STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

BOARD OF PODIATRY EXAMINERS

DECEMBER 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-19

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

December 22, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. William Friedman, President
Board of Podiatry Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Podiatry Examiners. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the President, William Friedman, D.P.M., is found on the yellow pages preceding the appendices.

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

Respectfully submitted,

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SUMMARY

In response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee, the Office of the Auditor General has conducted a performance audit as part of the sunset review of the State Board of Podiatry Examiners (Board), in accordance with A.R.S. §§41-2351 through 41-2379.

Arizona law defines podiatry as the subspecialty of medicine dealing with the "...diagnosis or medical, surgical,* mechanical, manipulative or electrical treatment of ailments of the human foot and leg...." "Leg" is defined as "that part of the lower limb between the knee and the foot."

The Board was first created as the Board of Chiropody in 1941 and was renamed the Board of Podiatry Examiners in 1964. Board duties include examining applicants for licensure, resolving complaints and promulgating rules and regulations.

Our review showed that the Board has not investigated and resolved complaints in a timely manner. The Board took an average of nearly eight months to resolve the 19 complaints it received and closed between January 1, 1978 and October 1, 1981. In addition, nine complaints still pending as of October 1, 1981, had been pending an average of more than 11 months. Limited funding and lack of full-time staff has forced the Board to rely on its own members, the Attorney General staff or volunteer podiatrists for any investigative actions needed to resolve complaints. In many cases the Board has not received adequate or timely responses from these sources. (page 9)

* Licensed podiatrists in Arizona are not allowed to amputate a leg, foot or toe or use other than a local anesthetic.

In addition, insurance companies are not reporting malpractice actions involving Arizona podiatrists within the time period required by law and the Board is not fully utilizing such information when it is received. As a result, the Board's effectiveness in regulating the profession is hampered. (page 22)

We found that improvements are needed in the preparation and grading of the Board's written examination. Specifically, the Board does not sufficiently revise examination questions. In addition, the Board has graded examinations in a questionable manner and incorrectly calculated scores. Further, the Board's decisions regarding grading procedures are not documented in its minutes. One solution to remedy these deficiencies would be for the Board to use a nationally prepared written examination in lieu of the written examination prepared by the Board. Currently 35 states either use the national examination instead of a state-prepared written examination or accept the national examination in lieu of their state-prepared written examination. (page 27)

Finally, our review revealed that Board records have not been maintained in an adequate manner in that 1) minutes of Board meetings do not record all legal actions, and 2) complaint and examination files are disorganized and incomplete. As a result, our ability to evaluate Board activities as part of the Sunset Review process was impaired. (page 35)

Consideration should be given to the following recommendations:

1. The Legislature adopt one of the following alternatives:
   a. Transfer the responsibility for regulating podiatrists to the Board of Medical Examiners and provide for representation of the podiatry profession by either 1) placing a podiatrist on the Board of Medical Examiners, or 2) creating a small advisory committee/board of podiatrists.

   b. Increase funding of the Podiatry Board in order to support more investigative activities.

2. The Legislature amend insurance statutes to require insurers to report malpractice claims or settlements to the appropriate Arizona regulatory boards and provide a penalty for noncompliance.

3. The Department of Insurance monitor compliance with the malpractice reporting provisions through its market conduct examinations or other regulatory programs.

4. The Board review malpractice information as it is reported and take appropriate investigative steps to determine if disciplinary measures are warranted.

In addition, consideration should be given to the following alternatives:

Alternative 1

The Legislature amend A.R.S. §§32-825, subsection C, and 32-827 to require the NBE (national examination) and eliminate the State written examination.

Alternative 2

- The Board more frequently revise examination questions for each examination date.
- The Board define procedures for determining when exam questions are unfair and consistently follow these procedures for each exam.
- Questions determined to be unfair should not be used on subsequent exams.
- The Board base a candidate's grade on the number of examination questions, exclusive of any questions determined to be unfair.
- The Board establish procedures to ensure that all examination questions are graded and that grades are calculated correctly.
- The Board adequately document in its minutes decisions regarding examination grading methods and questions found to be unfair.

Finally, we recommend that

1. ASBAO and the Attorney General's Office provide guidelines to the Board regarding the keeping of adequate meeting minutes.

2. ASBAO adopt and implement formal policies and procedures governing the management of all Board records.

INTRODUCTION AND BACKGROUND

In response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee, the Office of the Auditor General has conducted a performance audit as part of the sunset review of the State Board of Podiatry Examiners (Board), in accordance with A.R.S. §§41-2351 through 41-2379.

Arizona law defines podiatry as the subspecialty of medicine dealing with the "...diagnosis or medical, surgical,* mechanical, manipulative or electrical treatment of ailments of the human foot and leg...." "Leg" is defined as "that part of the lower limb between the knee and the foot."

The Board was first created as the Board of Chiropody in 1941 and was renamed the Board of Podiatry Examiners in 1964. Membership presently consists of three licensed podiatrists and two lay members (added in 1977) appointed by the Governor for five-year terms.

Board duties include examining applicants for licensure, resolving complaints and promulgating rules and regulations. Table 1 gives a summary of the volume of Board activity for the past four years.

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* Licensed podiatrists in the State of Arizona are not allowed to amputate a leg, foot, or toe or use other than a local anesthetic.

TABLE 1

BOARD WORKLOAD INDICATORS FOR
FISCAL YEARS 1977-78 THROUGH 1981-82*

	1977-78	1978-79	1979-80	1980-81	1981-82 (Estimated)
Licensing:					
Licensure applications	38	12	13	17	18
New licenses issued	8	3	12	19	16
Licenses renewed	107	130	111	133	133
Complaint Actions:					
Complaints handled	N/A	N/A	15	18	
Hearings held	1	1	9	5	
Licenses revoked/ suspended	1	1	1	1	
Censure/probation	N/A	N/A	N/A	2	
Consent agreements	N/A	N/A	8	1	

The Board derives its revenues from examination and license fees. These fees are $150 for examination, $75 for initial licensure, and $100 for license renewal. All monies are paid to the state treasurer, with 90% deposited in a podiatry fund for maintenance of the Board and enforcement of the statutes and 10% going to the general fund. Revenues and expenditures for fiscal years 1976-77 through 1981-82 are presented in Table 2.

* Sources: Budget requests for fiscal years 1977-78 through 1981-82 and Board licensing records.

TABLE 2

BOARD ACTUAL REVENUES AND EXPENDITURES FOR
FISCAL YEARS 1977-78 THROUGH 1980-81 AND ESTIMATED REVENUES AND EXPENDITURES
FOR FISCAL YEAR 1981-82*

	1977-78	1978-79	1979-80	1980-81	1981-82 (Estimated)
Revenues:					
Balance from prior year	3,200	2,600	4,100	2,500 **	6,200
Ninety percent of receipts	7,500	7,800	7,300	14,500	15,800
Total revenues	10,700	10,400	11,400	17,000	22,000
Expenditures:					
Personal services	3,600	2,300	1,300	1,100	1,500
Professional and outside services	2,100	2,500	6,600	8,000	10,600
Travel:					
In State	1,000	300	500	1,000	1,700
Out of State	400	300	-	-	-
Other operating expenditures	1,000	900	800	700	1,100
Total expenditures	8,100	6,300	9,200	10,800	14,900
Balance forward to next year	2,600	4,100	2,200 **	6,200	7,100

The Board of Podiatry Examiners has no full-time support staff. All support functions are provided by the Department of Administration through the Arizona State Boards Administrative Office (ASBAO). The ASBAO was created in 1976 to provide secretarial, clerical and other general support functions and office facilities to 11 small state boards and commissions. The Board of Podiatry Examiners first contracted for services from ASBAO in late 1977.

The Office of the Auditor General expresses its gratitude to the members of the Board of Podiatry Examiners and the staff of the Arizona State Boards Administrative Office for their cooperation and assistance during the course of our audit.

* Source: Budget requests for fiscal years 1977-78 through 1982-83.

** Budget documents show a discrepancy of $300 between the amount carried forward in fiscal year 1979-80 and the Balance from prior year for fiscal 1980-81.

SUNSET FACTORS

Nine factors are considered to determine, in part, whether the Board of Podiatry Examiners should be continued or terminated, in accordance with A.R.S. §§41-2351 through 41-2379.

SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE BOARD

The purpose of the Board is not stated explicitly in Arizona law. According to a statement provided by a Board member, the primary purpose or objective of the Board is to protect the health and well-being of the public by 1) evaluating the professional competency of podiatrists seeking to be licensed in Arizona, and 2) promoting continued competency and fitness by investigating complaints against podiatrists and taking disciplinary measures if needed.

SUNSET FACTOR: THE DEGREE TO WHICH THE BOARD HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The Board has failed to resolve complaints in a timely manner. In addition, malpractice actions against podiatrists are neither being reported to the Board in a timely manner by insurers nor fully utilized by the Board when reported. (page 9)

The Board has always operated under a relatively small budget. Estimated expenditures for fiscal year 1981-82 total only $14,900, the largest part of which is for contractual support services from the State Boards Administrative Office.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS OPERATED WITHIN THE PUBLIC INTEREST

Complaints filed with the Board generally have not been investigated in a timely manner and lengthy delays have occurred before disciplinary action was taken. In some cases it appears the Board's review of complaints was not thorough enough because it lacked investigative resources. (page 9)

In addition, the Board's licensing examination needs to be improved by upgrading the quality of its contents and by establishing more consistent and accurate grading procedures. (page 27)

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE BOARD ARE CONSISTENT WITH LEGISLATIVE MANDATE

Administrative rules and regulations promulgated by the Board are reviewed for consistency and legality and approved by the Attorney General prior to their implementation.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED INPACT ON THE PUBLIC

The Board has held public hearings on proposed rule changes. Public input at these hearings has been minimal. According to the Board president, most proposed rules have not been controversial. The small size of the profession (only about 100 practicing podiatrists in Arizona) and low public awareness of the Board probably accounts for the limited amount of public input. Only nine percent of respondents interviewed as part of a statewide public opinion survey were aware of the Podiatry Board. Although the Board meets the legal requirements for posting notices of meetings and hearings, it does not have funds for extensive publicity of rules hearings.

The Board notifies individual complainants before holding hearings or taking disciplinary action.

Minutes of Board meetings and transcripts of formal hearings are available for public inspection at the Board office.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

The Board receives a limited number of complaints. During the period January 1, 1978, to July 1, 1981, the Board received 35 complaints. As of October 1, 1981, 19 complaints had been resolved, nine were still pending, and seven had been referred to the Arizona Podiatry Association.

The Board does not have adequate staff or funds for investigative activities. As a result, complaints generally are not resolved in a timely manner and in some cases are not thoroughly investigated. (page 9)

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER ENABLING LEGISLATION

The podiatry statutes do not specifically address the subject of authority to prosecute criminal actions under the enabling legislation. In the absence of such a statement of authority, the County Attorney normally has authority to prosecute such actions.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

The Board has not initiated or openly supported legislative proposals in recent years. According to the Board president, the Board was under the impression that such was not an appropriate role for the Board. Individual Board members have been involved, however, as members of the podiatry profession in supporting legislative changes. No changes were made in the podiatry statutes in the 1981 legislative session. During the 1978, 1979 and 1980 sessions legislation passed covering the following topics:

- penalties for unlicensed practitioners,
- provisional licenses,

- misleading advertising,
- failure to renew licenses, and
- increases in license fees.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE BOARD TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

The Legislature should consider combining the regulation of podiatrists and medical doctors under a single board. (page 21)

In addition, insurance statutes should be amended to require insurers to report malpractice claims or settlements to the appropriate regulatory boards, and provide a penalty for noncompliance. (page 22)

Finally, the Legislature should consider amending A.R.S. §§32-825, subsection C, and 32-827 to require the National Board Examination and eliminate the State-written examination. (page 31)

FINDING I

THE BOARD OF PODIATRY EXAMINERS HAS NOT RESOLVED COMPLAINTS IN A TIMELY MANNER. IN ADDITION, THE BOARD HAS NOT RECEIVED MEDICAL MALPRACTICE INFORMATION, AS PRESCRIBED BY STATUTE.

The Board's handling of complaints is characterized by lengthy delays. The Board took an average of nearly eight months to resolve the 19 complaints it received and closed between January 1, 1978, and October 1, 1981. In addition, nine complaints still pending as of October 1, 1981, had been pending an average of more than eleven months.

The Board's lack of responsiveness in resolving complaints is due to

1. Untimely investigative and legal services from the Attorney General's Office;

2. The use of podiatrists as volunteer investigators; and

3. The failure of the Board to initiate investigations and follow up in a timely manner.

In addition, the Board has not received all medical malpractice information as prescribed in the statutes or utilized fully such information when it was received.

Excessive Time To Resolve Complaints

The Board has not investigated and resolved complaints in a timely manner. Since January 1, 1978, the Board has received 35 complaints against podiatrists. Of these 35 complaints, seven were referred to the Arizona Podiatry Association because they were fee disputes and thus deemed to be outside the Board's jurisdiction; and as of October 1, 1981, 19 had been resolved and nine were still pending. The 19 closed complaints were resolved in an average of nearly eight months, including one complaint which remained unresolved for 577 days. The nine complaints still open as of October 1, 1981, had been pending an average of more than eleven months, including four which had been pending 15 months or longer.

By way of contrast, the State of Arizona, Board of Medical Examiners (BOMEX) resolves complaints in an average of less than four months.

No Staff and Limited Budget

The Board relies on the Arizona State Boards Administrative Office (ASBAO) for clerical/secretarial support services, including receiving complaints from the public, typing Board minutes, processing license applications, and maintaining Board files. However, no investigative services are provided by the ASBAO under its present contract with the Board. The Board has no staff of its own to conduct investigations and very little funding to acquire such services. For example, only $800 was budgeted to cover investigation costs in fiscal year 1981-82 and only $300 was budgeted for such purposes in each of the fiscal years 1979-80 and 1980-81. Therefore, the Board must rely on the Attorney General's Office, podiatrists who are willing to serve without compensation, or Board members to provide investigative services.

Untimely Assistance From
Attorney General's Office

The Board has requested assistance from the Attorney General in two stages of the complaint process: 1) investigation, and 2) preparation for formal hearing. Our review of complaint-related information in Board minutes and files revealed that the Board has not received timely assistance in either area as the following cases illustrate.

CASE I

Nature of complaint: excessive fees; lack of informed consent.

Date	Action/Comment
April 12, 1979	Complaint received in Board office.
May 4, 1979	Discussed in Board meeting. Board member appointed to investigate.
May 17, 1979	Board member met with complainant.
June 20, 1979	Board heard oral report of Board member's interview. Both parties to be invited to a Board meeting and doctor's records to be obtained and reviewed.

Date	Action/Comment
June 25, 1979	Written report of Board member's interview received by Board.
September 20, 1979	Board letter to complainant requesting her attendance at next meeting.
September 25, 1979	Letter to Board from complainant explaining that she cannot attend due to lack of transportation.
October 5, 1979	Discussed in Board meeting. Attorney General representative to interview complainant and then report to the Board.
November 14, 1979	Discussed in Board meeting. Attorney General representative had not yet met with complainant due to priority of other matters.
January 30, 1980	Discussed in Board meeting. No report yet from Attorney General representative; Board President to contact representative about status of matter.
March 26, 1980	Discussed in Board meeting. Attorney General representative had not yet met with complainant; intends to have interview in near future.
May 9, 1980	Discussed in Board meeting. Change in Attorney General representative since last meeting. Attorney General investigator to bring complainant into Attorney General's Office for interview.
October 3, 1980	Discussed in Board meeting. Board concerned that complaint is over 15 months old. Another change in Attorney General representative since last meeting. New representative asked to meet with complainant and report to Board. (Attorney General representative interviewed complainant sometime between October 3 and November 19, 1980.)
November 19, 1980	Discussed in Board meeting. Board dismissed complaint on grounds that no violation of statutes had occurred.

Comment: At its October 25, 1979, meeting the Board requested its Attorney General representative to interview the complainant. Approximately one year later, some time between October 3 and November 19, 1980, this assignment was completed. During the interim the Board's Attorney General representative was changed twice. Total time to resolve complaint was nearly 19 months.

CASE II

Nature of complaint: Unlicensed practitioner; misleading advertising.

Date	Action/Comment
November 30, 1979	Complaint received in Board office.
January 30, 1980	Discussed in Board meeting. Attorney General representative directed to investigate.
March 26, 1980	Discussed in Board meeting. Attorney General representative reported that investigation had not begun, but would be conducted in near future.
May 5, 1980	Discussed in Board meeting. Change in Attorney General representative since last meeting; new representative to investigate and report at next meeting.
October 3, 1980	Discussed in Board meeting. Another change in Attorney General representative since last meeting. Investigation had begun, but had not yet located a witness.
November 19, 1980	Discussed in Board Meeting. Attorney General investigative report reviewed, but not adequate. Podiatrist to be appointed to investigate.
January 21, 1981	Discussed in Board meeting. Additional information still needed. Board agreed to ask a particular podiatrist to investigate. (Never appointed, according to Board President.)
March 18, 1981	Board meeting held; no mention of complaint in minutes.
May 13, 1981	Discussed in Board meeting. Discrepancies noted in Attorney General investigative report; a Board member will seek clarification from Attorney General investigator.
June 5, 1981	Discussed in Board meeting. Matter still awaiting further investigation; no additional information available yet.

(The Board did not meet between June and November 1981.)

Comment: At its January 30, 1980, meeting the Board directed its Attorney General representative to investigate the matter. A staff investigator in the Attorney General's Office was assigned the investigation some time between January 30 and October 3, 1980. The Board received the report and reviewed it at its November 19, 1980, meeting, however, the Board determined that the report was incomplete and agreed to appoint a podiatrist to investigate further. As of October 1, 1981, or 22 months after the Board received the complaint, it was still pending.

The above cases, as well as others reviewed, indicate that complaints turned over to the Attorney General staff for investigation have not received prompt response.

In addition, lengthy delays have also been experienced when the Board votes to hold a hearing and turns complaint-related documents over to its Attorney General representative in order to prepare for the hearing as the following case illustrates.

CASE III

Nature of complaint: Unnecessary surgery; inadequate care.

Date	Action/Comment
July 7, 1978	Complaint received in Board office.
August 8, 1978	Board letter to complainant requesting additional information before Board can proceed.
August 30, 1978	Board meeting held; no mention of complaint in minutes.
September 1, 1978	Second letter from complainant received in Board office.
October 6, 1978	Discussed in Board meeting. Board decided to appoint a particular podiatrist to investigate.
October 17, 1978	Board letter to podiatrist requesting him to investigate.
November 30, 1978	Investigative report received by Board.
January 31, 1979	Discussed in Board meeting. Investigator to be asked to submit his final recommendations before next meeting, and both parties to be invited to next meeting for an informal review of complaint.
May 4, 1979	Discussed in Board meeting. Parties had not been invited to meeting because of recommendation by Attorney General representative that two Board members meet with the parties and make recommendations to entire Board. The Board votes to suspend further interviews and hold a formal hearing.
May 16, 1979	All complaint-related documents were turned over to the Attorney General representative to prepare for the hearing.
May 21, 1979	Board notified parties that a formal hearing would be held.
May 23, 1979	Board sent letter to Attorney General representative reminding him to follow up on this complaint and other matters.
June 20, 1979	Discussed in Board meeting. No response received from Attorney General representative.

Date	Action/Comment
October 5, 1979	Discussed in Board meeting. Attorney General representative reported that he is reviewing documents but needs to contact podiatrist who did original investigation. Board expressed concern over length of time for resolving this complaint. Attorney General representative responded that he would give this case priority.
November 14, 1979	Discussed in Board meeting. Formal hearing to be held December 19, 1979.
December 1979	Hearing postponed. No indication in Board records as to reason for postponement.
January 30, 1980	Formal hearing held. Complaint dismissed; Board determined there was no violation of statutes.

Comment: At its May 4, 1979, meeting the Board voted to hold a formal hearing. All complaint-related documents were turned over to the Attorney General representative on May 16, 1979, in order to prepare for the hearing. On May 21, 1979, the Board notified both parties that a formal hearing would be held. However, six months passed before a hearing date was set. Total time to resolve complaint was 17 months.

According to the Board's current Attorney General representative, the observed delays in Attorney General response to Board requests for assistance were due to an overwhelming workload and competing priorities for Attorney General representatives, who oftentimes represent more than one board.

Use of Podiatrists As
Volunteer Investigators

The Board has most often relied on podiatrists for investigative services. These podiatrists are reimbursed for direct out-of-pocket expenses but are not compensated for their time. We found that, in general, this is not an effective means of obtaining investigative services because

1. Some complaints require a substantial number of hours to investigate for which the podiatrist receives no compensation;

2. Some investigations are not completed in a timely or adequate manner; and

3. Volunteer podiatrists are not trained as to how to investigate complaints.

In the last three years the Board has called upon at least seven podiatrists, exclusive of Board members, to conduct investigations. Interviews with five of these podiatrists revealed that two took an average of 15-20 hours to conduct each investigation, whereas the other three devoted only one or two hours to each investigation. A podiatrist who spent about 45 hours investigating three complaints said that he thought he would be paid for his time but learned later that he would not. This podiatrist, as well as two others we interviewed, expressed a reluctance to do additional investigations for the Board without compensation.

Because volunteer investigators can conduct investigations only as time and their schedules allow, investigations are not always done in a timely or adequate manner. For example, the Board requested a podiatrist to conduct an investigation to determine if a person was practicing podiatry without a license. According to the investigating podiatrist, he spent only one hour on the case, however, Board records show that the Board waited three months to receive his one-page report. Furthermore, when the Board received the report it was incomplete and insufficient for Board purposes. Although the report included a recommendation "...that the Board pursue its investigation of this individual...," the Board requested that the investigator provide more information but none was provided. Finally, the Board dropped the matter, frustrated over the lack of investigative resources to pursue it to a conclusion.

As shown above, the time devoted to investigations by podiatrists and the resultant quality of those investigations varied greatly from podiatrist to podiatrist. This appears to be partly a function of the fact that these volunteer investigators are not likely to be trained in investigative procedures.

Board Has Failed to Initiate Investigations or Follow up In a Timely Manner

Our review of complaint-related documents and Board meeting minutes also revealed that in some cases the Board has not initiated the investigative process in a timely manner or promptly followed up on information obtained. These delays in the complaint process can be attributed to one or more of the following factors:

- extended periods between Board meetings, sometimes as long as five months;
- no full-time staff to investigate or be responsible for information-gathering activities between meetings;
- lack of funds for immediate investigations, extra Board meetings, or additional hearings; and
- Board officers allowing meetings to pass without placing complaints on the agenda.

The following two cases illustrate several of these factors.

CASE IV

Nature of complaint: Unnecessary surgery recommended by two podiatrists suspected of collusion.

Date	Action/Comment
October 24, 1978	Complaint received in Board office.
November 29, 1978	Board meeting held; complaint not discussed because Board officers failed to add it to meeting agenda.
January 31, 1979	Discussed in Board meeting. Podiatrist to be appointed to investigate.
February 21, 1979	Letter sent to podiatrist requesting an investigation.
April 10, 1979	Investigative report received in Board Office.
May 4, 1979	Investigative report reviewed in Board meeting. All parties to be invited to next meeting to resolve informally.
June 20, 1979	Discussed in Board meeting; parties appeared. Complaint tabled to later meeting due to "...uncertainty of budgetary availability to pursue [complaint] at this time."
October 5, 1979	Board meeting held; no mention of complaint in minutes.

Date	Action/Comment
November 14, 1979	Discussed in Board meeting. Complaint dismissed "...on the basis that there was not sufficient evidence to support belief of probable violation of the podiatry statutes."

Comment: Three months passed from the date the complaint was received until it was discussed in a Board meeting and the investigative process was initiated. After the investigative report was reviewed and the parties appeared at a Board meeting (June 20, 1979), the Board tabled the matter due to budgetary constraints. According to the Board President, Board funds were critically low and did not permit additional meetings, hearings, or investigations. As a result, this complaint as well as several others were tabled to a later time. Note, however, that no additional information was gathered after the June 20, 1979, meeting regarding this complaint and yet five months later the Board disposed of it.

CASE V

Nature of complaint: Podiatrist not willing to release X-rays for a second opinion; insurance/fee dispute.

Date	Action/Comment
January 19, 1981	Complaint received in Board office.
February 17, 1981	Letter sent to complainant by Board President explaining that Board does not have jurisdiction over this complaint, but he will refer it to the professional association and the Board will formally consider jurisdiction at the next regular Board meeting.
March 18, 1981	Board meeting held; complaint not discussed because Board officers failed to add it to meeting agenda.
May 13, 1981	Discussed at Board meeting. Both parties to be invited to attend next Board meeting for an informal review of complaint.
June 5, 1981	Neither party could attend Board meeting, so matter deferred until next regular Board meeting.
August 10, 1981	Board received letter from podiatrist explaining his point of view.

Comment: This complaint initially appeared to be outside the Board's jurisdiction. However, when the Board finally reviewed the complaint some four months later, it decided that the complaint merited investigation. Without staff to contact the parties and gather information, the Board requested their appearance at a later meeting; however, neither party could attend. Therefore, as of October 1, 1981 - eight months after receipt of the complaint - the Board had received only minimal information on which to base a decision to pursue or dismiss the complaint.

Case II on page 12 also illustrates Board delays in following up on information received. In that case the Board agreed on November 19, 1980, to appoint a podiatrist to gather additional information. However, as of October 14, 1981, 11 months later, the Board had not appointed a podiatrist. As a result, as of October 1, 1981 - 22 months after receipt of the complaint - the matter was still pending. The Board President told us that additional investigative resources were not devoted to this complaint because it was not a high-priority item.

BOMEX Better Equipped
To Resolve Complaints

The Board of Medical Examiners (BOMEX) disposes of complaints in an average time of less than four months per complaint - less than half the average time taken by the Podiatry Board. BOMEX receives approximately 300 complaints per year, plus an additional 200-300 malpractice action reports from insurance companies; the latter are also investigated in a manner similar to complaints. BOMEX is able to resolve so many complaints in a timely manner because it has a support staff of 23.5 FTEs (1981-82 fiscal year), including four full-time investigators and three half-time staff physicians for investigative activities.

When a complaint is received in the BOMEX office, the staff associate director immediately reviews it and determines what investigative steps, if any, should be taken before the Board reviews the complaint. Normally, within a week of its receipt a complaint is assigned to a full-time investigator and/or physician consultant. Staff investigators interview witnesses, conduct pharmacy surveys and personally serve subpoenas and other legal papers required throughout the investigative and hearing stages. Part-time physician consultants are readily available for evaluating the appropriateness and quality of medical procedures when such are issues in complaints. An Attorney General representative located in the BOMEX office expedites the preparation of subpoenas and other legal papers. Upon completion of staff investigative activities, a comprehensive report - complete with recommendations - is prepared and given to a designated member of the Board. This Board member reviews the case, conducts an "investigational interview" with the doctor, if needed, and presents the case along with his recommendation to the full Board. Nearly all complaints are reviewed by the Board as a whole only once, at the point of final disposition.

Medical and Podiatry Boards Combined In 13 Other States

During our audit we identified at least 13 states which have only one board to license and regulate both medical doctors and podiatrists. Oregon was the most recent of these states to adopt such a structure, making the change in July 1981. We surveyed each of these 13 states to determine the nature and duties of the board. The results are shown in Table 3. We also contacted a representative of the podiatry association in most of these states to learn of the associations' opinions regarding a combined board. Their comments are also included in Table 3.

TABLE 3

REGULATORY STRUCTURE IN STATES WHICH COMBINE THE MEDICAL AND PODIATRY BOARDS

State	Practitioners Licensed By Board*	Board Membership	Membership of Podiatry Advisory Board or Committee	Duties of Podiatry Advisory Board or Committee	Number of Podiatrists	State Podiatry Association Comment	Pros or Cons Mentioned by Board or Association Contact: Pros	Cons
Alaska	MD, DPM, DO	5 MDs, 2 public	No advisory board		12	Association inactive		
California	Twelve related health professions (including podiatrists)	12 MDs, 7 public	Podiatrists and public	Examinations and complaints; actions reviewed by regular board	1,250	Generally satisfied but prefer to be independent	More prestige for podiatrists**	
Colorado	MD, DPM, DO	11 MDs, 2 public	5 DPMs	Prepare exam; advise regular board upon request	100	Generally satisfied; sees no other feasible alternative	Economies of scale**/***	Rivalry among professions**
Hawaii	MD, DPM	7 MDs, 2 public	Podiatrists	Prepare exam	10 practicing in state	Generally satisfied but prefer to be independent	Efficiencies in administering exams***	MDs uncomfortable regulating podiatrists*** Disagreement over scope of practice*** Board disinterested in podiatrists' needs**
Indiana	MD, DPM, DO, DC, PT	5 MDs, 1 DO, 1 DC	3 MDs, 4 DPMs	Peer review of complaints; advise regular board	400	Satisfied	Economies of scale*** More effective control over scope of practice violations***	
Louisiana	MD, DPM, DO	7 MDs	3 DPMs	Prepare and administer exam	65	Generally satisfied but prefer to be independent	More effective control over scope of practice violations*** Economics**	Board not sympathetic to podiatrists**
New Jersey	MD, DPM, DO, DC, LD	9 MDs, 1 DO, 1 DPM, 1 DC, 1 LD, 1 gov't rep 2 public	No advisory board		601	Satisfied	Economies of scale*** More prestige for podiatrists**	Disagreement over scope of practice***
Ohio	MD, DPM, DO, massage therapist, electrolysis	7 MDs, 1 DO, 1 DPM, 1 public	No advisory board		692	Satisfied	More prestige for podiatrists**	Law not enforced as vigorously as possible**
Oregon	MD, DO, DPM, PT, Emergency Medical Technician, Nurse Practitioner, Accupuncturists	6 MDs, 2 DOs, 1 public	1 MD, 3 DPMs, 1 public	Prepare and administer exam; advise investigators	100	No comment (changes in regulation too recent)	More resources for complaints** Economies of scale**	Lose professional identity** Disagreements with orthopedists**
Vermont	MD, DPM, PT	5 MDs, 1 PA, 1 DPM, 2 public	No advisory board		20	Association inactive		
Virginia	MD, DPM, DO, DC, PhD, PT, PA	10 MDs, 1 DPM, 1 DC, 1 PhD, 1 DO	No advisory board		60	Satisfied		Hard to be heard with so many professions represented**
West Virginia	MD, DPM	11 MDs, 2 DPMs, 2 public	No advisory board		60	Unable to contact association	More resources for disciplining podiatrists, if needed*** Economies of scale***	Different licensing qualifications complicate administrative and/or clerical tasks***
Wisconsin	MD, DPM, PT, PA	7 MDs, 1 DO, 1 public	3 DPMs, 1 public	Advise regular board on proposed changes to statutes and rules; Prepare and administer exam	263	Satisfied	Association with powerful MD profession** Self-supporting thru fees**	Podiatrists want a DPM on regular board***

* MD-medical doctors; DPM-podiatrists; DO-osteopaths; DC-chiropractors; PT-physical therapists; LD-laboratory directors; PA-physician's assistants; Ph.D-clinical psychologist.
** Association
*** Board

As shown by Table 3, a variety of regulatory structures exists among the 13 states with combined boards. Most of the combined boards license other practitioners in addition to medical doctors and podiatrists. The two most common means of giving representation to the podiatrists are 1) placing one or more podiatrists on the full board, or 2) creating an advisory board of podiatrists. The most frequently mentioned duty of an advisory board is to prepare and administer the licensing examination.

The podiatry associations contacted are generally satisfied with the combined regulatory structures. The most frequently mentioned advantages of this arrangement are 1) greater efficiency or economy of scale, and 2) increased prestige for the podiatry profession

BOMEX Could Absorb the Board of Podiatry Examiners With Only Slightly Greater Overall Costs

It is our opinion that the two boards could be combined with only slightly higher overall costs. The main benefit of such a consolidation would be a dramatic improvement in the timeliness and thoroughness of complaint resolution.

BOMEX executive director estimated that his staff could absorb the Podiatry Board workload with the addition of one secretarial position plus funds to pay for occasional consulting services from a podiatrist at the rate of approximately $150 per report. This estimate is based on the following assumptions:

- Podiatry licenses would be renewed on the same cycle as M.D. licenses.
- The same fee structure would be used for Podiatry and M.D. licenses.*
- A nationally administered examination would be used as the written licensing examination for podiatrists.

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* Current BOMEX fees: $200 for examination and licensure; $70 for license renewal. Current Board of Podiatry Examiner's fees: $225 for examination and licensure; $10 for license renewal.

Table 4 presents a comparison of estimated costs for regulating podiatrists under two possible arrangements: 1) existing structure, and 2) combining BOMEX with an advisory board of podiatrists to administer oral/practical examinations.

TABLE 4

COMPARISON OF CURRENT OPERATING COSTS
WITH COSTS UNDER COMBINED BOARDS

Cost Category	Existing Structure Estimated Expenditures For Fiscal Year 1981-82	Additional BOMEX Operating Costs If Boards Are Combined*
Personal services	$ 1,500	$12,100
Employee-related expenditures	0	2,300
Professional and outside services	10,600**	1,500
Travel (in State)	1,700	500
Other operating expenditures	1,100	1,300
Total	$14,900	$17,700 ***

As shown above, the costs of operating a separate podiatry board and a combined board are comparable.

Medical Malpractice

Information Not Reported or Utilized

Insurance companies have not consistently reported malpractice information to the Board, as required by state law. In addition, that information which has been reported has not been fully utilized by the Board in its regulation of the profession.

* Explanation of cost estimates: Personal services - $11,600 for a Secretary II position, grade 9, step 3; $500 per diem for advisory board members to administer exams. Professional and outside services - $1,500 for ten limited investigative reports from consulting podiatrists, at $150 per report. Travel (in State) - $500 for travel by advisory board members.

** $10,600 includes $9,000 for ASBAO services.

*** An additional $1,300 may be needed during the first year to acquire equipment for the Secretary II position.

Legislation passed in 1977 (effective August 27, 1977) requires insurance companies which provide malpractice coverage to report to the Board within 30 days all claims and settlements against podiatrists. A.R.S. §32-852.02, subsections A and C, state:

> "A. Any insurer providing professional liability insurance to a podiatrist licensed by the board pursuant to this chapter shall report to the board, within thirty days of its receipt, any written or oral claim or action for damages for personal injuries claimed to have been caused by an error, omission or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent or based upon breach of contract for professional services by a podiatrist.
>
> . . . . . .
>
> "C. Every insurer required to report to the board pursuant to this section shall also be required to advise the board of any settlements or judgments against a podiatrist within thirty days after such settlement or judgment of any trial court."

The Board is required to review all malpractice reports filed by insurers. It may take disciplinary action against the podiatrists involved in accordance with A.R.S. §32-852.02, subsection E:

> "E. The board shall institute procedures for an annual review of all records kept in accordance with this chapter in order to determine whether it shall be necessary for the board to take rehabilitative or disciplinary measures prior to the renewal of a podiatrist's license to practice."

In October 1977, soon after the law went into effect, the Board notified 14 insurance companies of the new law. From 1978 to 1980 the Board received notice of eight claims, at least three of which were not reported within the 30-day time limit specified in A.R.S. §32-852.02, subsection A.* Only one of these eight claims was connected with a complaint received by the Board from another source. There is no indication in Board files or meeting minutes that the other seven malpractice reports were reviewed by the Board or that investigative steps were taken to determine if disciplinary measures were warranted.

Between July and September 1981 the Board again contacted three insurance companies and asked them to report any claims or actions during the period July 1, 1980, through June 30, 1981. One company responded with a list of eleven claims, two of which had been reported individually at earlier dates. Of the remaining nine, seven had been filed with the insurer more than 30 days prior and five had been filed with the insurer in 1980 or earlier. Thus, the insurer had not reported within the time limits of the law. The Board President intends to review this latest list of claims at the next Board meeting.

According to the Legislative Council, insurers who fail to report claims or settlements, or report late, are not in compliance with the law. However, the law lacks enforcement provisions. Legislative Council issued an opinion regarding the medical malpractice reporting provisions of the BOMEX statutes which are nearly identical to the malpractice reporting provisions of the Podiatry statutes. That opinion, in part, states:

> "With respect to all claims made or settlements or judgments entered against a medical doctor from and after the effective date of A.R.S. section 32-1451.02, the burden on the professional liability insurer is clear. The insurer must report the statutorily required information in a timely fashion...."

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* In the other five cases we were unable to determine when the claim was reported to the insurer.

> "The basic problem in enforcing the reporting provisions of A.R.S. section 32-1451.02 is that the statutes do not prescribe any consequences for the failure to report. Failure to report in a timely fashion is not even declared to be unlawful and an offense...."

As a result of noncompliance by insurers with reporting requirements, the Board of Podiatry Examiners is not in possession of timely important information pertaining to the podiatrists it regulates. According to the Legislative Council, in the opinion rendered on the BOMEX statutes:

> "Failure of professional liability insurers to report claims filed or settlements or judgments entered pursuant to A.R.S. section 32-1451.02 will hinder the ability of BOMEX to regulate the medical profession as intended by the Legislature...."

The same can be said about the failure of insurers to report malpractice information involving podiatrists. For example, five of the 17 total malpractice actions reported to the Board since 1977 involved the same podiatrist and were filed as claims with the insurer over a three-year period. Such information may have been helpful to the Board had it been reported in a timely manner.

A possible solution to the failure of insurance companies to report malpractice data would be to make such practices a violation of the insurance code--possibly with a fine or other penalty for noncompliance. The Department of Insurance could then monitor and enforce the reporting provisions through its market conduct examinations and other regulatory programs. Further, under this system if nonreporting was found, action could be taken by the Department of Insurance, which is involved in the daily regulation of insurance companies and not in licensing boards.

CONCLUSION

The Board has not investigated and resolved complaints in a timely manner. Limited funding and lack of full-time staff has forced the Board to rely on its own members, the Attorney General staff or volunteer podiatrists for any investigative actions needed to resolve complaints. In many cases the Board has not received adequate or timely responses from these sources.

In addition, insurance companies are not reporting malpractice actions involving Arizona podiatrists within the time period required by law and the Board is not fully utilizing such information when it is received. As a result, the Board's effectiveness in regulating the profession is hampered.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Legislature adopt one of the following alternatives:
   a. Transfer the responsibility for regulating podiatrists to the Board of Medical Examiners and provide for representation of the podiatry profession by either 1) placing a podiatrist on the Board of Medical Examiners, or 2) creating a small advisory committee/board of podiatrists.
   b. Increase funding of the Board of Podiatry Examiners in order to support more investigative activities.

2. The Legislature amend insurance statutes to require insurers to report malpractice claims or settlements to the appropriate Arizona regulatory boards and provide a penalty for noncompliance.

3. The Department of Insurance monitor compliance with the malpractice reporting provisions through its market conduct examinations or other regulatory programs.

4. The Board review malpractice information as it is reported and take appropriate investigative steps to determine if disciplinary measures are warranted.

FINDING II

PROCEDURES REGARDING THE PREPARATION AND GRADING OF THE BOARD'S WRITTEN EXAMINATION NEED TO BE IMPROVED.

Arizona Revised Statutes (A.R.S.) §§32-824 and 32-825 require that applicants for a license to practice podiatry pass a written and a practical examination. An applicant meeting certain requirements may take an oral examination in lieu of the written examination. Our review of the written examination prepared and administered by the Board revealed that improvements need to be made in preparation and grading procedures because the Board

- Does not sufficiently revise examination questions,
- Grades examinations in a questionable manner,
- Does not document grading procedures in its minutes,
- Calculated incorrectly scores for one Board examination, and
- Did not grade the last 30 questions of a 75-question examination although candidates answered all questions.

One solution to remedy these deficiencies would be for the Board to use a nationally prepared written examination in lieu of the written examination prepared by the Board. Currently 35 states either use the national examination instead of a state-prepared written examination or accept the national examination in lieu of their state-prepared written examinations. In addition, some states license solely on the basis of the national examination.

Examination Questions Have Not Been Revised Sufficiently

The Board administers its written and practical examination twice a year. The written examination since October 1978 has consisted of 75 questions, most of which were multiple choice.

The six written examinations prepared and administered by the Board from October 1978 to May 1981 have consisted of many of the same questions and twice the exact same examination was administered for consecutive examination sittings. Table 5 shows the Board's repeated use of examination questions on the written examination.

TABLE 5

REPEATED USE OF EXAMINATION QUESTIONS IN EXAMS GIVEN BY THE BOARD FROM OCTOBER 1978 TO MAY 1981

Date Of Examination	Number Of Examination Questions	Number Of Questions Repeated From Preceding Examination	Percent
October 1978	75	0	0%
May 1979	75	75	100
October 1979	75	53	71
May 1980	75	75	100
October 1980	75	40	53
May 1981	75	68	91

It is generally accepted that the same examination should not be repeated, particularly if applicants retake the examination as is the case with the Board's written examination. For example, the National Board of Podiatry Examiners, who administers the National Podiatry Examination, prepares new questions for each national examination except for a series of repeated questions which are used to gauge the difficulty of the examination.

Examinations Graded In
A Questionable Manner

Our review revealed that the Board grades written examinations in a questionable manner in that 1) the Board's method of identifying unfair questions appears to be inconsistent, 2) questions the Board determined to be unfair were used in later examinations, and 3) scores are artificially inflated by adjusting all applicants' scores for unfair questions regardless of whether or not they missed the questions determined to be unfair. We also found one instance in which the Board did not correct all the questions on the examinations, and another instance in which seven of nine examination scores were calculated incorrectly.

When grading the October 1979, May 1980 and October 1980 written examinations, the Board added 9.8, 10.8 and 9.1 points respectively to each candidate's raw score to compensate for those questions the Board determined to be unfair. According to the Board, the criterion for identifying unfair questions was those questions missed by most candidates. However, our review revealed that the frequency of missed questions did not always correspond to the questions determined by the Board to be unfair for the October 1979 and May 1980 examinations.

Table 6 shows how the Board treated questions missed by four or more of the nine applicants that took the October 1979 written examination.

TABLE 6

BOARD TREATMENT OF QUESTIONS MISSED BY
FOUR OR MORE OF THE NINE APPLICANTS THAT TOOK THE
OCTOBER 1979 WRITTEN EXAMINATION

Question Number	Number Of Incorrect Responses	Question Determined To Be Unfair
11	7	Yes
17	6	Yes
21	6	Yes
23	6	No
37	6	Yes
60	6	No
16	5	Yes
27	5	No
28	5	No
52	5	Yes
67	5	No
68	5	No
12	4	No
14	4	No
22	4	No
31	4	No
35	4	No
42	4	No
43	4	No
47	4	No
65	4	Yes
75	4	No

As shown above, six applicants missed questions number 23 and 60, yet the Board did not determine these questions to be unfair; however, it did consider question number 65 to be unfair which was missed by only four applicants.

The Board often determines a question to be unfair and gives each candidate point credit for those questions. This procedure was followed by the Board for the October 1979, May 1980 and October 1980 examinations. However, questions the Board determined to be unfair were often used on successive examinations. For example, the Board determined that seven questions were unfair on the October 1979 Board examination. However, when the exact same examination was given in May 1980 these seven questions were not determined by the Board to be unfair, but eight other questions were determined to be unfair. Further, when the Board included in its October 1980 examination five of the 15 questions previously determined to be unfair, none of the five were determined to be unfair but seven other questions were.

As was noted earlier, the Board adds points to each applicant's raw score to compensate for questions determined to be unfair. In applying this practice the Board adds the same point value to each applicant's score regardless of whether the applicant missed the unfair question or not. This practice not only artificially inflates the grades of all applicants but may have resulted in several candidates passing the examination who did not achieve the required passing score. Board rules and regulations state: "All applicants...shall complete and pass a written examination...with a general average grade of not less than 75%...." Were it not for the Board awarding additional points, six applicants that passed the October 1979, May 1980 and October 1980 examinations would have failed.

Further, our review of the Board's May 1979 written examination revealed that the last 30 questions of the 75-question examination were not graded, although applicants were required to answer all 75 questions. Board members could not explain why the last 30 questions were not graded. One Board member commented that the Board may have licensed applicants who might have failed had all examination questions been graded.

Finally, our review of the Board's October 1979 written examination revealed that the Board incorrectly calculated the grades for seven of the nine applicants who took the test. As a result, one candidate who passed the examination should not have. Board members could not explain why the examination grades had been calculated incorrectly.

Inadequate Documentation Of
Examination Grading Procedures

A.R.S. §38-431.01 requires that Board legal actions be conducted at public meetings and documented in its minutes. A "legal action" is defined as a collective decision made by the Board. According to Legislative Council, such legal actions include decisions by boards regarding methods used to score examinations. A.R.S. §38-431.05 further provides that legal action taken in violation of these provisions shall be declared null and void. Our review of Board minutes from January 1979 to August 1981 revealed that its minutes do not include information as to how the Board determined grades, in spite of Board decisions to give extra points to all candidates based upon questions determined to be unfair. Also, information was not provided as to which questions were determined to be unfair and why.

Alternative To the Written
Examination Prepared By the Board

A report by the Educational Testing Service (ETS) at Princeton, New Jersey to the U.S. Department of Labor indicates that nationally prepared examinations are preferable to locally prepared examinations. It was stated in this report that national examinations are of higher quality than locally prepared examinations because locally prepared examinations are prepared by Board members who are skilled in their professions but seldom have expertise in the field of measurement.

On the other hand, questions on national tests are written by experts, reviewed by other experts and subjected to item analysis.

The National Board of Podiatry Examiners administers the National Board Exam (NBE) to all podiatry students. Part I of the NBE is taken by students after two years of podiatry school and Part II is taken in the last year of school. Each part of the NBE consists of over 500 questions and applicants are given 1 1/2 days to complete each part. Thirty-five states either use the NBE instead of a separate state written examination or accept the NBE in lieu of their state-prepared written examinations. At least four of these 35 states presently license applicants solely on the basis of the NBE (that is, no practical/oral examination is given), and two other states are in the process of adopting that policy.

Finally, we found that seven boards which regulate health professionals in Arizona use nationally prepared written examinations rather than preparing their own. Use of the NBE to replace the state written examination in Arizona would eliminate the problems of questionable grading procedures and revising examination questions. It should also be noted that the Board President is personally in favor of eliminating the State written examination by requiring the NBE instead. He states that this practice would simplify the licensing process.

Statutory changes would be necessary to use the NBE. A.R.S. §32-825, subsection C, allows the NBE to be substituted for the State written examination in conjunction with an oral and practical examination. However, A.R.S. §32-827 requires that an applicant, to qualify for licensure without written examination, must have practiced podiatry for five years in another state or country. These two sections would need to be amended to allow the NBE to replace the State written examination without requiring applicants to have practiced for five years in another state or country.

CONCLUSION

Procedures for the preparation and grading of the written examination administered by the Board of Podiatry Examiners need to be improved. Specifically, questions are not changed or revised frequently enough and questions determined by the Board to be unfair appear to have been selected in an arbitrary manner. Further, Board grading procedures result in artificially inflated grades. Also, the Board incorrectly calculated examination scores for its October 1979 examination resulting in one candidate passing who should have failed. In addition, the Board did not grade the last 30 questions of its May 1979 examination. Finally, Board decisions on grading procedures are not documented adequately in Board minutes. The NBE administered by the National Board of Podiatry Examiners is a viable alternative to the State written examination.

RECOMMENDATIONS

Consideration should be given to the following alternatives:

Alternative 1

The Legislature amend A.R.S. §§32-825, subsection C, and 32-827 to require the NBE and eliminate the State written examination.

Alternative 2

- The Board revise more frequently examination questions for each examination date.
- The Board define procedures for determining when exam questions are unfair and consistently follow these procedures for each exam.
- Questions determined to be unfair should not be used on subsequent exams.
- The Board base a candidate's grade on the number of examination questions, exclusive of any questions determined to be unfair.
- The Board establish procedures to assure that all examination questions are graded and that grades are calculated correctly.
- The Board adequately document in its minutes decisions regarding examination grading methods and questions found to be unfair.

FINDING III

BOARD RECORDS ARE INCOMPLETE, DISORGANIZED AND NOT IN COMPLIANCE WITH STATUTES.

State law establishes requirements regarding the documentation of legal actions and management of public records. The records of the Board of Podiatry Examiners are not adequately maintained in that 1) minutes do not record all legal actions, and 2) complaint and examination files are disorganized and incomplete. Inadequate records restricted our ability to evaluate Board activities as part of the Sunset Review process.

Arizona Statutes Require Board To Maintain Records

Arizona Revised Statutes relating to public records and open meetings require the Board to keep accurate records. A.R.S. §41-1346 defines agency responsibility for records management:

> "A. The head of each state and local agency shall:
>
> "1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
>
> "2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities." (Emphasis added)

Further, Arizona law requires each governing body in the State to hold open meetings and to document legal actions taken in those meetings. A.R.S. §38-431.01 states:

> "A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.

> "B. All pubic bodies...shall provide for the taking of written minutes or a recording of all their meetings. Such minutes or recording shall include, but not be limited to...[a]n accurate description of all legal actions proposed, discussed or taken...." (Emphasis added)

The term "legal action" includes discussions and deliberations by members of the public body in addition to the results of formal votes by the Board. An August 1975 opinion by the Arizona Attorney General defined legal actions as follows:

> "...it is our opinion that all discussions, deliberations, considerations or consultations among a majority of the members of a governing body regarding matters which may foreseeably require final action or a final decision of the governing body constitute 'legal action' and must be conducted in an open meeting...." (Emphasis added)

In a June 18, 1979, memorandum, Legislative Council also recommended that "legal action" be defined broadly:

> "...legal action should be construed broadly and is not only the mere formal act of voting but includes discussions and deliberations by members of the public body prior to the final decision."

A review of the Board's records reveals that adequate records have not been maintained.

Documentation Of Legal Actions In Board Minutes Has Been Inadequate

As required by A.R.S. §38-431.01, all legal actions of the Board must be conducted at public meetings and documented in the minutes. However, the Board's minutes do not adequately record all of the legal actions taken by the Board regarding the investigation and disposition of complaints. Table 7 reveals the extent of documentation in the Board minutes for complaints received and disposed of since January 1, 1978.

TABLE 7

DOCUMENTATION IN BOARD MINUTES FOR COMPLAINTS RECEIVED AND DISPOSED OF SINCE JANUARY 1, 1978*

	Yes	No	Total Complaints
Nature of complaint identified	9	10	19
A summary of discussion or deliberation	10	9	19
Disposition indicated	19	0	19
Grounds or basis for disposition explained	13	6	19

As shown in Table 7, the Board has not adequately or consistently documented its actions relating to the resolution of complaints in its minutes.

Board Files Are Disorganized and Incomplete

Since late 1977, the Board has contracted with the Arizona State Boards Administrative Office (ASBAO) for clerical support services, including receipt of complaints, maintenance of Board files and processing of license renewals. Meeting minutes are recorded by a Board member and typed by the ASBAO staff.

ASBAO has not adequately maintained the Board's examination and complaint files. For example, ASBAO does not maintain a central log or list identifying complaints received by the Board and the current status of each. In addition, examination and complaint files lack organization and there are inadequate controls over the removal of these files from ASBAO premises.

* Does not include seven complaints involving fee disputes which were referred to the Arizona Podiatry Association.

Audit Impaired By

Poor Record keeping

Incomplete minutes and disorganized files impaired our ability to evaluate Board activities. For example, excessive time was consumed by audit staff in locating complaint and examination documents which were not in designated files. Several files were eventually found in the possession of Board members or at other locations within ASBAO. Excessive time was also spent in reconstructing the history of Board actions with regard to particular complaints. In some cases, the absence of information such as the grounds or basis for disposition prevented us from evaluating the appropriateness of final Board decisions. The dispersion and disorganization of examination-related documents also made it difficult for us to determine if examination procedures were fair and consistent.

Guidelines For

Record keeping Are Needed

Failure to record complete minutes appears to be due to a lack of understanding of statutory requirements. The Board president was not aware that meeting minutes did not conform to statutory requirements. ASBAO and the Attorney General's Office could provide guidelines to the Board. Since 1976, three different members of the Board have kept minutes, underscoring the need for such guidelines.

CONCLUSION

Board records have not been maintained in an adequate manner in that 1) minutes of Board meetings do not record all legal actions, and 2) complaint and examination files are disorganized and incomplete. As a result, our ability to evaluate Board activities as part of the Sunset Review process was impaired.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. ASBAO and the Attorney General's Office provide guidelines to the Board regarding the keeping of adequate meeting minutes.

2. ASBAO adopt and implement formal policies and procedures governing the management of all Board records.

State of Arizona
Board of Podiatry Examiners

1645 W. Jefferson Room 418
Phoenix, AZ 85007

December 16, 1981

Douglas R. Norton, CPA
Office of the Auditor General
State of Arizona
Legislative Services Wing
Suite 200, State Capitol
Phoenix, AZ 85007

Re: Performance Audit of the Board of Podiatry Examiners

Dear Mr. Norton:

This letter is written as an official response to the above referenced audit. Your report is accepted in the spirit for which it was intended- that this Board recognizes that it is a constructive tool to be used for enhancing Board activity and thus better serving the needs of the State of Arizona. This response will focus on those areas of the report that the Board feels need further comment or clarification.

The Auditor General recommends that the Legislature consider adoption of the following alternatives for regulating podiatrists:

A. Transfer the responsibility to the Board of Medical Examiners.

B. Increase funding of the Podiatry Board in order to support more investigative activities.

If the order in which these occur also reflects the order of recommendation priority, this Board views alternative B as the preferred manner of resolving any and all podiatric regulation issues raised in the audit. The vesting of podiatry professional interests within the statutes regulating the practice of allopathic (M.D.) medicine (ie: BOMEX) would, in our opinion, be ill conceived. The mixing of these two medical disciplines at a regulatory Board level would cause an immediate loss of autonomy and podiatric representation at a time when our profession already is concerned about the general lack of action taken by allopathic hospitals, controlled by allopathic physicians, to affect podiatry representation on its staffs and privileges commensurate with the statute defined scope of podiatry practice.

Under Finding I the Board regrets that Case II was referred to as a complaint matter in its minutes whereas it was actually perceived as an inquiry made by a podiatrist. The minutes fail to reflect that this case was never given a high priority in view of the other complaint matters before it and that the investigation has now been completed and the inquiry answered to the satisfactory conclusion of the Board.

Finding I also states the "Board Has Failed to Initiate Investigations or Follow Up In a Timely Manner." One factor cited relates to extended periods between Board meetings; the Board has implemented a regularly scheduled monthly meeting during 1982 and also plans to conduct some Board business by telephone conference. Both of these avenues are measures that will assist in overcoming this deficiency.

As president I assume sole responsibility for the failure of placing certain complaints on specific meeting agendas during my tenure. This failure was usually due to establishing of priority items to come before a meeting in a given time period and on at least one occasion was a regretful oversight. Increased Board meeting time should also eliminate this problem.

Finally, under Finding I, the audit reports that the Board has not fully utilized information pertaining to eight malpractice claim reports filed with the Board from 1978 to 1980. One of these claims was being treated under a complaint process. Of the remaining seven, the Board members had never seen three of them until identified by your staff at our Executive Session of December 9, 1981; this was clearly an oversight of ASBAO to distribute the information received. One of the remaining four was not acted upon, by advise of Board counsel, because of a concern of possible conflict in a complaint process already before the Board involving the same practitioner. One of the remaining three involved a practitioner who was satisfactorily serving a one year probation, at the time the report was filed, for similar complaint matters. The other two were discussed by the Board with no action felt necessary.

The minutes fail to reflect the activity of the Board concerning these individual actions and thus the impression left to the Office of the Auditor General that the Board had not fully utilized information it did receive. This is not to mean that the Board denies this finding en toto and acknowledges that definitive policy procedures must and will be instituted to ensure Board activity on this matter as stipulated by statute.

Finding II deals with procedures regarding the preparation and grading of the Board's written examination. Information reported under this finding is of itself factual. However I would submit that all written exams were conducted, graded and analyzed with the objective that the Board would license those candidates who met the minimum requirements of a general grade of not less than 75%. The methodology of arriving at a final percentage grade has a number of variables and not withstanding math error should be applicable as deemed appropriate by the Board members grading same. The Board recognizes that it needs to simplify grading procedures.

Individual questions and ultimately exam validity can also be tested by various means. The frequency with which a question is missed or correct may not by itself establish validity within a single sample. Questions were often repeated in subsequent exams to test them among a different group of candidates.

None of the professional Board members feel they are experts in the area of testing generally but apply the skills they do have to the best of their ability and with the frailty to human error we all possess. The Board applied reporting of the November 1981 exam information to the minutes of December 9, 1981 in keeping with your alternative recommendations that the Board adequately document decisions regarding exam grading methods etc. Failure to comply in this regard in the past was strictly due to lack of knowledge that it should be done as opposed to hiding something.

Finding III that includes the statement that "Documentation Of Legal Actions In Board Minutes Has Been Inadequate" is really answered under "Guidelines For Recordkeeping Are Needed" where it reads that "failure to record complete minutes appears to be due to a lack of understanding of statutory requirements." This is absolutely true and I recommend that orientation of Board members take place upon appointment to deal with legal aspects of Board activity as well as administrative development and distribution of a Board procedural and policy manual.

Finally, there are some problem areas of activity concerning this Board at the ASBAO level. One is identified in this letter and several are reported in your audit. The Board recommends that the matters dealing with ASBAO be handled internally by them or by a higher administrative authority.

In summary I would like to state that the Board feels that this audit process has been a positive one. Deficiencies cited were often cummulative oversights which the Board will now have the opportunity to focus its attention on and improve its functional activity. Lastly, we feel that maintaining the present Board structure will best serve the needs of both the safety and welfare of the public and the podiatry profession in Arizona.

Sincerely,

William Friedman, D.P.M.

William Friedman, D.P.M.
President

WF/sml

cc: Board Members
Julia Smock, Assistant Attorney General