be noted that the dentist had a similar complaint filed against him earlier in the year.

Complaint No. 73-80

A patient filed a complaint with the Board in April 1980 charging the dentist with substandard denture care. The dentist made an upper plate for the patient in January 1980. The patient stated:

> "In my opinion these dentures are a complete misfit and I have suffered not only pain, but mental stress and actual hunger."

The complaint investigation committee examined the complainant on June 23, 1980, and reported:

> "It is obvious that there are still problems with her denture. (The dentist) has offered a refund to her of $200.00, and we feel that it is fair. We feel the Dr. should refund the $200.00 which after done, the case should be closed."

The Board voted to dismiss the case in August 1980.

Lack of Disciplinary Action

One of the major deficiencies in the Board's complaint review process noted in Report No. 79-11 was that even when investigations substantiated allegations of substandard care, the Board took no disciplinary action. Our review indicated that the Board has continued to dismiss complaints when investigations confirmed that substandard care had occurred. We found 23 complaints that were resolved in this manner. The following complaints are examples:

Complaint No. 163-79

A November 1979 complaint alleged that the dentist did a poor job of capping three teeth, which caused unbearable pain, redness, bleeding and discoloration. The complaint investigation committee examined the complainant and stated:

> "The open contacts (are) thought to be the major source of patient discomfort due to food impaction and in itself the open contacts make the restoration unacceptable."

The dentist made a full refund to the complainant and the Board voted to dismiss the complaint. It should be noted that this complaint was not the only one filed against this dentist.

Complaint No. 37-80

A February 1980 complaint against the same dentist alleged that, despite numerous adjustments, the dentures would not fit. The investigative committee found the following discrepancies:

"A. Post dam on upper denture too deep and sharp, contributing to tissue inflammation and pain.

"B. The retromolar pad areas were not covered with lower denture in place.

"C. The border of the lower denture could have been perfected more.

"D. There appeared to be a reaction between the denture base and the supporting tissue that could not be explained by pressure spots. She perhaps is experiencing an allergic reaction to the denture base and/or the voluminous amount of adhesive she is using to stabilize the lower denture."

The Board voted on May 31, 1980, to require the dentist to correct the discrepancies at no cost to the patient. A follow-up by the Board investigator on December 9, 1980, determined that the patient's denture still had not been corrected. It should be noted that the same dentist has another 1979 complaint pending against him, and eventually was censured by the Board as the result of yet another 1980 complaint.

Complaint No. 135-79

The complaint alleged that, despite numerous try-ins, the denture would not fit. The investigative committee found numerous deficiencies with the denture and reported:

> "It appears (the patient) made request that were not possible and that (the dentist) attempted to meet her felt need and in doing so added too much bulk to buccal flange...The dentures are not acceptable."

The dentist refunded the fees and the Board voted in July 1980 to dismiss the complaint. A similar complaint was filed against the same dentist by another patient in August 1980.

Complaint No. 145-80

The complaint alleged that the dentures would not fit and caused the patient's mouth to become sore. The investigative committee found that the denture did not meet standards of professional care and recommended censure and probation. The investigative committee changed its recommendation to dismissal after interviewing the dentist. They concluded the following:

> "(The dentist) seemed to feel that (the patient) has adjusted his dentures himself after seeing him for remake. There are deficiencies in the dentures but these are things that the patient requested in an attempt by (the dentist) to make patient happy. (The dentist) has been more than reasonable in his attempts to help this patient."

The Board dismissed the complaint on December 12, 1980. It should be noted that the dentist has two more 1980 complaints pending against him.

Complaint No. 94-79

The complaint alleged that the dentist made a set of dentures that were unusable despite several adjustments. An informal interview held in February 1980 found that the dentures were not adequate. The dentist offered to refund the fees and the Board voted in March 1980 to dismiss the complaint upon verification of a refund. A similar complaint has been filed against the same dentist.

Complaint No. 57-79

The complaint alleged that the dentist made a set of dentures that are "...totally useless, I can't even eat with them and I want my money back so I can get some that fit." The investigative committee found a number of deficiencies in the denture and recommended restitution and continuing education for the dentist. On September 13, 1980, the Board voted to censure the dentist, require restitution within 60 days and require seven hours of continuing professional education within six months. The dentist filed a petition to reopen the case and the Board voted on October 17, 1980, to deny the petition. After interviewing the dentist on November 3, 1980, the investigative committee changed its recommendation to dismissal and concluded:

> "Denture as it appears at time of examination may constitute violation of A.R.S. 32-1201-10-N -- however, no opportunity to adjust or remake the denture was afforded to (the dentist) and due to this fact and the fact that records supplied by (the dentist) indicate an offer to remake denture or refund fee (4-13-79) in fact, no violation of statute exists."

The dentist appealed again and the Board voted on November 14, 1980, to once more deny the appeal. Then, on December 12, 1980, the Board voted to rescind the original orders of September 1980 and to issue the following order:

> "That within 30 days you send the patient the full amount paid by the patient for the denture as per your offer on 13 April 1979 as recorded in your records; and
>
> "That no further action to be taken."

At the Board meeting at which the above action was taken, a representative from the Office of the Auditor General asked the Board how it could require a dentist to provide restitution yet dismiss a complaint, especially when substandard care is substantiated.

It was the concensus of the Board that its intent is to sanction a dentist in all instances of substandard care. It also is Board policy to censure a dentist if restitution is required, as stated in the statutes. However, the Board's action on Complaint No. 57-79 contradicts that policy. Further, the Board took two other actions at the same meeting which contradicted its stated policy.

Complaint No. 136-80

The complaint alleged that, despite numerous trips for adjustments, the dentures still are ill-fitting. They caused swollen gums, which created a financial hardship because of medical bills to treat the swelling. The investigative committee found some deficiencies in the denture and concluded that the complaint was supported by evidence, but was minor in nature. The Board voted to dismiss the complaint and suggested that the patient return to the dentist for necessary corrections in spite of the fact that: 1) the Board was aware that the patient would not return to that dentist, and 2) the dentist involved in this complaint had six other complaints filed against him over a 13-month period and was on probation at the time this decision was made.

Complaint No. 97-80

The complaint alleged that dentures made by the dentist did not fit properly. The complainant consulted a former dentist who allegedly said that work of such poor quality did not warrant a second try. The complaint investigation committee found major deficiencies in the upper denture and minor deficiencies in the lower partial denture and concluded that:

> "Partial would be adequate with saddle extension. Upper denture not acceptable or practically correctable."

The committee recommended that the complaint be dismissed, based on the following:

> "1.) Dr. recognized the error in the denture and offered to remake the denture but patient did not afford him an opportunity to do so; and
>
> "2.) no charge was every [sic] made for the denture."

It should be noted that the complainant had paid the dentist $291. Thus the committee's recommendation was based partially on incorrect information. The Board voted to dismiss the complaint.

Inappropriate Disciplinary Actions

Another recommendation in Report No. 79-11 was that the Board resolve complaints in compliance with the statutes. Effective July 1980, the Board has four statutory options regarding disciplinary actions:

1. Revocation of license,
2. Suspension of license,
3. Decree of censure which may require restitution, and
4. An order fixing a period and terms of probation.

However, recommended sanctions in the Board's complaint review process guidelines manual do not conform with the statutes. The sanctions recommended in the manual are:

> "A. Letter of Admonishment: The use of the admonishment form of letter shall be in an instance where evidence tends to support allegations made by the patient but said problems are minor in nature and the greater problem might be in communications. It is a form of expressing a warning or disapproval in a gentle way.
>
> "B. Letter of Censure: The use of the censure form of letter shall be in an instance where evidence tends to support allegations made by the patient although not serious in nature, the licensee has made little effort to resolve the problem or does not recognize the problem as being of his/her making.
>
> "C. Recommendation of Censure: The use of censure with restitution and/or probation with other terms is a formalized finding or judgment of guilty of allegations made in the complaint. The allegations are serious in nature and are supported by evidence but are not serious to the point where in the opinion of the reviewing members that it would require suspension or revocation of license
>
> "1. Term of restitution may be required with censure
>
> "a) If restitution is recommended, state the amount and time limit of sixty days maximum.

"2. Terms of probation may be required in conjunction with the formal censure and may be used to:
"a) Rehabilitate
"b) Set a probationary time period within which the licensee is subject to review. Options are:
"1) Continuing education (in multiple of seven hours)
"2) Office procedure and treatment review
"3) Reviews of literature, etc.

"D. Recommended Formal Hearing: A recommendation of a formal hearing is made only when, in the opinion of the reviewing panel, the violation is of such a serious nature that a sanction of suspension or revocation is warranted."

Following its own manual guidelines, the Board has taken ten disciplinary actions during 1980 that are not within its statutory authority.

The Board has issued orders of admonishment or reprimand in conjunction with various orders for restitution or refund. According to a Legislative Council memorandum dated February 12, 1981,* the Board does not have authority to sanction licensees in this manner. The memorandum states:

> "The board does not have any explicit or implicit statutory authority to admonish a dentist and require that restitution or a refund be made to the complainant. The board's authority following completion of the required investigation of any verified complaint pursuant to A.R.S. section 32-1263.02 is limited to the institution of proceedings to suspend or revoke the license, dismiss the complaint or issue a decree of censure or probation against the licensee.

* See Appendix for the full text of the memorandum.

The Board Has Not Actively Informed The Public Of Its Complaint Review Responsibilities Or Its Disciplinary Actions

Report No. 79-11 concluded that the Board had failed to adequately inform the public of its complaint review responsibilities. It was recommended that the Board inform the public of the Board's oversight responsibilities and the results of its disciplinary actions. The Board's only ongoing attempt to publicize its complaint review process and disciplinary actions is to list disciplinary actions in its newsletter. It should be noted that the newsletter is distributed primarily to dental practitioners, not the news media or the general public.

The Department of Insurance has actively publicized its complaint services through television and radio coverage, press releases and public speaking engagements. As a result, public awareness of the Department's complaint process increased considerably.

The Auditor General also recommended in Report No. 79-11 that the Board periodically follow up cases in which persons request a complaint form but do not file complaints with the Board. Since Report No. 79-11 was published, the Board has discontinued maintaining a log of complaint forms requested, precluding implementation of the recommendation regarding followup.

Complainant Dissatisfaction with the Board's Handling of Complaints Has Increased

An Auditor General survey of complainants involved in 1979 and 1980 complaints revealed that complainant dissatisfaction with Board decisions increased considerably from 1979 to 1980. More than 60 percent of the 1979 complainants responded that the Board decision was fair and impartial, while barely one-fourth of the 1980 complainants said the Board decision was fair. In addition, the percentage of complainants who replied that the Board's investigations were conducted thoroughly, fairly and impartially declined from 54 percent in 1979 to 46 percent in 1980, while the percentage of dentists who claimed investigations were thorough, fair and impartial increased from 80 to 84 percent.

One factor that caused considerable complainant dissatisfaction with the Board's handling of complaints was a policy the Board adopted in mid-1980 disallowing complainants verbal input at Board meeting. It was the concensus of the Board that the complainants should provide their input before the complaint comes before the Board for resolution and not during the meeting when the complaint is deliberated.

An additional cause of complainant dissatisfaction is that committee lay members often are not present during the complainant interview. The Board's complaint review process guidelines manual requires the lay member to be present when licensees are interviewed, but is less specific about lay member attendance when a complainant is interviewed.

As a result, many complainants perceive a bias in favor of the licensee when complaints are investigated and resolved. This perception was evidenced in comments made by complainants responding to our survey. The following complainant comments are examples.

> "There is a basic conflict of interest built into this Board and its ancillary investigative committees."
>
> "Altho (sic) I feel I submitted a comprehensive letter of details, it is very evident the interviewers & later the board, believed statements made by the Dentist, but gave far too little credence to my statements of complaint."
>
> "Impartial that is a joke! dentist [sic] covering up for other dentist."
>
> "As the 2 persons who conducted the investigation were themselves dentist(s) and aquaintances of (the treating dentist) I felt there was prejudice."
>
> "The dentists who made the dental examination stated in front of a witness that the dentures were not made right but evidently in their report to the board changed their mind in favor of the practitioner."

Our review of the Board's complaint process revealed that accusations of Board bias in favor of licensees may have some basis in fact, particularly with regard to Board decisions on petitions for rehearing or review.

TABLE 4

COMPARISON OF BOARD ACTION ON
COMPLAINANT AND LICENSEE PETITIONS FOR
REHEARING OR REVIEW DURING 1980

Petition Filed By	Number of Petitions	Number Granted	Percentage Granted	Decisions Rendered On Rehearings: Changed in Favor of Licensee	Changed in Favor of Complainant	Not Changed
Complainant	20	5	25%	0	0	2
Licensee	14	9	64%	4*	0	2

As shown in Table 4 the Board granted only one-fourth of complainant petitions for rehearing or review, but almost two-thirds of licensee petitions. Further, as of December 31, 1980, none of the granted complainant rehearings resulted in a decision reversal in favor of the complainant, while two-thirds of the licensee rehearings resulted in a decision reversal in favor of the licensee. The following case is one of the rehearings that resulted in a decision reversal in favor of a licensee.

Complaint No. 64-80

The complaint alleged that the dentist started an involved reconstruction treatment plan and abandoned it less than one month after placing temporary crowns. The investigative committee found that the dentist abandoned the patient through the use of a general patient release. In addition, the patient was obviously upset by the whole situation. The committee made the following recommendations:

* In two of these four cases the Board voted originally to deny the petition for rehearing. The Board subsequently granted a rehearing and reversed its earlier decision.

" I. Patient is in desperate need to have the treatment that was started by (the dentist) finished by a qualified dentist.

" II. It is the opinion of the committee that organized dentistry has an obligation to assist this lady in the completion of her treatment.

"III. The patient paid $2,547.50 down before treatment. (The dentist) refunded $847.50. (The dentist) has retained a balance of $1,700.00. The patient has only temporary crowns at this time. It is the opinion of the committee that it is (the dentist's) obligation as a professional to either complete the case satisfactorily for the total fee of the original estimate or to make arrangements with someone qualified in reconstruction of a patient suffering from cranio-manibular dysfunction. Should (the dentist) choose not to satisfactorily complete the case himself it is the committee's opinion that any costs the patient incurs in excess of $2,890.00 ($4,590 less the $1,700 he retained) must be born(e) by him."

On August 3, 1980, the Board voted to (1) censure the dentist, (2) place him on probation until the case is satisfactorily completed and (3) require him to complete the case for not more than $4,590 or to pay all expenses if he refers the patient to another dentist. The licensee appealed the Board's decision and, on October 17, 1980, the Board denied the dentist's petition for rehearing. The dentist appealed once more and the Board voted in November 1980 to reopen the case and conduct an informal interview. The informal interview was held on December 6, 1980, and the committee concluded that there had been no violation of statute. The Board voted on December 12, 1980, to rescind its order of August 1980 and impose the following:

> "That the complaint be dismissed and a letter of admonishment be sent to (the dentist) referring specifically to the manner of dismissing patients with followup referral to subsequent treating dentist."

It should be noted that the complainant did not learn of the reopening of the case and the informal interview until after the interview was held. In addition, the complainant did not learn that the Board would make a decision on her complaint at its December board meeting until after the meeting.

A Health Occupations Council as an Alternative To Individual Regulatory Bodies

A Council of State Governments* publication entitled, State Regulatory Policies - Dentistry and the Health Professions, contains a description of a model law creating a State Health Occupations Council. Composed of one representative from each health area subject to regulation through the law and at least one-third membership representing the general public, the Council is authorized to review and coordinate licensing boards regulations, establish discipline and enforcement procedures, and resolve scope of practice questions. Such a Council would also coordinate certain functions currently performed by individual licensing boards by centralizing budgeting, staffing, investigations and professional discipline.

The major purpose of such a Council is, according to the Council of State Governments, to maintain the perspective of public interest in the regulation of professions and occupations:

> "Historically, once licensed, the groups tended to be regulated by autonomous boards composed primarily of representatives from the profession. Many have felt that such a system dominated by practitioners will primarily protect the interests of the individual professional groups rather than those of the consumer. State policymakers often have been frustrated in their attempts to ensure that the licensure and regulatory process takes into consideration broad public policy issues such as costs, availability of services, and fragmentation of health care delivery." (Emphasis added)

* The Council of State Governments is a joint agency of all the state governments - created, supported and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials, and legislators; issues a variety of publications; assists in state-Federal liaison; promotes regional and state-local cooperation; and provides staff for affiliated organizations.

CONCLUSION

Improvements made in the Board's complaint review process during 1980 have resulted in better documentation of investigations, more complete investigations generally, quicker resolution of complaints and more stringent penalties for those deemed to have provided substandard care. However, in some cases, the Board still does not conduct adequate investigations or take appropriate action when substandard care is substantiated. Further, the Board has not actively informed the public of its complaint review responsibilities or its disciplinary actions or taken steps to encourage the public to file complaints. In addition, those persons who filed complaints against dental practitioners with the Board in 1980 generally were dissatisfied with the Board's handling of their complaints.

RECOMMENDATIONS

It is recommended that:

1. The Board formally adopt the complaint review process guidelines manual after amending it as follows:
   - Require lay member participation at complainant interviews.
   - Change the recommended sanctions so they will be in conformity with the statutes.
   - Allow complainants to appear before the Board when it renders a decision on a complaint.
   - Inform complainants of rehearings granted in decisions rendered on complaints.

2. The Board investigate and resolve all complaints in compliance with its own policy, the statutes and the legal opinions of the Legislative Council.

3. The Board inform the public of the Board's complaint review responsibilities and disciplinary actions through the use of press releases, public service announcements, public speaking engagements and television and radio coverage.

4. The Board periodically follow up cases in which persons request complaint forms, yet do not file complaints with the Board. This should be done to determine the reasons complaints are not being filed so that appropriate corrective measures may be taken.

5. The Legislature and Governor consider establishing a Health Occupations Council as outlined by the Council of State Governments. This alternative would apply to all health regulatory entities.

FINDING II

STATUTORY AND OTHER CHANGES ARE NEEDED TO IMPROVE THE BOARD'S COMPLAINT REVIEW PROCESS.

Since the issuance of Report No. 79-11 in September 1979, several statutory and other changes have been implemented relative to the State Dental Board. However, our review indicates that additional changes should be considered:

1. Compensation for investigative committee members, and

2. Statutory changes in the following areas:

   - Grounds for disciplinary actions;
   - Types of disciplinary action;
   - Adding specific authority to subpoena records;
   - Authority to take further action if licensees do not cooperate.

COMPENSATION FOR INVESTIGATIVE COMMITTEE MEMBERS

As noted on page 7, during 1980 the Board increased the number of its investigative committees from three to seven. These committees are comprised of two dentists and one lay member each, and conduct interviews and investigations for the Board.

During 1980 the workload of the committees increased to the point that some members were spending as many as 15 hours a month on Board business. Participation on these committees is completely voluntary and, as a result, the Board encounters difficulty in obtaining and retaining committee members.

Arizona's Board of Medical Examiners (BOMEX) also uses consultants for assistance in its complaint review process. However, participants on BOMEX committees are paid at the rate of $100 a day. If the Board were to pay participants on its investigative committees at a rate comparable to BOMEX', it would cost the Board approximately $40,000 a year.

The Board currently has ample funds to compensate members of its investigative committees and would have an additional source of funding if it had the authority to impose administrative fines. (page 29)

STATUTORY CHANGES

Problems encountered by the Board during 1980 indicate that certain statutory changes are needed.

Grounds For Disciplinary Action

A.R.S. §32-1263 should be amended to include dental incompetence as grounds for disciplinary action. In addition, dental incompetence should be defined similarly to medical incompetence in A.R.S. §32-1401.8, which states:

> "'Medically incompetent' means lacking in sufficient medical knowledge or skills or both, in that field of practice in which the physician concerned engages, to a degree likely to endanger the health of his patients."

Such statutory definition is necessary to guard against dentists practicing in specialty fields, such as orthodontics, without proper training.

Types of Disciplinary Action

The types of disciplinary action outlined in A.R.S §32-1263.01.A do not give the Board sufficient leeway to take appropriate action in all cases. A definition of disciplinary action similar to that in the Accountancy Board statutes, §32-701.01.3, should be adopted in State Dental Board statutes. A.R.S. §32-701.01.3 states:

"3. 'Disciplinary action' means any other regulatory sanctions imposed by the board in combination with, or as an alternative to, revocation or suspension of a certificate or registration, which may include:

"(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or regulations promulgated thereunder.

"(b) Imposition of restrictions on the scope of registrants' accounting practice, including, without limitation, restriction of audit or attest function practice, restriction of tax practice, or restriction of mangement advisory practice.

"(c) Imposition of peer review and professional education requirements.

"(d) Imposition of probation requirements best adapted to protect the public welfare which may include a requirement for restitution payments to accounting services clients or to other persons suffering economic loss resulting from violations of this chapter or regulations promulgated thereunder."

It should be noted that imposition of administrative penalties on licensees could help recover the cost of compensating members of investigative committees.

Specific Authority To Subponea Records

The State Dental Board has an implied subpoena power through A.R.S. §32-1207. The authority to subpoena could be made clearer by adopting language similar to Accountancy Board §32-743.E, which states:

"The board, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with an investigation initiated by the board or upon hearing under this chapter. In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence."

Authority To Take Further Action

A.R.S. §32-1263.02.C gives the Board the authority to investigate or hold an informal interview with a licensee against whom a complaint has been filed. However, if the licensee refuses to cooperate, the Board lacks authority to take further action. A.R.S. §32-1263.02.C should be amended to require a formal hearing if a licensee refuses to cooperate.

CONCLUSION

Statutory and other changes are necessary to allow the State Dental Board to investigate and resolve complaints more effectively.

RECOMMENDATIONS

It is recommended that:

1. The Board consider compensating investigation committees with a consultant fee.

2. The Legislature consider the following statutory changes:
   - Define dental incompetence in A.R.S. §32-1201, using §32-1401.8 as a guide.
   - Include dental incompetence as grounds for disciplinary action in A.R.S. §32-1263.
   - Define disciplinary action in A.R.S. §32-1201, using §32-701.01.3 as a guide, and amend §32-1263.01.A accordingly.
   - Give the Board specific authority to subpoena records by adopting a statute similar to A.R.S. §32-743.E.
   - Amend A.R.S. §32-1263.02.C to require a formal hearing if a licensee refuses to cooperate in an informal hearing or investigation.

RESPONSE OF THE ASBDE TO THE AUDITOR GENERAL'S REPORT

The ASBDE feels it has, with the implimentation of the 1980 Statuatory Amendments, substantially improved the complaint review process. The Auditor General's report indicates that "in general, complaints were investigated adequately during 1980" but that in "some cases" the Board did not perform to their expectations.

It has taken a concerted effort to organize and direct a volunteer cadre of professionals and laypersons to become effective investigators. A continued adjustment of investigative and administrative procedures has led to a position - after 7½ months of adjudications under the revised statutes - of reasonableness if not perfection, and in the overwhelming instances has protected the public in disciplinary matters.

Some problems may be identified by the complaint examples illustrated. There were some instances where the dentures were not available for examination therefore the committee had nothing to evaluate.

Correction of this type of investigative problem may be difficult but some proposals are under consideration. Additionally, some auditor's recommendations are presently incorporated into the procedures.

Some complaints quoted point out noncompliance of statuatory provisions by assessment of restitution without censure. These were few in number in relation to total number of complaints. The intent of the Board is to correct this deficiency and to pursue the use of consent orders especially in minor violations.

The statistical evidence of increased dissatisfaction by complainants is difficult to evaluate. The Board has requested the survey results and remarks from the audiitors for assessment.

As illustrated in Table I after July 1, 1980, when the amended statute became effective, the elapsed time for resolutions dramatically improved. This is a compliment to the effectiveness of the process under the amended law.

Table 3 illustrates more stringent penalties for violations. The expectations of complainants or licensees probably will never be met to their total satisfaction and civil action may further temper these adjudications.

Table 4 relates to rehearing or review and complaint # 64-80 is presented. This is a complicated case and the criticism of the auditors illustrates the frustrations of the Board in reversing the recommendations of the committee. Board minutes are not verbatum records of the deliberations and therefore the Board action does not appear to be well documented. Records show that the complainant was residing out of state and did not timely receive notices mailed by the Board.

The auditors favor the creation of a Health Occupations Council as an alternative for all health regulatory agencys. The Board in majority disagrees in that the projected investigative procedure costs could increase immensely when taken out of the realm of voluntary service. The Board utilizes 30 persons on investigative teams and will undoubtedly have to increase the number if the complaint numbers grow. Since dental investigation involves examination of the patient by professionals there is no shortcut to this process. An alternative plan to the Health Occupations Council would be a Health Occupations Hearing Board which would take the results of investigations conducted by Boards and on the basis of those investigations conduct disciplinary interviews and hearings.

APPENDIX

ARIZONA LEGISLATIVE COUNCIL MEMORANDUM

FEBRUARY 12, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

February 12, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-03)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated January 19, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

1. Investigations of complaints alleging substandard care are not initiated or are terminated upon an agreement by a dentist to make a refund or provide restitution to the complainant. The state board of dental examiners (board) then dismisses the complaint.

2. If an investigation of a complaint results in the conclusion that substandard care occurred, the board will: a) vote to admonish the dentist and require that a refund or restitution be made to the complainant; b) vote to dismiss the complaint upon a refund by the dentist; or c) vote to dismiss and suggest that the patient return to the dentist for continued care.

QUESTIONS PRESENTED:

1. Is the board obligated to investigate complaints which allege substandard care even if the dentist agrees to make a refund or provide restitution?

2. Is it appropriate for the board to resolve complaints in the manner outlined in Fact Situation Number 2?

ANSWERS:

1. Yes. The board is statutorily obligated to investigate the verified complaint of any person which alleges substandard care of a type covered under Arizona Revised Statutes (A.R.S.) section 32-1263, relating to grounds for disciplinary action. It is only after the required investigative process has been completed pursuant to an informal interview or the convening of an investigative committee and a recommendation has been forwarded to the board that the board may exercise discretion with respect to any verified complaint.

2. a) No. The board does not have any explicit or implicit statutory authority to admonish a dentist and require that restitution or a refund be made to the complainant.

The board's authority following completion of the required investigation of any verified complaint pursuant to A.R.S. section 32-1263.02 is limited to the institution of proceedings to suspend or revoke the license, dismiss the complaint or issue a decree of censure or probation against the licensee.

b) and c) Whether the licensee is willing to make a refund or not should have no bearing on a decision by the board to dismiss a complaint. A complaint should be dismissed only upon a finding that the evidence submitted does not warrant license suspension or revocation or any of the other statutorily prescribed less severe disciplinary sanctions.

DISCUSSION:

1. A.R.S. section 32-1263.02 prescribes required statutory prerequisites for the investigation and adjudication of complaints against dentists. Subsection B of this section provides:

> B. The board shall investigate the verified complaint of any person which appears to show the existence of any of the causes or grounds for censure, probation, suspension or revocation of a license as provided in section 32-1263 and such person's name shall not be disclosed unless such person's testimony is essential to the disciplinary proceedings conducted pursuant to this section. (Emphasis added.)

Use of the word "shall" in the above subsection imposes a mandatory directive on the board to investigate complaints made by any person which appear to show the grounds listed. It is an elementary principle of statutory construction that each word in a statute will be given effect. Sutherland, Statutory Construction, 4th Edition, section 46.06; State v. Superior Court for Maricopa County, 113 Ariz. 248, 550 P.2d 626 (1976). The words of a statute are to be given their common meaning unless it appears from the context or otherwise that a different meaning is intended. Ross v. Industrial Commission, 112 Ariz. 253, 540 P.2d 1234 (1975). It is clear that the board is obligated to investigate the verified complaint of any person against a licensee which fits within the confines of section 32-1263.

A.R.S. section 32-1263 prescribes several situations which can cover a complaint alleging substandard care,* although most complaints in this area would presumably be classified under unprofessional conduct. Section 32-1263 provides in full that:

> The board may invoke disciplinary action against any person licensed under this chapter for any of the following reasons:
> 1. Unprofessional conduct, as defined in section 32-1201.
> 2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.
> 3. Physical or mental incompetence to practice his profession.
> 4. Violation of or noncompliance with any provision of this chapter or of any rules or regulations promulgated by the board pursuant to this chapter.

*It is assumed in this memo that substandard care refers to care that is grossly below that expected, given prevailing standards in the profession.

Unprofessional conduct is defined under A.R.S. section 32-1201 as including "gross malpractice, or repeated acts constituting malpractice" and "any conduct or practice which does or would constitute a danger to the health, welfare or safety of the patient."

In the context of A.R.S section 32-1263.02, subsection C, investigation of a complaint against a licensee can follow one of the following two alternate procedures:

1. An informal interview with the licensed party against whom a complaint is filed.

2. Review by an investigative committee appointed by the board, consisting of both dentists and lay persons who need not be members of the board.

A.R.S. section 32-1263.02, subsection C further provides that, with respect to the informal interview and investigative committee, the procedures are as follows:

> 1. If an informal interview is requested, the president or his designee shall appoint a member of the board to act as the informal interviewing officer. The officer shall within sixty days of his appointment hold the interview and make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action which should be taken.
>
> 2. If the matter is referred to an investigative committee, it shall within ten days, unless good cause requires longer, begin to investigate the charges and shall exercise all the powers of the board in such an investigation. Within sixty days of referral, the committee shall make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action which should be taken. (Emphasis added.)

Again, the statutory mandate is clear. Both in the case of an informal interview or in the case of an investigative committee, the board, through its designees, is required to act and determine the nature of the verified complaint.

There is no statutory authority for the board to fail to investigate or provide for early termination of an investigation of any verified complaint which falls within the confines of A.R.S. section 32-1263 upon an agreement by the dentist to make a refund or provide restitution. Since administrative agencies are creatures of legislation without inherent or common law powers, the general rule applied to statutes granting powers to them is that they have only those powers that are conferred either expressly or by necessary implication. Sutherland, Statutory Construction, 4th Edition, section 65.02; Corporation Commission v. Consolidated Stage Company, 63 Ariz. 257, 161 P.2d 110 (1945); Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946). The board must follow the clear dictates of the Arizona Revised Statutes in exercising its administrative powers and duties.

What then are the options for the board once the required statutory processes relating to complaint investigations have been completed? In this connection, A.R.S. section 32-1263.02, subsection D provides:

> D. Within thirty days of receipt of the written report of the informal interviewing officer or the investigative committee, the board shall issue preliminary findings based on the written report. The findings shall be made as follows:
>
> 1. If the board finds that the evidence would, if proved true, warrant suspension or revocation of a license issued under this chapter,

formal proceedings for the revocation or suspension of the license shall be immediately initiated as provided in title 41, chapter 6, article 1.

2. If the board finds that the evidence does not warrant suspension or revocation of a license, the preliminary order shall either dismiss the complaint or decree censure or probation and the conditions under which the censure or probation are to occur.

Pursuant to A.R.S. section 32-1263.01, the board may, in issuing a decree of censure, require that restitution be made to the aggrieved party.

It is only after the investigative procedures mandated by A.R.S. section 32-1263.02 have been complied with that the board may dismiss the complaint. An agreement by the dentist to make a refund or provide restitution is not a relevant criterion for the board to consider in making this decision. The only statutorily relevant criterion under which the board may dismiss a complaint pursuant to A.R.S. section 32-1263.02, subsection D, paragraph 2 is a finding "that the evidence does not warrant suspension or revocation of a license" or any of the less severe disciplinary sanctions.

2. With respect to the authority of the board to take any of the actions described in Fact Situation Number 2, the following comments may be made:

a) As noted above, the board's administrative discretion, relating to disposition of complaints, is limited by A.R.S. section 32-1263.02, subsection D. Paragraph 2 of this subsection provides that the preliminary order of the board may only dismiss the complaint or decree censure or probation and the conditions under which the censure or probation are to occur. There is no explicit or implicit authority for the board to admonish the dentist and require that a refund or restitution be made to the complainant. It is only with respect to entering a decree of censure against a dentist that the board may order that restitution be made to the complainant.

In this memo, the assumption is made that admonish refers to a somewhat lesser form of disciplinary sanction than censure but something more than probation. Probation refers in part to an act of grace and clemency which may be granted to allow a person to escape the extreme rigors of a penalty otherwise imposed by law (Blacks Law Dictionary). An administrative board or agency as previously noted can exercise only such powers as are expressly given by statute or which follow by implication. If the Arizona legislature had intended for the board to have the authority to admonish a dentist in lieu of censure or probation, it must be assumed that the legislature would have so provided in A.R.S. section 32-1263.02. Thus, any board action to admonish a dentist is outside of the scope of its existing statutory authority.

b) and c) With respect to whether it is appropriate for the board to resolve complaints by (i) voting to dismiss the complaint upon a refund by the dentist, or (ii) voting to dismiss and suggesting that the patient return to the dentist for continued care, reference must again be made to A.R.S. section 32-1263.02, subsection D, paragraph 2. This paragraph provides:

> 2. If the board finds that the evidence does not warrant suspension or revocation of a license, the preliminary order shall either dismiss the complaint or decree censure or probation and the conditions under which censure or probation are to occur. (Emphasis added.)

There is no statutory authority for the board to consider whether the dentist is or is not willing to make restitution or a refund in making the decision to dismiss a verified complaint. The only relevant criterion is whether the evidence against the dentist relating to the alleged conduct after the required investigative procedures have been completed is sufficient. If such is not the case, then the complaint may be dismissed.

RECOMMENDATIONS:

If the board would find it beneficial to have the administrative authority to terminate the investigation of a verified complaint or decline to investigate a verified complaint upon refund or restitution by the licensed dentist to the complaining party, appropriate legislation should be recommended to the legislature.

Similarly, if the board were to deem it appropriate for complaints to be resolved in the manner detailed in Fact Situation Number 2, appropriate legislation should be recommended to the legislature. For the present, the board has no implicit or explicit authority to admonish a dentist and require that refunds or restitution be made nor does it have any authority to vote to dismiss a verified complaint on any other grounds than the fact that the evidence presented is insufficient to implement any of the statutorily prescribed disciplinary sanctions. Willingness of the licensee to make refund or restitution should not be construed to change the nature of the alleged conduct in question.

cc: Gerald A. Silva
Performance Audit Manager