STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

# ARIZONA STATE BOARD OF PHARMACY

**AUGUST 1983**

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 83-14

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STATE OF ARIZONA
OFFICE OF THE
# AUDITOR GENERAL

August 22, 1983

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Joseph J. Rowan, President
Arizona State Board of Pharmacy

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona State Board of Pharmacy. This report is in response to a January 18, 1982, 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 Arizona State Board of Pharmacy is found on the yellow pages.

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

Sincerely,

Douglas R. Norton

Douglas R. Norton
Auditor General

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## SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona State Board of Pharmacy in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes §§41-2351 through 41-2379.

The Arizona Territorial Board of Pharmacy, which later became the Arizona State Board of Pharmacy, was established in 1903. The Board currently has seven members appointed by the Governor, two of whom are lay members. The Board licenses pharmacists and interns, issues permits to drug outlets of all types, inspects permittees, investigates complaints, conducts disciplinary proceedings and educates the public and pharmacists on drug abuse and pharmacy laws. The Board has a full-time staff consisting of an executive secretary, four inspectors and four office personnel. Board revenues are obtained from fees for examinations, licenses and permits.

### Enforcement Effectiveness (see page 13)

The Board has significantly improved its enforcement program over the past 2-1/2 years. The Board has increased the number of disciplinary actions taken and has improved complaint investigation procedures. However, further progress can be made. The Board can improve complaint investigation thoroughness and documentation. In addition, there is no requirement that insurance companies report to the Board information regarding malpractice insurance claims against pharmacists. Finally, the Board doesn't regularly disseminate information on the curtailed prescription-writing privileges of disciplined medical practitioners to pharmacists.

To increase the thoroughness of complaint investigations, the Board should interview doctors or inspect physical evidence when appropriate. A more

thorough review of complaint investigations by the chief inspector would ensure that these steps were taken when necessary. In addition, care should be taken to file copies of all correspondence and other documentation in the appropriate files.

The insurance code should be amended to require insurance companies to report malpractice insurance claims and settlements to the Board. In addition, the statutes of other health Boards whose practitioners write prescriptions should be amended similarly to those of the Board of Medical Examiners to require disciplinary action to be reported to the Board. The Board should then find an acceptable method to regularly disseminate this information to pharmacists.

Inspection Efficiency (see page 23)

Pharmacy inspections can be performed in a more efficient and less costly manner. The chief inspector's time is inefficiently utilized as a result of his assigned inspection territory. Inspectors inappropriately use 24-hour assigned State motor pool vehicles for commuting. Additionally, travel claims are not always in compliance with established Department of Administration (DOA) travel policies.

The chief inspector should be reassigned to a Phoenix-area inspection territory. In addition, either the inspectors' use of State vehicles for commuting should be eliminated, or the State should be reimbursed by the inspectors for commuting costs. Finally, travel claims should be reviewed more closely for compliance with DOA travel policies.

Fee Structure (see page 33)

Portions of the Board of Pharmacy's fee structure and related procedures should be changed. The Board's statutory exam fee structure is not based on costs, and it results in some applicants' exam fees being subsidized by other applicants. In addition, the Board's grade certification fee is not clearly specified in the pharmacy statutes.

The Board's statutes (A.R.S. §32-1924.A.) should be amended to eliminate the provision for a free second examination and make the examination fee structure more flexible. In addition, the grade certification fee currently charged by the Board should be statutorily authorized.

## INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona State Board of Pharmacy in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The six-member Arizona Territorial Board of Pharmacy was established in 1903 for the purpose of licensing pharmacists. When Arizona became a state in 1912, the Board's title was changed to the Arizona State Board of Pharmacy.

The Ninth Legislature (1928-1929) amended the pharmacy laws to require the registration of pharmacists. The Board's membership was increased to seven pharmacists appointed by the Governor to four-year terms. In 1935, the 12th Legislature provided for new definitions and expansion of Board authority, and the Board was reduced to 5 members serving 5-year terms on a staggered appointment basis. For the first time, college graduation was required to become a pharmacist, whereas previously practical experience was considered of greater importance.

The pharmacy laws underwent major modifications in 1951 and 1970. Except for minor changes legislated over the past 13 years, the 1970 rewrite is the current law. In 1976, the Board was again expanded to seven members, two of whom are lay members.

Currently, the Board licenses pharmacists and pharmacy interns. An applicant must be a graduate of a recognized school of pharmacy and have 1,500 hours of intern training before being able to take the two required exams (a two-day national exam sponsored by the National Association of

Boards of Pharmacy and a jurisprudence exam on Arizona pharmacy law). Upon receiving acceptable exam scores, the applicant is licensed as a registered pharmacist.* The Board also issues permits for all drug outlets (pharmacies, hospital pharmacies, patent and proprietary outlets** and general dealers***), drug wholesalers and drug manufacturers (see Table 1 for a summary of the Board's licensing and enforcement activities for the past four years).

In addition to its licensing duties, the Board inspects permitees, promulgates rules and regulations, investigates complaints, conducts disciplinary proceedings and educates pharmacists and the public on drug abuse and pharmacy laws. The Board's full time staff consists of an executive secretary, four inspectors (one of whom is based in Tucson) and four office personnel.

Revenues are obtained from fees for examinations, licenses, permits and renewals of licenses and permits. The percentage of such revenues deposited in the State Board of Pharmacy Fund to be used for the Board's operations is 90 percent, and 10 percent is deposited in the State General Fund. The Board's revenues and expenditures for fiscal years 1978-79 through 1981-82 and the budget for fiscal year 1982-83 are shown in Table 2.

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* In 1983, A.R.S. §32-1922 was changed to allow foreign graduates the opportunity to be examined.

** Patent and proprietary (P & P) outlets are nonpharmacy outlets that sell only over-the-counter nonprescription drugs. These outlets are often part of supermarkets. P & P permits are renewed biennially at a fee of $100.

*** General dealer outlets are very limited over-the-counter outlets. They can sell only those types of nonprescription drugs specified in the Board's rules and regulations (R4-23-602 as authorized by A.R.S. §32-1930). The general dealer permit is a nonexpiring permit that costs $10. It is designed for very low-volume operations such as gas stations that sell items such as aspirin and cough drops for the convenience of the public.

TABLE 1

LICENSING AND ENFORCEMENT ACTIVITIES FOR FISCAL YEARS 1979-80 THROUGH 1982-83

| | Fiscal Year 1979-80 | Fiscal Year 1980-81 | Fiscal Year 1981-82 | Fiscal Year 1982-83 |
|---|---|---|---|---|
| Licenses and Permittees as of June 30: | | | | |
| Total pharmacists registered | 3,774 | 4,026 | 3,974 | 4,100 |
| Pharmacy interns | 259 | 178 | 125 | 130 |
| Pharmacies (all types) | 628 | 645 | 659 | 665 |
| Wholesale drug firms | 54 | 61 | 57 | 58 |
| Manufacturers | 14 | 13 | 10 | 11 |
| Patent or proprietary outlets | 2,442 | 2,528 | 2,563 | 2,580 |
| General dealers | 864 | 817 | 846 | 850 |
| Activity for fiscal year: | | | | |
| Full audits of drug accountability | 49 | 39 | 26 | 50 |
| Pharmacy inspections (including hospitals) | 609 | 692 | 570 | 700 |
| Manufacturer inspections | 11 | 8 | 2 | 16 |
| Wholesaler inspections | 27 | 41 | 32 | 60 |
| Patent and proprietary inspections | 286 | 203 | 312 | 300 |
| General dealer inspections | 18 | 13 | 20 | 30 |
| Complaints investigated | 87 | 74 | 57 | 100 |
| Hearings held | 7 | 11 | 28 | N/A |
| Informal conferences held | -0- | 43 | 74 | N/A |

Sources: Board of Pharmacy fiscal year 1983-84 budget request (hearing and conference data supplied by Board executive secretary).

TABLE 2

REVENUES AND EXPENDITURES FOR FISCAL YEARS 1978-79 THROUGH 1981-82
AND ESTIMATED REVENUES AND BUDGET DATA FOR FISCAL YEAR 1982-83

| | Actual Fiscal Year 1978-79 | Actual Fiscal Year 1979-80 | Actual Fiscal Year 1980-81 | Actual Fiscal Year 1981-82 | Estimted Revenues and Budget Fiscal Year 1982-83 |
|---|---|---|---|---|---|
| Number of FTEs | 8 | 8 | 8 | 8 | 9 |
| Revenues: | | | | | |
| Licenses | $292,298 | $199,297 | $304,321 | $258,775 | $410,600 |
| Fees | 59,850 | 47,845 | 45,200 | 50,575 | 53,700 |
| Other | 1,800 | 1,356 | 2,287 | 2,449 | 3,600 |
| Total | 353,948 | 248,498 | 351,808 | 311,799 | 467,900 |
| 90 percent credited to Pharmacy Fund | 318,553 | 223,648 | 316,627 | 280,619 | 421,110 |
| Additonal revenue - 100 percent credited to Pharmacy Fund (not subject to 90/10 provision)* | 777 | 1,484 | 1,384 | 1,849 | 3,210 |
| Total revenue credited to Pharmacy Fund | $319,330 | $225,132 | $318,011 | $282,468 | $424,320 |
| Expenditures: | | | | | |
| Personal services and employee-related expenses | $187,771 | $205,191 | $219,820 | $242,561 | $287,100 |
| Professional and outside services | 6,809 | 13,720 | 13,450 | 11,527 | 7,500 |
| Travel - | | | | | |
| In-State | 25,258 | 27,073 | 30,141 | 28,445 | 26,600 |
| Out-of-State | 5,679 | 3,957 | 6,214 | 9,665 | 5,000 |
| Other operating | 25,549 | 29,917 | 38,981 | 41,982 | 41,500 |
| Equipment | 1,480 | 1,657 | 4,762 | 12,965 | 19,800 |
| Refunds | 1,355 | 833 | 1,644 | 509 | |
| Total expenditures | $253,901 | $282,348 | $315,012 | $347,664 | $387,500 |
| Excess of revenues credited to Pharmacy Fund over expenditures | 65,429 | (57,216) | 2,999 | (65,196) | 36,820 |
| Ending fund balance | $277,786 | $220,570 | $223,748 | $158,280 | $195,100 |

Sources: Board of Pharmacy Annual Reports, State of Arizona Appropriations Reports and Board of Pharmacy's fiscal year 1983-84 budget request

* Includes revenue from book and manual sales and grade certification fees.

## Scope of Audit

Our audit of the Board of Pharmacy addressed issues set forth in the 11 Sunset Factors in A.R.S. §41-2354. Additional detailed work was conducted on the following issues:

- Whether the Board's enforcement activities are effective and at an adequate level,
- Whether the Board's inspection process is conducted efficiently, and
- Whether the Board's fee structure is appropriate.

As part of our review of Board enforcement activities, we examined the need to keep pharmacists informed about the prescription-writing privileges of doctors and other practitioners. In addition, we conducted a limited review of four other pertinent issues: 1) Board inspectors' relationships with the Arizona Pharmacy Association, 2) statutes related to civil penalties or censure, 3) regulation of patent and proprietary outlets, and 4) the title of doctor. These four issues are discussed on pages 39-42. Areas for future audit work are indicated on page 43.

The Auditor General and staff express appreciation to the members and staff of the Arizona State Board of Pharmacy for their cooperation and assistance during the course of our audit.

## SUNSET FACTORS

In accordance with A.R.S. §§41-2354, the Legislature should consider the following 11 factors in determining whether to continue or terminate the Board of Pharmacy.

1. Objective and purpose in establishing the Board

Although not specifically expressed in State law, the Board's objective and purpose is to protect the public in relation to the practice of pharmacy and the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances. A.R.S. §32-1904 establishes the Board's functions as 1) promulgating rules and regulations, 2) licensing pharmacists and interns, 3) issuing permits to drug outlets, 4) conducting investigations/inspections, and 5) taking enforcement/disciplinary action.

In addition, the Board is striving, in cooperation with other boards and agencies, to curb forged prescriptions and overprescribing of controlled substances.

2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which the Board has operated

The Board has generally met its objective and purpose effectively and efficiently. The Board has effectively examined and licensed qualified applicants and registered pharmacies, wholesalers, manufacturers and over-the-counter drug outlets. The Board's licensing and registration system has been recently improved with the introduction of word processing equipment.

The Board's inspection policies and procedures are also adequate, although improvements in inspection efficiency are needed (see Finding II, page 23). Complaint investigation procedures appear to

have improved significantly over the past three years, however, further improvement is still possible (see Finding I, page 13). In addition, the Board's disciplinary proceedings have generally been effective. The number of hearings held and actions taken by the Board has increased over the past three years.

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

The Board's examination, licensing, inspection and enforcement functions serve the public interest since effective regulation of the pharmacy profession protects the public from untrained, incompetent or unscrupulous pharmacists.

4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

During the past two years the Board has reviewed and updated its rules and regulations to ensure consistency with its legislative mandate. However, the statutory basis for one Board regulation governing grade certification fees needs to be clarified (see page 36).

5. 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 impact on the public

The Board has notified professional associations and interested individuals of all meetings where regulations were discussed. All proposed regulations and regulatory changes are discussed in open meetings prior to drafting. The Board appears to have complied with Open Meeting Law requirements. Minutes have been adequately maintained and notice has been properly given.

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

The Board appears to be diligent in following up and resolving complaints. Complaints received by the Board are investigated in a timely manner by a Board inspector. The Board has taken strict enforcement action on complaints and inspection-related violations. Although investigation procedures have been strengthened over the past three years, some improvement is still needed (see page 13).

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

A.R.S. §32-1996 establishes criminal penalties for violation of the pharmacy statutes. The following offenses are specified:

- Violation of any provision of pharmacy statutes (chapter 18) without intent to defraud or mislead and not involving counterfeit drugs--Class 2 misdemeanor (with intent to defraud or mislead--Class 5 felony);

- Violation of §32-1965.4 involving manufacture, sale or holding for sale a counterfeit drug or forgery or misrepresentation of any drug identification device--Class 2 felony; and

- Obtaining a license by misrepresentation or fraudulently representing oneself as a pharmacist--Class 2 misdemeanor.

Violations may be prosecuted by the Attorney General or by a county attorney.

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

The Board has generally addressed deficiencies in its enabling statutes. During the past two years the Board has proposed or supported several statutory changes. Recent statutory enactments or amendments include 1) the addition of civil penalties to A.R.S. §32-1927, 2) the requirement for continuing education, 3) the requirement of a code identifying the drug and manufacturer on all legend drug products, 4) the enactment of the Uniform Controlled Substances Act, and 5) the enactment of imitation controlled substances legislation (1982 HB 2052). Other 1983 legislation that the Board supported includes 1) SB 1256 concerning clinical pharmacist practitioners, 2) HB 2159 concerning look-alike drugs, and 3) HB 2187 concerning qualifications for pharmacist registration.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset law

Additional changes are needed in the Board statutes. The legislature should consider:

- Amending the insurance code to require reporting of malpractice claims and settlements to the Board (see page 17),

- Amending A.R.S. §32-1924 to make the Board's exam fee structure more flexible and fair to all applicants (see page 33), and

- Enacting statutory authorization for the grade certification fee currently charged by the Board (see page 36).

In addition, the Legislative Council has recommended that the Legislature consider amending A.R.S. §31-1928.A. to conform with A.R.S. §32-1927.B. with regard to civil penalties and censure (see page 41).

Finally, the Board supports an increase in fees to cover higher operating costs.

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

The termination of the Board would significantly harm the public health, safety and welfare. The practice of pharmacy has the potential for harm, as evidenced by the Board's complaint files and the generally acknowledged danger that drugs can pose. The Board's licensing and enforcement activities are essential to assure that pharmacists are qualified, competent and ethical.

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

The level of regulation exercised by the Board appears to be appropriate.

## FINDING I

### THE BOARD'S ENFORCEMENT EFFECTIVENESS CAN BE FURTHER IMPROVED.

The Board's enforcement procedures could be improved to further reduce the potential for public harm. The Board has made a considerable effort to protect the public over the past 2-1/2 years. Additional improvements are needed, however, in the area of complaint investigation thoroughness and documentation. In addition, insurance companies are not required to report malpractice claims and settlements to the Board. Finally, an effective means for disseminating information on disciplined medical practitioners needs to be established.

### Board Effort to Protect the Public

The Board is making a commendable effort in the area of public protection. The Board's record of disciplinary actions has improved considerably over the past 2-1/2 years. Although documentation of investigative actions has also improved and complaints are being resolved in a timely manner, the Board realizes the need for further improvement in complaint investigations.

The Board's record of disciplinary actions has significantly improved over the past 2-1/2 years. For example from July 1980 through February 1983, the Board revoked 13 licenses and permits, suspended 16 licenses and put 3 licensees on probation. In comparison, from July 1978 through June 1980, the Board revoked only 1 license, suspended 8, and placed 2 licensees on probation.

Complaint investigation procedures and documentation have also improved over the past 2-1/2 years, and complaints are handled in a timely manner. Complaint reports from the past 2-1/2 years were found to be better documented and maintained than reports from an earlier period. In addition, the Board acts on the premise that complaints often identify

problem practitioners, therefore complaint investigations often result in follow-up inspections and disciplinary proceedings. Although inspections constitute the bulk of the Board's enforcement activities, complaints are given a higher priority. Generally complaints are investigated within one or two days of being received and are resolved in a timely manner. Seventy-four complaints were investigated in fiscal year 1980-81 and fifty-seven in 1981-82.

The Board's executive secretary is responsible for much of the Board's improvement in enforcement effectiveness. After assuming office, he initiated efforts to implement procedures to expedite complaint resolution.

Complaint Investigation Adequacy

Although significant improvements have been made, complaint investigations are not always thorough and adequately documented. The Board's existing complaint investigation procedures do not ensure the thoroughness of all investigations. In addition, the documentation in complaint reports is sometimes incomplete.

Current Procedures - The Board's current complaint investigation procedures include the following nine steps: 1) transfer information received onto the complaint form, 2) assign an inspector, 3) personally contact the complainant, 4) visit the pharmacy and talk to the pharmacist involved, 5) complete the investigation and file the report with the chief inspector, 6) send the report to the Board review officer,* 7) send the review officer's recommendations** to the chief inspector for his

* A Board member acts as the Board review officer. Board members (excluding lay members) are rotated into this position on a 90-day cycle.

** Possible recommendations which could be made by the review officer include: no further action, sending a letter to the pharmacist, calling the pharmacist into a hearing or informal conference, requiring a follow-up inspection of the pharmacy or taking legal action.

implementation, 8) correspond with the complainant and pharmacist involved, and 9) file all forms and correspondence in the appropriate files.

Thoroughness Can Be Improved - Some additional complaint procedures need to be added to improve the thoroughness of investigations. The Board's current procedures should be supplemented with the following additions.

1. Board inspectors should, when necessary, visit or contact the doctor who was responsible for writing the prescription involved. The following case example demonstrates the need for personal contact with the responsible doctor.

   Case I

   A complaint was made against a pharmacist for incorrect directions on a prescription label. The label should have indicated one tablet twice daily, but instead it read two tablets twice daily. The doctor called the prescription in by telephone. The pharmacist involved maintained that the doctor was unsure of the quantity to prescribe. An authoritative source "Facts and Comparisons," indicated the labeled dosage was double the usual dose for the initial day of therapy but within the daily dose for children under 12. However, despite the dosage being technically safe, the patient was unable to stand after the second dose. The Board inspector determined that the prescription was filled and labeled correctly. However, the doctor was never contacted to determine if the label directions were per his instructions. The Board sent the pharmacist in question a letter indicating that he acted correctly.

2. Complaint procedures should include verification of physical evidence. The inspector should personally inspect all physical evidence involved in a complaint, including prescription records, labels and drugs. Case II illustrates the need for this procedure.

Case II

A complaint was received involving an incorrectly filled prescription alleging that the pill strength was four times the prescribed dosage. The resulting report was inadequate in that there was no documentation that the inspector physically verified the actual contents of the prescription and no indication that the prescribing pharmacist was contacted. In addition, the inspector did not include his conclusion or disposition in the report. The only conclusion present in the report was that of the supervising pharmacist of the pharmacy involved.

3. Complaint procedures should include a review by the chief inspector of completed complaint investigations. Complaint reports need to be reviewed for completeness and if necessary should be returned to the inspector for further follow-up work. Cases I, II and III show the need for review* and further follow-up work by the Board inspectors.

Case III

The Board received a telephone complaint concerning an incorrectly filled prescription. This complaint was resolved. However, during the course of the investigation, the inspector noted two other drugs that had been incorrectly substituted. No other notation is made concerning these other two drugs in the report and no follow-up work was ever conducted.

* The points contained in Cases I, II and III illustrate the need for increased review of complaints by the chief inspector as a part of his administrative duties as noted in Finding II (see page 23).

Inadequate Documentation - Complaint report documentation is not always adequate. Copies of the following documentation are sometimes not included in the complaint files:

- Correspondence with the complainant,
- Relevant prescriptions or labels,
- Correspondence with the pharmacist who is the subject of the complaint, and
- Recommendations from the Board review officer and final disposition of the complaint.

If this information were in the complaint files, it would allow Board personnel to easily determine all relevant information concerning a complaint. In addition, copies of complaint reports were not always found in the appropriate pharmacy or pharmacist files. Proper filing of report copies in these files helps Board personnel determine when multiple complaints have been received against a particular licensee or permittee.

Malpractice Insurance Reporting

The Board's enforcement effectiveness could be improved if insurance companies were required to report instances of malpractice claims and settlements to the Board. Current statutes do not require mandatory reporting of malpractice insurance claims. Requirements for mandatory reporting of malpractice insurance claims are already in the statutes of six Arizona health regulatory boards.

Insurers are not currently required to report dangerous or incompetent practitioners to the Board. Mandatory reporting laws increase a regulating board's ability to review and take disciplinary action on cases of alleged incompetence or unprofessional behavior. The lack of such statutes in the Pharmacy Practice Act allows the Board to remain unaware of problem practitioners and possible negligence. An example illustrates this possibility:

A customer sued a pharmacy alleging that labels on two prescriptions were reversed. As a result the customer had to be admitted to a hospital. The Board's attention was drawn to this problem when attorneys involved in the case called the Board for information. The executive secretary is positive that the Board would not have become aware of this situation had the attorneys not contacted the Board. The Board is currently considering the need for disciplinary action.

Legislation requiring mandatory reporting of malpractice insurance claims is already in the statutes of six Arizona health regulatory boards: Board of Medical Examiners (A.R.S. §32-1451.02), Board of Dental Examiners (A.R.S. §32-1263.03), Board of Chiropractic Examiners (A.R.S. §32-930), Board of Optometry (A.R.S. §32-1745), Board of Podiatry Examiners (A.R.S. §32-852.02) and Osteopathic Board of Registration and Examination in Medicine and Surgery (A.R.S. §1855.02). In comparison, the Board of Pharmacy's impact on public health and safety is at least equal to these boards. An incompetent or negligent pharmacist could harm the public just as seriously as a doctor, dentist or chiropractor.

If such a reporting requirement is considered for the Board of Pharmacy, the requirement should be placed in the insurance statutes rather than the Board statutes. Previous performance audits have repeatedly found that licensing boards have difficulty in obtaining compliance by insurers with malpractice reporting requirements. In Report No. 81-19, A Performance Audit of the Board of Podiatry Examiners, we addressed this issue and noted:

> "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. . . ."

Relay of Practitioner
Information to Pharmacists

Information on the prescription-writing privileges of medical doctors and health practitioners disciplined by other boards is not routinely reported to practicing pharmacists. The Board has not complied with the BOMEX statutory requirement pertaining to notification of restrictions on medical doctors' prescription privileges. In addition, other health boards need similar requirements to supply pharmacists necessary information concerning their disciplined practitioners.

BOMEX Statutory Requirement - In Report No. 81-11, A Performance Audit of the Board of Medical Examiners, we stated that pharmacists lack awareness of BOMEX disciplinary actions:

> "During the course of the audit, we noted that pharmacists appeared not to be aware of disciplinary actions taken by the Board. As a result, some pharmacists did not know that a physician had been restricted from prescribing certain controlled substances. After audit staff discussed the information with the Board it contacted the Board of Pharmacy, which has agreed to publicize in its quarterly newsletter, sent to all licensed pharmacists, information regarding those doctors with restricted prescription-writing privileges.

As a result, legislation was enacted in July 1982 to ensure this information would be supplied to pharmacists. A.R.S.§32-1451.I. states:

> "If the board acts to restrict any doctor of medicine's prescription writing privileges the board shall notify the state board of pharmacy of such restriction. The state board of pharmacy shall notify the licensed pharmacies of this state of any restrictions upon any doctor of medicine's prescription writing privileges.

The Board Has Not Complied - The Board has not complied with the reporting requirement since its inception and currently minimal information regarding disciplined medical doctors is being made available to pharmacists. No appropriate means currently exists for sending the required information to pharmacists. In addition, specific information necessary to fulfill the statutory requirement is not being supplied by BOMEX in a format which facilitates efficient reporting.

Originally the Board planned to use its quarterly National Association of Boards of Pharmacy (NABP) Newsletter. However, the space alloted the Board in the NABP newsletter proved to be insufficient. The executive secretary is currently seeking another source to properly report the information.

Information is not being supplied by BOMEX in a format which facilitates efficient reporting. In complying with the statutory requirement, BOMEX supplies the Board of Pharmacy with quarterly minutes and appropriate BOMEX orders. According to the executive secretary of the Board of Pharmacy, the BOMEX minutes and orders are not in a format that facilitates drawing the necessary information. Most information is available, however, it is buried in the minutes and has to be extracted by Board personnel. Further, the address of the disciplined doctor is not available. This is needed to help pharmacists pinpoint which doctors are near their pharmacies. Further, the minutes and orders are sometimes confusing and need clarification or interpretation by BOMEX.*

In order to comply with the BOMEX statutory requirement, the Board needs to 1) find an appropriate way to communicate the proper information to pharmacists and 2) enter into an agreement with BOMEX regarding the format BOMEX will follow when reporting information to the Board.

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* The executive director of BOMEX would encourage the Board of Pharmacy to put BOMEX's phone number on all newsletters and encourage pharmacists to call BOMEX if they have questions concerning medical doctors.

Similar Requirements Are Necessary for Other Health Regulatory Boards - Other health regulatory boards need requirements to supply pharmacists with information concerning their disciplined practitioners. According to the executive secretary of the Board, reporting disciplinary actions of medical doctors is a step in the right direction. However, he further stated that without reporting by other health boards, whose practitioners also have prescription-writing privileges, the information supplied pharmacists is incomplete.*

Information from other health boards, regarding their disciplined practitioners, should be furnished to the Board of Pharmacy and made available to pharmacists. Statutes similar to BOMEX's should be enacted. The Board, in cooperation with the other boards, should then develop a format for reporting information.

## CONCLUSION

The Board's enforcement effectiveness can be improved. Complaint investigations can be more thorough and better documented. In addition, the Board does not currently receive needed information on pharmacy-related malpractice insurance claims. Finally, pharmacists are not being properly notified regarding disciplined medical practitioners.

## RECOMMENDATIONS

The Board's enforcement effectiveness can be improved if the following changes are made:

* Practitioners who may write prescriptions include: licensees of BOMEX (physicians, ophthalmologists and physician assistants who work under a physician's supervision), osteopathic physicians, homeopathic physicians, dentists, podiatrists and veterinarians. In addition, legislation passed in 1982 provides nurse practitioners limited prescription-writing privileges--rules and regulations governing these privileges are currently under development.

1. The Board should amend its complaint investigation and related procedures to include:
   a. Contacting doctors associated with the complaint, if necessary;
   b. Inspecting physical evidence; and
   c. Conducting a more thorough review of all complaint investigation reports.

2. The Board should improve retention and filing of complaint documentation by
   a. Filing all correspondence in the appropriate files,
   b. Recording all final dispositions in the complaint file, and
   c. Including copies of all other appropriate documentary evidence in the complaint files.

3. The Insurance Code should be amended to require companies writing malpractice coverage for pharmacists to report malpractice insurance claims and settlements to the Board.

4. The Board of Pharmacy should a) determine an acceptable format for the reported information in cooperation with each of the other health boards, including BOMEX, and b) establish an acceptable method to disseminate this information to pharmacists regularly.

5. Statutes should be enacted requiring other Arizona health boards whose practitioners write prescriptions to report disciplinary actions to the Board of Pharmacy.

## FINDING II

### INSPECTION COSTS CAN BE REDUCED AND EFFICIENCY IMPROVED.

Pharmacy inspections can be performed in a more efficient and less costly manner. The chief inspector's inspection territory is inefficiently covered. Inspectors use 24-hour assigned State motor pool vehicles inappropriately for commuting. Additionally, travel claims are not always in compliance with the established Department of Administration (DOA) travel policies.

### The Inspection Process

All pharmacies, manufacturers and drug outlets in the State are divided into four inspection territories. Each of the three Board inspectors and the chief inspector is responsible for his own territory. The inspector based in Tucson is responsible for the Tucson metropolitan area and the communities in the southeast corner of the state. The remainder of the state is divided among the other two inspectors and the chief inspector, who are based in Phoenix.

Pharmacies, manufacturers and wholesalers are generally inspected once each year. Over-the-counter outlets (i.e., patent and proprietary outlets and general dealers) have a lower priority and are inspected as time permits. Inspectors check for general sanitation, adequacy of the pharmacist's reference library, outdated drugs, correction of previously noted violations or problems and proper posting of a current license. Additionally a "mini audit" is performed as part of each pharmacy inspection, the nature of which is periodically changed. Previously, the "mini audit" involved taking an inventory of three controlled substances. Currently, five recent prescriptions are reviewed to determine the adequacy of the paperwork, the label and the container.

The three inspectors are assigned State motor pool vehicles for traveling to inspections. The chief inspector, who has the lightest inspection load, uses his personal vehicle.

## Inspection Territories

The chief inspector's widely dispersed inspection territory is handled inefficiently. The chief inspector spends too much time traveling. Furthermore, his inspection functions result in less time being available for his administrative and supervisory responsibilities. Assigning the chief inspector to a Phoenix-area territory would increase efficiency.

Chief Inspector Spends Considerable Time Traveling - The chief inspector spends too much time traveling. The chief inspector assigns himself an inspection territory which has approximately one-fourth the number of inspections covered by each of the other inspectors. However, the chief inspector averages almost as many travel miles per month as the other inspectors. As shown in Table 3, the chief inspector logged 18,905 miles between May 1982 and April 1983. The other Board inspectors, who each have approximately 4 times the inspection work load, logged from 17,951 to 23,515 miles.

The reason the chief inspector logs so many travel miles is because he cannot efficiently cover his out-of-town inspection territory given his other responsibilities. He has assigned himself an inspection area that includes approximately 50 pharmacies which are dispersed over a large area of the northern, central and eastern portions of the State. This inspection territory requires extensive travel, however, he generally does not spend more than one day out of town at a time. At least part of the reason for this appears to be that his administrative and supervisory responsibilities require him to be at the Board office regularly. (These responsibilities are enumerated on page 26). Therefore, he often travels great distances yet has time to do only a minimal number of inspections. For example, he made nine* one-day trips to the Flagstaff/Williams area

* According to the Board's executive secretary, 3 of these trips were not made solely for routine inspection-related purposes. These trips were made for investigations done in cooperation with the Food and Drug administration or other noninspection-related investigations.

between July 1982 and April 1983. Pharmacies are generally inspected once each year, and he is responsible for only 10 pharmacies in the Flagstaff area. Flagstaff is over 140 miles from Phoenix. During the same 10-month period, he made 5 one-day trips to the Globe/Miami area where he is responsible for only 6 pharmacies. Although the distance to this area is less than 100 miles, a distance which may not ordinarily warrant staying overnight, each round trip took him roughly 4 hours. Moreover, two of his one-day trips to Globe/Miami took place only one day apart on November 2 and 3. On both days he appears to have had office duties to perform as he left from the Board office (which he does often) rather than from his home. Additionally, according to his daily reports, he did only two pharmacy inspections on November 2 and only one hospital on November 3. Generally, routine pharmacy inspections were expected to take 1-1/2 to 2 hours prior to 1983. Currently they average only about 30 minutes due to less extensive "mini audits" being performed, as discussed on page 23.

TABLE 3

INSPECTION MILEAGE -
MAY 1982 THROUGH APRIL 1983

| | Base and Area Covered | Pharmacies in Territory | Miles Traveled | Cost to Board |
|---|---|---|---|---|
| Chief inspector | Phoenix based (statewide area) | 51 | 18,905 | $3,781 |
| Inspector 1 | Tucson based (southeast area of State) | 191 | 17,951 | 2,868 |
| 2 | Phoenix based (Phoenix metro area) | 211 | 21,138* | 2,776 |
| 3 | Phoenix based (statewide area) | 204 | 23,515* | 3,523 |

* These figures may be inflated because they include commuting mileage, as discussed on page 27.

Travel Limits the Chief Inspector's Administration Time - The chief inspector's inspection-related functions result in his having less time available for administrative and supervisory functions.

The chief inspector has numerous administrative and supervisory responsibilities. They include:

- Supervision of the inspection function, including the review of all inspection reports coming from the three other inspectors;
- Review of all complaint reports;
- Design and preparation of report forms;
- Communications with other health regulatory boards when needed;
- Assisting the Board's attorney general representative in collection of facts needed for hearings;
- Provision of backup to inspectors in complaint investigations and inspections as needed;
- Preparation and revision of the Arizona jurisprudence exam and grading of the results; and
- Preparation of the chief inspector's report on inspection activities for presentation at Board meetings.

As discussed on page 16, the chief inspector apparently needs to spend more of his time on at least one of his administrative/supervisory functions (i.e., the review of complaint reports). A reduction of his inspection-related travel time would help him do this. The chief inspector could be reassigned to a Phoenix-area inspection territory, allowing his current territory to be covered more efficiently by the other Board inspectors. Because of the travel time involved, the most efficient way to conduct remote inspections would be to have an inspector remain out of town for several nights to do a number of inspections in a local area.

24-Hour Vehicle Assignments

State motor pool vehicles should not be used regularly by inspectors for commuting. The State is incurring excessive costs in that inspectors are being subsidized for their commuting expenses. The Board should reevaluate its policy of assigning motor pool vehicles to inspectors on a 24-hour basis.

Currently, three Board inspectors (two in Phoenix and one in Tucson) are assigned State motor pool vehicles on a 24-hour basis on the grounds that they generally travel directly to inspection sites from their homes each morning. The chief inspector is not assigned a State vehicle because of his lighter inspection load. The two Phoenix-based inspectors live in a community north of Phoenix (approximately one mile from each other) approximately 32 miles from the Board office and also a considerable distance from the bulk of their Phoenix-area inspections.

The State is essentially subsidizing Board inspectors' commuting costs. For example, assuming the two Phoenix inspectors make the 64-mile round trip into the Phoenix area* on approximately two-thirds of the work days per year (based on an estimate of the Board's office manager), this costs the State over $2,900.** Of this amount, the Board of Pharmacy pays $1,320 at 7¢ per mile. Regular commuting costs are normally born by the employee, not the State.

The Department of Administration's rules and regulations state that domicile-to-duty travel is allowable only

* Out of the 415 pharmacies that the two Phoenix inspectors are responsible for, 355 (or 85%) are in the Phoenix area.

** Based on the actual life-to-date operating costs to the State for the two Phoenix vehicles. These costs are 17.9¢ and 12.9¢ per mile.

> "When circumstances make it impractical for the employee to return the vehicle to the motor pool upon returning from an official trip. . . ."
>
> or
>
> "When an employee is going to use a vehicle for official State business after his normal working hours on the same day or prior to his normal working hours on the succeeding day."

The only justification for domicile-to-duty vehicles in this case would be the impracticality of returning the vehicle each night. This would not be a justification, however, for the State paying inspectors' commuting costs.

Some other departments use even more restrictive criteria for the assignment of 24-hour vehicles. For example, the Department of Public Safety's criteria for assignment of a State vehicle on a 24-hour basis are: 1) the requirement for continual capability to respond to emergencies or 2) the performance of frequent off-duty inspections. Pharmacy Board inspectors fulfill neither requirement.

The Board should reevaluate its policy of assigning vehicles to inspectors on a 24-hour basis. There are two options open to the Board. First the Board could eliminate 24-hour vehicle assignments and require inspectors to commute to the office in their own vehicles to pick up their State vehicles. Second, the Board could determine a reasonable commuting distance for each inspector using a State vehicle and charge them for this. The DOA motor pool has indicated that such "charge backs" are feasible and the specifics can be worked out by the Board. The resulting charge backs are paid to the DOA motor pool to defray its operating costs.

Travel Claims

Travel claims do not fully comply with Department of Administration (DOA) travel policies. Travel claims should be more closely reviewed for compliance with DOA policies.

We noted three types of problems in a limited review of inspectors' travel claims:

- Many instances were noted where a $10 or $20 per diem was improperly claimed. In 15 out of 32 instances noted where a $10 per diem was claimed, the individual was not on travel status according to the DOA definition. In addition, in three out of five instances noted where $20 was claimed, the claimant was entitled to only $10. Travel status is defined as being away from one's designated post of duty for 10 or more hours or 6 or more hours if travel begins at least 2 hours before the normal start of duty or terminates at least 3 hours after the end of normal duty. A $10 per diem is paid to those on travel status up to 12 hours and a $20 per diem is paid for 12 to 18 hours.

- Personal vehicle mileage recorded on travel claims always appears to be the actual distance traveled when the claimant leaves from his home. When a personal vehicle is used and a trip is commenced at the claimant's home, the distance traveled should be computed from either his designated post of duty or his home, whichever is lesser.

- Travel claims examined identified only the claimants first and last stops and indicate all other stops only by the notation "and points between." If an employee is required to make several stops during a day while on travel status, he does not have to list the odometer readings at each stop but should show the day's beginning and ending mileage and clearly identify all intermediate stops.

Travel claims need to be more closely reviewed for compliance with DOA travel policies. Board personnel should be familar with these policies. The office manager and/or the executive secretary should undertake reviewing all travel claims for the purpose of making certain that DOA travel policies are being consistently followed. Noncompliance with DOA policies can result in the Board paying excessive travel costs.

## CONCLUSION

The Board of Pharmacy can reduce its inspection costs and improve the efficiency of its enforcement activities. The chief inspector currently wastes too much time attempting to cover a large, dispersed inspection territory using one-day trips. In addition, the assignment of State vehicles to inspectors on a 24-hour basis results in excessive costs. Finally, inspectors have not always complied with DOA travel policies. This has sometimes resulted in overstated or improperly documented travel claims.

## RECOMMENDATIONS

1. The chief inspector's inspection territory should be reassigned to the other inspectors. The chief inspector's new territory should be the area closest to the Board office.

2. Board policies relating to 24-hour vehicle assignments should be reevaluated. Either inspectors' domicile-to-duty travels should be eliminated, or inspectors should reimburse the State for commuting costs.

3. Travel claims should be reviewed more closely by the office manager and/or the executive secretary to ensure compliance with DOA travel policies.

## FINDING III

### THE BOARD'S FEE STRUCTURE CAN BE IMPROVED.

Portions of the Board of Pharmacy's fee structure and related procedures should be changed. The Board's exam fee structure, as established by statutes, is not based on costs; and it results in some applicants' exam fees being subsidized by other applicants. In addition, all fees currently charged by the Board are not clearly specified in the pharmacy statutes.

#### Current Fee Structure

The Board's statutory maximums for fees relating to pharmicists and interns are shown in Table 4. Currently all fees charged by the Board are set at their statutory maximums. The Board is planning to propose higher maximums in the near future to cover cost increases.

TABLE 4

CURRENT FEES

| Fee Type | Maximum | Statutory Reference |
|---|---|---|
| Application for examination | $100 | §32-1924.A. |
| Certificate of registration for successful pharmacist applicant | 20 | 32-1924.A. and 32-1924.C. |
| Registration for pharmacy intern | 5 | 32-1924.B. |
| Biennial renewal fee - pharmicist | 60 | 32-1925.F. |
| Bienniel renewal fee - intern | 10 | 32-1925.F. |

An analysis of fees charged by the other 49 states shows that there is a high degree of variation, making individual comparisons very difficult. However, Arizona's license, permit and renewal fees appear to be reasonable and not out of line with the other states.

Exam Fees Are Inequitable

Statutes require the Board to charge exam fees which are inequitable in that many applicants are forced to subsidize the exam costs of other applicants. Other states have more equitable fee structures. A more flexible fee structure could be designed with costs taken into consideration.

The Board charges $100 to all applicants taking the national exam (NABPLEX) for the first time. The Board pays $50 to the National Association of Boards of Pharmacy (NABP) for each five-part set of national exams.* This cost includes exam grading. New applicants are also required to take the Arizona jurisprudence exam which is prepared and graded by Board personnel.

Some Applicants Subsidize the Exam Costs of Others - Many applicants are forced to subsidize the exam costs of other applicants. The initial $100 fee more than covers all costs (approximately $82 per Table 5 on page 36) directly associated with first-time applicants, including application processing costs. A.R.S. §32-1924.A., however, states that "payment of the fee shall entitle the applicant to take a second examination if he fails in his first examination, but the second examination shall be within one year of the first examination."** This results in the Board sometimes incurring as much as $70 in additional costs ($59 and $11 according to Table 5 on page 36) when there is no corresponding revenue. This cost is subsidized by the $100 fee charged to paying applicants.

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* The cost to the Board for each set of national exams will go up to $75 in 1985.

** According to the Board's interpretation of this statute, applicants taking the exam for the first time or retaking the exam an odd number of times must pay $100. Applicants retaking the exam an even number of times pay nothing. An analysis of the exams given in June 1982 and January 1983 shows 10 of the 95 applicants taking the exam paid nothing.

Other States - Other states' pharmacy boards have more equitable exam fee structures. An analysis was done on the exam fees of 11 western state pharmacy boards that use the national exam (NABPLEX).* No state surveyed has an unqualified policy of allowing a second examination to be taken at no charge as Arizona has. Only three states have provisions for free or reduced-fee retakes; however, the degree to which some applicants' exam costs are subsidized by others is minimal in all of these three instances.

- Kansas allows its state-administered lab or jurisprudence exams to be retaken for only $25. If the NABPLEX is failed, however, the retake fee is a full $125.

- Montana, which purchases the NABPLEX by parts, allows a free retake only if one part is failed, otherwise the fee is a full $75.

- Washington allows its state-administered law exam to be retaken for free if NABPLEX is entirely passed, otherwise the full $85 fee must be paid.

An Equitable Exam Fee Structure Is Possible - Statutes could be amended to allow a more equitable exam fee structure based on costs. The results of audit staff analysis of current costs connected with exams and application processing are shown in Table 5. As shown in this table, a fee of approximately $82 for initial applicants may be reasonable. Separate fees of approximately $12 for jurisprudence retakes and $65 for national exam retakes would give the fee structure added flexibility. A flexible fee schedule based on Board costs, such as that shown in Table 5, would be fair to all applicants.

* The 11 states surveyed are Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming.

TABLE 5

CURRENT EXAM AND APPLICATION COSTS

| | Exam Cost | Grading and Preparation | Administration Costs | Total Cost | Appropriate Fee (Includes 10 Percent Contribution to State General Fund) |
|---|---|---|---|---|---|
| National exam | $50 | | $9 | $59 | $65 |
| Jurisprudence exam | | $8 | 3 | 11 | 12 |
| Application processing | | | 4 | 4 | 5 |
| | | | | $74 | $82* |

* This does not include possible increases in NABPLEX fees (going to $75 in 1985) and other increases due to inflation or other unforeseen factors.

## Grade Certification Fee Not Clearly Specified in Statutes

The Board is charging a fee not clearly specified in the statutes. The Board's rules and regulations require payment of an examination grade certification fee of $10 which is not authorized in the statutes. Although the statutes give the Board the authority to establish rules and regulations necessary for the protection of the public, the statutory authority for the above-mentioned fee should be made more clear.

A fee of $10 is required by the Board's rules and regulations (R4-23-202L) for "certification of grades made on examinations." The rules and regulations are not clear on when this fee is to be collected. According to Board personnel, however, it is collected from a pharmacist who requests his grades be sent to another state where he or she is seeking reciprocity.

Although the Board has authority to promulgate regulations for the protection of the public and for the lawful performance of its duties, the regulation requiring the $10 grade certification fee should be more specifically covered in the statutes. The Legislative Council, in a statutory interpretation, pointed out that

> "There is no statutory provision which even mentions such a fee or certification of exam grades."

Although the $10 grade certification fee may be authorized under the Board's general rule-making authorities, the Legislative Council recommends that

> "The pharmacy statutes should be amended so that each of the fees to be charged by the Board is clearly specified."

This would avoid any possibility for confusion in the future.

## CONCLUSION

The pharmacy statutes specify an exam fee structure which is inflexible and unfair to some applicants. In addition, the $10 grade certification fee required by the Board's rules and regulations is not clearly authorized by the statutes.

## RECOMMENDATIONS

The Legislature should consider amending the pharmacy statutes as follows:

1. Eliminate the provision for a free second examination.

2. Add more flexibility to the exam fee structure to allow separate fees, based on Board costs, for the jurisprudence and national exams.

3. Statutorily authorize the $10 grade certification fee currently required by the Board's rules and regulations.

## OTHER PERTINENT INFORMATION

During the audit, other pertinent information was developed regarding 1) Board inspectors' relationships with the State association, 2) the consistency of statutes related to civil penalties, 3) the statutory authority of the Board to regulate patent and proprietary outlets, and 4) the use of the title of doctor.

### Board Inspectors' Relationships with Association

A Board inspector is currently the chairman of the Arizona Pharmacy Association's Political Action Committee (PAC). This is a nonpartisan fund raising committee that lobbies for pharmacy-related legislation and contributes to the campaigns of legislative candidates. Contributions primarily come from pharmacists. State law provides that

> "No employee . . . may be a member of any national, state or local committee of a political party, or an officer or chairman of a committee of a partisan political club. . . ." (A.R.S. §41-772.B.)

Attorney General Opinion number 71-1 states that

> "The apparent legislative intent in providing these statutory restrictions against employees engaging in political activity was to insure that employees can fully and properly discharge their duties and responsibilities of State service employment with impartiality, free from any taint of favoritism, prejudice, personal ambition, or partisan demands."

Moreover, State Personnel Board rules and regulations state that

> "The employee shall not engage in . . . other activity which is not compatible with the full and proper discharge of the duties and responsibilities of his State Service employment, or which tends to impair his capacity to perform his State Service duties and responsibilities in an acceptable manner."
> [R2-5-401 B (8)]

Although the Pharmacy Associations's Political Action Committee (PAC) is nonpartisan, holding the position of chairman might impair a Board inspector's capacity to perform his Board duties and responsibilities. An inspector who is the PAC chairman may be required to solicit funds from pharmacists he inspects. This could raise a question as to whether inspections are handled impartially and free from prejudice. Additionally, the Association could take a position on an issue that the Board does not agree with, creating a potential conflict of interest for the inspector. We found, however, no evidence to indicate the inspector has ever failed to acceptably perform his duties as a Board employee. When audit staff pointed out these possible conflicts to this inspector, he resigned his position with the PAC. This inspector also previously served as the association's president while employed by the Board.

In addition to the inspector discussed above, another past pharmacy association president was also a Board inspector. Furthermore, one Board member is currently on the association's board of directors, and this position has been held by another Board member in the past.

Statutes Related to Civil Penalties or Censure

A 1982 statutory amendment, which authorizes the Board to impose civil penalties or to censure a licensee, is unclear as to a pharmacist's rights to a hearing. In an opinion dated May 27, 1983, the Legislative Council suggested that a clarification of statutes may be desirable:

> "A.R.S. Section 32-1927 was amended in 1982 to allow the board to impose civil penalties on or censure pharmacists or pharmacy interns for certain violations. These two new disciplinary sanctions were not added to A.R.S. Section 32-1928, subsection A at that time. After reviewing when and where this amendment was adopted this office believes it is unlikely that the legislature intended the board could impose a civil penalty on or censure a pharmacist or

> pharmacy intern without notice and an opportunity for a hearing. A.R.S. Section 32-1928, subsection A probably should be conformed to A.R.S. Section 32-1927, subsection B by adding imposition of a civil penalty and censure in order to avoid future confusion."

Regulation of Patent and Proprietary Outlets

A.R.S. §1904.C. may create confusion regarding the Board's authority to regulate patent and proprietary outlets. This subsection states:

> "Nothing in this section shall be construed as granting the board the authority to deny or restrict the right of any permittee to sell patent and proprietary medicines."

The Board's attorney general representative stated that the original intent of this subsection was probably to prevent the Board from restricting the drugs sold by patent and proprietary outlets (i.e., over-the-counter drugs). Over-the-counter drugs are designated by the Food and Drug Administration. This subsection, however, has been cited in at least one legal action taken against the Board. In that case, the plaintiff was attempting to show that the Board did not have any authority to regulate the name used by a patent and proprietary outlet under A.R.S. §32-1961.B.(3).* Because the general language of §1904.C. is open to broad interpretation, the Board's executive secretary would like to have restrictions on the Board's authority clarified.

* A.R.S. §32-1961.B.(3) makes it unlawful to use certain words, such as "drugs," in the title of a store that does not have a licensed pharmacist in active personal charge.

## Title of Doctor

A nationwide controversy currently exists concerning the title pharmacists should use. Professional associations in as many as 28 states across the country are supporting the "Doctor of Pharmacy" or "PD" title. They argue that pharmacists should have a title similar to that of other health care professionals (i.e., medical doctors). Opponents argue that the PD designation is misleading and conveys a title not earned, since most pharmacists have only a bachelors degree.* State boards of pharmacy appear to be divided on how they are responding to this situation. Many are remaining neutral, apparently because the matter of title does not directly affect the practice of pharmacy. Other state boards have opposed the title change. To date only one state, Tennessee, has actually legislated the title of doctor for pharmacists. The Arizona Board of Pharmacy has no official position and no jurisdiction in this area.

The Arizona Pharmacy Association, the State's professional association of pharmacists, is selling "Doctor of Pharmacy" certificates to Pharmacists licensed in Arizona without the approval of the Board of Pharmacy. The Association has been selling "Doctor of Pharmacy" certificates since June 1982 to any pharmacist registered in the State. Approximately 500 have been sold. There is currently no State law or rule to prevent or regulate the sale of such certificates, and the Board of Pharmacy has no authority to act.

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* Currently a doctorate degree in pharmacy can be earned, but it takes approximately four years of post graduate education. Proponents of the "PD" designation, however, are arguing for a professional title for all pharmacists not tied to post graduate education.

## AREAS FOR FURTHER AUDIT WORK

During the course of our review of the Board of Pharmacy, we identified several areas for further audit work. These issues, which were beyond the scope of our review due to time constraints, include:

- Whether the Board's reciprocity policy is too restrictive,
- Whether the national exam should be administered in Phoenix rather than in Tucson,
- The adequacy and efficiency of the Board's renewal schedules, and
- The need for the Board to develop uniform disciplinary action guidelines.

# Arizona State Board of Pharmacy

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MEMBER


August 18, 1983


AUG 22
AUDITOR GENERAL


Mr. Douglas R. Norton
Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Re: Comments on the Performance Audit of the Arizona State Board of Pharmacy

Dear Mr. Norton:

Thank you for your letter of August 16, enclosing your revised preliminary report draft of the performance audit of the Board of Pharmacy.

The Arizona State Board of Pharmacy is pleased to express its appreciation to the Auditor General's Sunset Review Team for their handling of the review of the Board's activities. Board members have worked diligently to administer their legislative charge to protect the public in relation to the practice of pharmacy and the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances. It is therefore gratifying to read in the report that "the Board has significantly improved its enforcement program", and "has increased the number of disciplinary actions taken and has improved complaint investigation procedures".

In addition, the Auditor General's Review Team determined for the "Sunset Factors" that the Board has generally met its objective and purpose effectively and efficiently. The Board wholeheartedly endorses the conclusions in the Sunset Factors:

1. The Board has generally met its objective and purpose through licensing, inspection, and investigations of those persons and facilities related to the practice of pharmacy. These have all been improved with the introduction of new policies and procedures, and supported by word processing and a new filing system.

2. The Board's enforcement functions serve the public interest, since the Board has taken strict enforcement action on complaints and inspection-related violations.

3. The Board has generally addressed deficiencies in its enabling statutes. Further, the board is in agreement with the legislative changes recommended by the Review Team.

Recommended Legislation

The Performance Audit review recommends that the Legislature should consider:

1. Amending the insurance code to require reporting of malpractice claims and settlements to the Board.

   Comment:

   The Board agrees with this recommendation. At present this information usually is never provided to the Board, and serious or repetitive actions of a licensee would go undetected.

2. Amending A.R.S. § 32-1924 to make the Board's exam fee structure more flexible and fair to all applicants.

   Comment:

   The Board agrees that such an amendment would provide equitable examination costs for all candidates. Establishing a maximum examination cost, which could be adjusted by regulation, and a re-take charge equal to the original examination cost would equalize the costs for candidates and prevent subsidization and loss of revenue by the Board.

3. Enact statutory authorization for the grade certification fee.

   Comment:

   The Board agrees that this statute is vital. As detailed in the report, the Board is charging a fee not clearly specified in the statutes, but which is in the Board's authority. A statute would clarify this point.

4. Amend A.R.S. § 32-1928.A to conform with A.R.S. § 32-1927.B with regard to civil penalties and censure.

   Comment:

   The Board agrees with this recommendation. This was obviously an oversight when A.R.S. § 32-1927 was amended in 1982 to provide for "censure and civil penalty".

Further, the Board would like to recommend that A.R.S. § 32-1924.A, A.R.S. § 32-1924.B, A.R.S. § 32-1924.C, A.R.S. § 32-1925.F, and A.R.S. § 32-1931.E be amended to establish higher maximums on fees which the Board can charge. Currently all fees charged by the Board are at their statutory maximums.

Findings

Procedural recommendations were provided by the Review Team and documented in Findings I, II, and III. The board concurs with their findings and has initiated corrective action to improve its enforcement procedures to further reduce the potential for public harm:

1. The Board's enforcement procedures could be improved to further reduce the potential for public harm. This finding was divided into three areas: (a) Complaint investigation adequacy, (b) relay of information to pharmacists regarding disciplined medical practitioners, and (c) needed information on pharmacy-related malpractice insurance claims.

    a. The board has implemented a new policy and procedure format on complaint investigations. A review procedure for the completed investigation now ensures that all parties involved are informed of final dispositions. Cross-filing of these reports provides cumulative data on licensees.

    b. The statute requiring the relay of information to pharmacists regarding disciplined medical practitioners became effective in July, 1982. With only minimal space available in the Board's quarterly newsletter, a new method for this reporting was necessary. The format for publication of this data has been established and been implemented with the first report scheduled for September, 1983.

    c. No action can be taken by the Board to obtain information on pharmacy-related malpractice insurance claims without the enactment of necessary statutes.

2. Pharmacy inspections can be performed in a more efficient and less costly manner. This finding was divided into three areas: (a) inspection areas and travel time, (b) state vehicle assignments, and (c) D.O.A. travel polices.

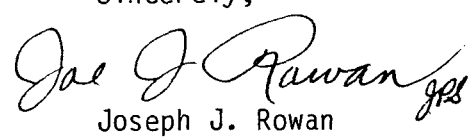
    a. Inspection areas have been reassigned with the Chief Inspector covering a territory nearest to the Board office. This will allow him to spend more time at office duties, and to be available for assistance to other inspectors on special assignments.

    b. In accordance with D.O.T. Motor Pool recommendations a "charge back" system is being initiated which requires the inspectors to reimburse the State for commuting costs.

    c. Travel claims are now being reviewed closely by both the office manager and the executive secretary for compliance with D.O.A. travel policies.

The Board of Pharmacy again thanks you and your staff for your courtesy and sincerity.

Sincerely,



Joseph J. Rowan
President

cc: Members of the Board
Executive Secretary