STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

BOARD OF MEDICAL EXAMINERS COMPLAINT REVIEW PROCESS

NOVEMBER 1982

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 82-7

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

November 30, 1982

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. M. David Ben-Asher, Chairman
Board of Medical Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Medical Examiners, Complaint Review Process. This report is in response to Senate Bill 1385 of the Thirty-fifth Legislature.

The blue pages present a summary of the report; a response from the Board of Medical Examiners is found on the yellow pages.

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

Respectfully submitted,

Douglas R. Norton
Auditor General

Staff: William Thomson
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Enclosure

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OFFICE OF THE AUDITOR GENERAL

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SUMMARY

The Office of the Auditor General has conducted a follow-up review of the State of Arizona, Board of Medical Examiners (BOMEX), complaint review process as required by Senate Bill 1385 of the Thirty-fifth Legislature, Second Regular Session. This review is based on findings contained in performance audit report number 81-11 prepared by the Office of the Auditor General on the Board of Medical Examiners.

The Board of Medical Examiners, established in 1913, is responsible for examining and licensing medical doctors in Arizona and protecting the public from incompetent and harmful practitioners. The Board is comprised of 12 members: 9 licensed physicians, 2 lay members and a licensed professional nurse from the Arizona State Board of Nursing.

Results of this follow-up review show that BOMEX has improved its complaint review process since Auditor General report number 81-11 was completed. BOMEX has improved its discipline of doctors with multiple complaints. Discipline is more consistent with California guidelines and statutory provisions in effect in Michigan that the Auditor General previously utilized as a benchmark in measuring BOMEX actions. Also, BOMEX has eliminated inappropriate Board member involvement in complaint investigations by barring Board members from participating in the investigative process. Previously, the Board was lenient in disciplining doctors with multiple complaints and Board members were unnecessarily involved in the actual complaint investigations.

Board communication with complainants and doctors has improved. A pamphlet explaining the Board's complaint review process is now sent to all complainants. In addition, a review of a sample of complaints indicates the Board is now properly using the informal interview procedure. Moreover, the number of formal hearings held has increased. However, the Executive Director improperly closed three minor complaints without full-Board review. We recommend that all opened investigations be presented to the Board for final disposition.

Finally, while most of the recommendations set forth in the Auditor General report of October 1981 appear to have been followed by the Board, the long-term effects of these changes have yet to be seen.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a follow-up review of the Board of Medical Examiners (BOMEX), complaint review process as required by Senate Bill 1385 enacted by the 35th Legislature in 1982. This review is based on findings contained in performance audit report number 81-11 prepared by the Office of the Auditor General on the Board of Medical Examiners dated October 1981.

The Board of Medical Examiners, originally established by the Legislature in 1913, is responsible for examining and licensing medical doctors in Arizona, renewing medical licenses annually and protecting the public from incompetent and harmful practitioners of medicine. The Board is comprised of 12 members: 9 licensed physicians, 2 lay members and a licensed professional nurse who is a member of the State Board of Nursing. All members are appointed by the Governor, except the licensed nurse member who is appointed by the Board of Nursing.

Audit Scope

The scope of this audit is limited to a review of the Board's complaint review process to determine if improvements have been made since the initial audit. Auditor General's report number 81-11 stated that the Board had been lenient in its disciplining of doctors with multiple complaints and that deficiencies existed in BOMEX complaint review procedures. This audit takes a second look at these two areas.

Because this review closely follows the first audit, the long-term effects of changes made by the Board have yet to be seen. In addition, the Board is now operating under new requirements and procedures as a result of Senate Bill 1385 enacted by the Legislature in 1982. Although implementation had begun on some of its elements, the statute was not in effect during the period of this review.

The Auditor General and staff express appreciation to the employees and members of the Board for their cooperation and assistance during the course of this audit.

FINDING

THE BOARD OF MEDICAL EXAMINERS HAS MADE IMPROVEMENTS IN ITS COMPLAINT REVIEW PROCESS.

The Board of Medical Examiners has made improvements in its complaint review process since Auditor General report number 81-11 was completed. BOMEX has 1) improved its disciplining of doctors with multiple complaints, 2) eliminated inappropriate Board member involvement in complaint investigations, 3) improved Board contact with complainants and doctors, and 4) used informal interviews appropriately and held more formal hearings. However, Board staff improperly closed three complaints without full-Board review.

Complaint Review Methodology

Disciplinary action for specific doctors was reviewed for the period July 1981 through June 1982. Initially, a list of 14 doctors with multiple complaints was developed. Of these 14 doctors, 8 had at least one substantiated complaint during the 1981-82 review period. Following the methodology employed in the previous audit, disciplinary actions taken in these cases were analyzed by comparing Board actions to minimum actions suggested by disciplinary guidelines used in California and requirements in Michigan statutes.

Our follow-up complaint study also consisted of reviewing a sample of complaints randomly chosen from 304 complaints received by BOMEX between July 1981 and June 1982. Of 60 complaints sampled, 41 had final action taken at the time of our review.

Disciplinary Actions

BOMEX has improved its disciplining of doctors with multiple complaints. Discipline of these doctors by BOMEX is more consistent with suggested discipline in California and Michigan. Also, BOMEX is currently developing disciplinary guidelines for mandatory penalties for multiple violations by a physician as required by Senate Bill 1385 enacted in 1982. These improvements should be interpreted with caution, however, since their long-term effects have yet to be seen.

Recent disciplinary actions by BOMEX compare more favorably to recommended actions of California and Michigan. In our follow-up, 62.5 percent of the actions reviewed had discipline equal to or greater than the minimum discipline required in California's disciplinary guidelines or Michigan statutes (see Table 1). Only 25 percent of the actions reviewed were found to be lenient. This review shows an improvement from our prior report of 33 percent more actions being equivalent to those suggested by the two other states.

TABLE 1

REVIEW OF DISCIPLINARY ACTIONS
INVOLVING DOCTORS WITH MULTIPLE COMPLAINTS

	Initial Audit 1981	Follow-up Review 1982
BOMEX discipline equal to or greater than minimum required in other states	29.5%	62.5%
BOMEX discipline less than minimum required in other states	70.5	25.0
No minimum discipline requirement found in other states	--	12.5

BOMEX statistical reports show that the Board took more disciplinary action and stricter action in fiscal year 1981-82 than in prior years. Total actions against doctors in 1981-82 increased significantly as shown in Table 2. In fiscal year 1981-82, 32 total actions were taken including 2 license suspensions and 5 revocations. In fiscal year 1980-81, only 13 total actions were taken and in 1979-80, only 14 actions were taken. Only one license was permanently suspended or revoked during the two-year period 1979 through 1981.

TABLE 2

BOMEX COMPLAINT ACTION
FISCAL YEARS 1979-80 THROUGH 1981-82

	1979-80	1980-81	1981-82
Complaints received	*	*	304
Letters of Concern**	*	88	128
Disciplinary action:			
Censures	2	1	3
Probation NEW	6	10	9
Stipulation NEW	4		10
Summary suspension	2	1	3
Suspension			2
Revocation		1	5
Total	14	13	32

Source: BOMEX statistical summary

* Data on complaints received prior to fiscal year 1981-82 are available by calendar year only. Complaints received by calendar year are as follows: 1979-224; 1980-319; 1981-314.

** Letters of Concern are not considered an official disciplinary action by the Board.

BOMEX is currently developing guidelines in compliance with legislation passed in 1982 which requires the Board provide the legislature with recommended mandatory penalties for multiple violations by a physician. The deadline for providing this information is January 1, 1983. These guidelines are designed to further improve the disciplinary process by prescribing appropriate actions in cases involving repeat violations.

Board Member Involvement

Inappropriate and unnecessary Board member involvement in complaint investigations has been eliminated. Board members currently review investigative reports but are barred from actively participating in investigations of complaints.

Auditor General report number 81-11 stated that Board members were unnecessarily involved in the investigative process and overburdened with assignments. Board members participated in investigational interviews and acted directly on Board dispositions resulting in an appearance of partiality in some cases.

Board members currently review investigative reports but are not allowed to participate directly in the investigative process. A staff physician at BOMEX prepares a report on the complaint, listing his findings and recommendations. This report is reviewed by a Board member who makes a second recommendation for disposition. At the Board meeting, the staff physician presents the complaint to the Board. The reviewing Board member is provided an opportunity to give his comments but is barred from making motions or voting on matters related to the complaint.

Board Contact

Board contact and communication with complainants and doctors has also improved. Complainants are contacted by the Board and currently are provided a pamphlet explaining Board investigative procedures. Also, doctors are properly notified of the complaint filed against them.

The Board contacts all patient/consumer complainants through routine correspondence. Patient/consumer complaints receive acknowledgment letters and letters of disposition. Also, in April 1982 the Board prepared a pamphlet describing the complaint investigation process at BOMEX which is enclosed with letters of acknowledgment. The pamphlet includes information on complaint processing procedures and a list of possible disciplinary actions which can be taken by the Board.

It appears all doctors receive notification of complaints within statutory time limits. All complaints in our sample acted upon by the Board had a letter sent apprising the doctor of the complaint.

Board Procedures

Our follow-up review revealed no inappropriate use of informal interviews by the Board. In addition, the number of formal hearings held by the Board has increased.

Auditor General report number 81-11 stated that the Board held informal interviews rather than formal hearings even when case circumstances warranted a formal hearing. Informal interviews are not appropriate in very serious cases or when the doctor involved is uncooperative. During the 18-month period of January 1979 through June 1980, only 4 formal hearings were held compared to 49 informal interviews.

Our follow-up review found no cases in which informal interviews were inappropriately used by the Board. In five cases sampled, the Board held an informal interview with the doctor involved in the complaint. The facts in these five cases did not indicate that formal hearings would have been more appropriate.

Moreover, the number of formal hearings held by the Board has increased. Seven doctors were involved in formal hearings during the 12-month period reviewed compared to four doctors during the prior 18-month review period. This amount represents an increase in the percentage of hearings to complaints received from 1.1 percent during January 1979 through June 1980 to 2.3 percent during fiscal year 1981-82. The Board attributes this increase to the 1981 statutory authorization to utilize hearing officers in lieu of convening the Board for formal hearings.

Unauthorized Complaint Closures

Board staff closed complaints without proper Board authorization or approval. Files had been closed after investigations had begun but before the Board or any of its members reviewed the complaint. Neither BOMEX statutes nor a Board resolution on the duties of the Executive Director allows the closing of complaint matters by staff.

Our sample of complaints during fiscal year 1981-82 included three minor complaints that had been administratively closed by the Executive Director after investigations were begun but before the Board or a Board member reviewed the case. Usually, a written investigative report would be prepared by a staff physician, then a Board member would be assigned by the Executive Director to review the report and make a recommendation on disposition of the case.

Neither BOMEX statutes nor Board authorizations allow the closing of complaint matters by BOMEX staff. In June 1982, the Board passed a resolution setting out administrative duties of the Executive Director. These duties included the initiation of investigations but not closure of investigations. When Auditor General staff questioned one case, the Executive Director reopened the file and requested Board direction on the matter.

CONCLUSION

Since the Auditor General report on BOMEX dated October 1981, BOMEX has improved its complaint review process. However, the long-term effects of these changes have yet to be seen.

RECOMMENDATION

All complaints received and investigations opened should be presented to the Board for final disposition.

Governor
Bruce Babbitt
Chairman
M. David Ben-Asher, M.D.
Vice Chairman
James E. Brady, Jr., M.D.
Secretary
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Executive Director
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THE ARIZONA BOARD OF MEDICAL EXAMINERS
5060 north 19th avenue, suite 300 • phoenix, arizona 85015

November 23, 1982

The Board of Medical Examiners would like to formally indicate its appreciation to the Auditor General's staff for developing a report which recognizes the positive efforts that have been made by the Board to carry out its statutory mandate to protect the public through licensure, regulation, rehabilitation and discipline of the State's allopathic physicians. This is particularly gratifying since the Auditor General is not noted for its recognition of any positive efforts by state agencies. The Board is aware that the realities of Sunset Review require the Auditor General to find fault, but the zeal with which the Auditor General undertook the original review of the Board left a substantially "skewed" impression of how effectively this Board was carrying out its statutory responsibilities.

The Board was pleased to see that the Auditor General felt the Board was more consistent with California's disciplinary guidelines and Michigan's statutory penalties. However, the Board finds the use of these "benchmarks" anecdotal, since neither California nor Michigan rank as high in disciplinary action per thousand physicians as does Arizona. The following table, which reflects the 1980 annual statistics as prepared and published by Pulitzer prize winning reporter, Joel Brinkley, in the Louisville, Kentucky Courier Journal newspaper, well illustrates the point.

1980 Ranking	State	Medical Doctors in 1980	Medical Bd Disciplinary Actions	Actions per 1,000 Doctors
1	Oregon	5,232	82	15.7
2	New Jersey	10,567	124	11.7
3	Wyoming	610	6	9.8
4	Arizona	5,859	42	7.2
5	Alabama	5,229	30	5.7
6	Virginia	10,476	47	4.5
7	New Mexico	2,292	10	4.4
8	Michigan	15,571	56	3.6
9	Washington	8,450	29	3.4
10	Missouri	8,508	29	3.4
11	Mississippi	3,015	10	3.3
12	Maryland	13,282	43	3.2

13	Georgia	8,549	26	3.0
14	Florida	21,131	57	2.7
15	South Carolina	4,607	12	2.6
16	Texas	24,058	58	2.4
17	Nevada	1,233	3	2.4
18	Oklahoma	4,194	10	2.4
19	Kansas	4,043	9	2.2
20	California	60,752	122	2.0
21	North Carolina	9,742	19	2.0
22	Colorado	6,391	12	1.9
23	Rhode Island	2,163	4	1.8
24	Alaska	627	1	1.6
25	Iowa	3,917	6	1.5
26	Minnesota	8,297	12	1.4
27	Utah	2,570	3	1.2
28	Louisiana	6,997	7	1.0
29	Tennessee	7,686	8	1.0
30	Ohio	18,781	20	1.0
31	Wisconsin	8,005	8	0.99
32	Delaware	1,047	1	0.96
33	Idaho	1,134	1	0.88
34	Pennsylvania	23,742	19	0.80
35	Massachusetts	16,661	13	0.78
36	New Hampshire	1,701	1	0.59
37	Kentucky	5,212	3	0.58
38	Maine	1,927	1	0.52
39	Illinois	22,228	10	0.45
40	New York	49,978	22	0.44
41	Connecticut	8,322	3	0.36
42	Indiana	7,527	2	0.27
43	South Dakota	884	0	0
44	North Dakota	956	0	0
45	Montana	1,153	0	0
46	Vermont	1,215	0	0
47	Hawaii	2,265	0	0
48	Nebraska	2,509	0	0
49	West Virginia	2,857	0	0
50	Arkansas	3,070	0	0
51	Dist. of Columbia	4,164	0	0

Perhaps the Auditor General would not have utilized the guidelines of California and the statutory penalties of Michigan as benchmarks if it had first evaluated these statistics. Additionally, the Auditor General failed to recognize that in 12.5% of

the cases included in its survey, the Arizona Board of Medical Examiners took disciplinary action where Michigan and California would not. (See Table 1 page 1)

In view of the foregoing, the Board will continue to deliberate with caution, act with decisiveness and oppose incompetence and unprofessional conduct with firmness, while at the same time evaluating the circumstances of each case and assuring that the public is not placed in jeopardy.

With regard to the Auditor General's finding that the Executive Director inappropriately closed 3 complaints before the Board reviewed the cases, the following details of these cases will reflect the appropriateness of the action. However, since the Auditor's staff has expressed concerns about these actions, the Board will consider at its December 1982 meeting the feasibility of allowing the Executive Director the authority to file matters for information where the investigation was instituted by the Board's staff and showed no violation of the Medical Practice Act. The above would not include the authority to file matters for information which were received as a result of written complaints or malpractice claims.

Case 1

Physician A had been on probation, for substance abuse, until September 1979. In October 1981, the Drug Enforcement Administration (DEA) advised the Board's staff that the doctor had ordered 1 oz of pharmaceutical cocaine for office use.

The Executive Director questioned the physician's use of cocaine in light of his specialty and past history of substance abuse and, therefore, directed the Board's investigative staff to proceed to the doctor's office, together with DEA agents if necessary, to 1) obtain a log of patients who received the cocaine, as well as their medical records, 2) check all narcotics maintained in the office, and 3) obtain a biological fluid sample.

As the investigators entered the building to carry out this directive, the pharmacist in Doctor A's building inquired as to what was happening. The pharmacist was asked if he had supplied any more cocaine to Doctor A besides the 1 oz, which was earlier reported to BOMEX. The pharmacist reported that the doctor had only ordered the 1 oz of cocaine, which was stored in the phar-

macy safe. The drug was being utilized in preparing a 60cc solution, applied topically in treating office patients and dispensed only in small amounts. The solution contained only a minute amount of cocaine.

The Board investigators sighted the 1 oz bottle of cocaine taken from the safe and found that an appropriate amount was missing, which coincided with the pharmacist's report in which he stated that he had prepared the topical solution once.

Recognizing at this point that the question which initiated the directive, namely, that Doctor A was personally using cocaine, was ill-founded, the investigator called the Executive Director for instructions on how to proceed in this matter. The Executive Director determined to terminate the investigation. Accordingly, this matter was not presented to the Board. Indeed, there was nothing to present.

Case 2

In October 1980, while conducting an unrelated pharmacy survey, a Board investigator found that Doctor B was prescribing Preludin 75mg for weight control. This information was provided to the Executive Director, who directed that an in-depth survey be conducted into Doctor B's prescription-writing habits, as his prescription practices had been criticized by BOMEX on a previous occasion.

A pharmacy survey of 34 pharmacies revealed 43 prescriptions for 39 patients. 36 patients received prescriptions for 30 Preludin in compliance with the Board's Amphetamine Regulation. However, one patient received 2 prescriptions for 30 Preludin. The other prescriptions were within accepted limits.

The doctor was notified in writing (see attached October 27, 1981 letter) of the Board's regulation limiting amphetamine prescriptions to 30 days for the treatment of exogenous obesity. The Doctor replied on October 28, 1981 that he would discontinue all prescriptions of amphetamines for weight control. The Executive Director, at this point, administratively closed the file.

On September 17, 1982 the Auditor General's staff pointed out to the Executive Director that he had no authority to resolve this matter. Recognizing the Auditor General's difficulty in evaluat-

ing actions taken based on common sense, the Executive Director reopened the case and immediately referred the matter to the Board for its consideration. Also a pharmacy survey was carried out which indicated in the seven-month period from April through October 1982, the doctor had written no prescriptions for Schedule II drugs.

Case 3
On June 1, 1982, an aide to an Arizona congressman requested the Board's assistance in "persuading" two doctors to release certain medical information for use in establishing the disability claim of a constituent for Social Security Administration benefits.

Upon inquiry by the Board, it was found that one of the physicians, who had retired from the practice 6 months earlier, had already notified the aide that he could not find the consultation report which he prepared for an insurance company, but if she contacted the insurance company, the report could easily be obtained. The attached June 18, 1982 letter appropriately reflects the substance of this matter.

Likewise, the second physician had released records to the patient and his attorney prior to the aide's request. The physician's office told the aide of the above situation as well as the fact that she could get the record from the patient or from his attorney. Yet as a result of the Board's inquiry into this matter, the doctor sent additional copies of the sought-after medical records to the aide, once the appropriate release of records was submitted.

The Director believed that there was no violation to report to the Board as this matter had been resolved prior to the Board's involvement.

Hopefully, with the above details, a more valid assessment of the Auditor's concerns can be made.

In conclusion, the Board is willing to place its recent record against any other state medical board as well as against any other health regulatory agency in Arizona. The Board's administrative, investigative, and licensure procedures, record manage-

ment and statutes are a model for other agencies. The Board believes the Auditor General's report, to a large degree, recognizes the superiority of its operations.

M. David Ben-Asher, M.D.
Chairman

Douglas N. Cerf
Executive Director

MDB:DNC/jh

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THE ARIZONA BOARD OF MEDICAL EXAMINERS
5060 north 19th avenue, suite 300 • phoenix, arizona 85015

October 27, 1981

Re: Amphetamine Regulation - BOMEX (10-22-81)

Dear Doctor

The Arizona Board of Medical Examiners is in receipt of the enclosed copy of a summary of your prescriptions since June 1981.

At this point in time, the Board would like to remind you of the Amphetamine Regulation which covers the drug Preludin, and reads as follows:

R4-16-10 Amphetamine Regulation

A. The Arizona Board of Medical Examiners after reviewing available data and information, finds that the use of amphetamines and similar sympathomimetic drugs has a high potential for abuse and dependence.

B. Oral Amphetamines - The Board finds the use of oral amphetamines and similar sympathomimetic drugs in the treatment of exogenous obesity should be restricted to short term (less than one month) adjunctive therapy in patients whose obesity has proven refractory to other measures.

C. Injectable Amphetamines - The Board finds there are no therapeutic indications for the use of injectable amphetamines or similar sympathomimetic drugs.

D. It is therefore, the opinion of this Board that the prescription of oral amphetamines beyond these limitations, or any use of injectable amphetamines, is a conduct or practice which does or might constitute a danger to the health, welfare or safety of the patient or the public, and thus constitutes unprofessional conduct and is a violation of A.R.S. §32-32-1401.10(t) as amended.

The Board has notified you in the past of this regulation, and your compliance with it will eliminate the need for Board monitoring or your participation in an investigational interview.

Though the summary appears to indicate that you are currently only writing for a thirty (30) day supply of the Preludin, one patient, however, received two prescriptions for thirty (30) single unit dosages of Preludin on July 16, 1981 and August 24, 1981. The Board advises that you review your records and if you are providing prescriptions for weight control, that you reevaluate these prescriptions, as you may be in violation of the current amphetamine regulation.

Your compliance with the Board's current rules and regulations would be urged and greatly appreciated.

If you have any questions regarding this matter, please do not hesitate to contact me directly, either by letter or phone.

Sincerely,

BOARD OF MEDICAL EXAMINERS
STATE OF ARIZONA

Douglas N. Cerf
Executive Director

DNC:jb

Enclosure

October 28, 1981

The Arizona Board of Medical Examiners
5060 N. 19th Avenue Suite 300
Phoenix, Arizona 85015

Re: October 27, 1981 letter

Dear Sirs,

I would like to inform you that since September 15, 1981, I have discontinued writing prescriptions for amphetamines for weight control.

However, I would like to thank the Board for reminding me of the amphetamine regulation at this point.

Sincerely,

/dap

OCT 30 1981

June 18, 1982

Mr. Douglas Cerf, Executive Director
Arizona Board of Medical Examiners
5060 North Nineteenth Avenue, Suite 300
Phoenix, Arizona 85015

Dear Mr. Cerf:

This is in reference to the claim which has been lodged against me by the office of

Strangely enough, after forty-six and a half years of medical practice, I have to wait until eight months after my retirement before someone lodges the first complaint that has ever been made about my professional conduct.

I hardly know how to answer this. Obviously, who lodged the complaint, read my report in which I told her that I remember examining this particular patient for an insurance company but was completely unable to find a copy of my report to him. This happens rarely, take my word for it, but I am sure you will appreciate the fact that it can happen. I further suggested to her, in an effort to be as cooperative as I could, that if she obtained the name of the insurance company from the patient, and I am sure he would have it, all she had to do was write to them and ask them for the original report that I sent to them. Instead of doing that, she writes you a letter which will get her absolutely nowhere at all.

I am impressed by her use of the term "release of information to a Congressional office". In this particular case, if instead of a Congressional office, this request was made by the President of the United States, the Prime Minister of Great Britain, the Prime Minister of West Germany, the President of France, and, for good measure, the President of the Soviet State, it still wouldn't get them anywhere. I can't furnish information that I simply can't find.

I cannot think, in line with the request, of any appropriate action which could be taken by your agency to persuade (and she doesn't even spell this correctly) me to release information that I am unable to put my hands on.

BOMEX

JUN 22 1982