State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

BOARD of OCCUPATIONAL THERAPY EXAMINERS

Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
October 1996
Report 96-16

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

DEBRA K. DAVENPORT, CPA
DEPUTY AUDITOR GENERAL

October 17, 1996

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Mr. Kenneth D. Fink, Executive Director
Board of Occupational Therapy Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Occupational Therapy Examiners. This report is in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

Overall, we found that the Board has accomplished its statutory mandates. However, we did find that the Board needs to improve its complaint-handling process. Specifically, it should categorize information it receives as complaints only when the matter falls within its jurisdiction, and only when the information indicates that a violation of its statutes or rules has occurred. In addition, it should ensure that each closed complaint file contains a summary that documents the Board's actions to resolve the complaint. Finally, to ensure the public can obtain information about the complaint history of its licensees, the Board should ensure that licensing files contain information on the number and nature of complaints filed against a practitioner, as well as the outcome of those complaints.

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

This report will be released to the public on October 18, 1996.

Sincerely,

Douglas R. Norton
Auditor General

Enclosure

2910 NORTH 44TH STREET • SUITE 410 • PHOENIX, ARIZONA 85018 • (602) 553-0333 • FAX (602) 553-0051

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Board of Occupational Therapy Examiners (Board) pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. This audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

The Legislature created the Board in 1990 to license occupational therapists (OTs) and occupational therapy assistants (OTAs) and to enforce practice standards. The Board consists of five members appointed by the Governor for three-year terms, and includes two occupational therapists, one occupational therapy assistant, and two public members.

Occupational therapists and therapy assistants work with injured or disabled individuals to prevent further injury and to increase these individuals' level of functioning and independence. For example, a patient recovering from a spinal cord injury may receive occupational therapy to increase muscle strength and range of motion, practice daily living skills such as dressing and eating, and learn how to use adaptive equipment such as a wheelchair.

Board's Complaint-Handling Process Needs Improvement (See pages 7 through 10)

The Board needs to improve its complaint-handling process to ensure accurate and complete information is available to the public so they can make informed decisions when seeking the services of occupational therapy practitioners. The Board has received 26 complaints since its inception in 1990, most of which allege unlicensed activity and unprofessional conduct. Although the Board has resolved 23 of these complaints, our review of its complaint files met with several obstacles that prevented us from fully assessing the Board's complaint-handling process. For example, none of the files we reviewed contained a clear and concise summary of the complaint, the investigative actions taken by the Board, and the final disposition.

To ensure the public has access to accurate and complete information, the Board needs to improve its complaint-handling process in three ways.

- First, the Board should categorize information it receives as complaints only when it falls within its jurisdiction, and only when the information indicates that a violation of its statutes or rules has occurred.

- Second, the Board should ensure that each closed complaint file contains a summary that documents all the Board's actions to resolve the complaint.

- Third, the Board should ensure that licensing files of occupational therapy practitioners involved in a complaint contain information on the number and nature of complaints filed against a practitioner, as well as the outcome of those complaints.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Board of Occupational Therapy Examiners pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. This audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

Definition of Occupational Therapy

The Board of Occupational Therapy Examiners (Board) was established in 1990 to license occupational therapists (OTs) and occupational therapy assistants (OTAs) and to enforce practice standards. The practice of occupational therapy is broadly defined in A.R.S. §32-3401 as:

> **the use of occupational therapy services** with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, socioeconomic and cultural differences or the aging process **in order to achieve optimum functional performance, maximize independence, prevent disability and maintain health** . . . (emphasis added).

OTs and OTAs work in a variety of settings such as medical facilities, schools, mental health centers, home health care agencies, and private practices. In addition, the profession serves a wide array of patients such as individuals with developmental or mental disabilities; stroke, heart attack, or cancer victims; and individuals who have sustained work- or sports-related injuries. To assist patients in achieving optimum functional performance, OTs and OTAs provide diverse services including:

- **Evaluation**—a comprehensive assessment to determine the types of treatment needed to increase a patient's level of functioning. This assessment can include a review of the patient's medical records, use of special tests, observation of the patient, and interviews with the patient and other persons who are familiar with the patient;

- **Treatment**—individualized therapy based on the treatment goals outlined in the initial evaluation. For example, a patient recovering from a spinal cord injury may receive occupational therapy to increase muscle strength and range of motion, practice daily living skills such as dressing and eating, and to learn how to use adaptive equipment such as a wheelchair. Likewise, a patient recovering from carpal tunnel syndrome may seek the services of an occupational therapist to have surgical dressing removed following surgery,

or have a splint fashioned for the injured wrist; and to receive electrical stimulation to increase circulation and prevent infection; and,

- **Assessment**—measurement of the patient's progress toward established treatment goals. If the patient has attained his/her goals then treatment is discontinued, or a new set of treatment goals will be established if further improvement is needed.

Personnel and Budget

The Board consists of five members appointed by the Governor for three-year terms and includes two occupational therapists, one occupational therapy assistant, and two public members. In addition, the Board has two full-time staff, an executive director and administrative secretary, to assist it in carrying out its duties. Specifically, these duties include reviewing applications and issuing licenses to approximately 1,200 OTs and OTAs annually, receiving and investigating complaints, and performing routine correspondence.

Monies for the Board's operations are appropriated from the Occupational Therapy Fund, which is comprised of fees collected for initial licenses and renewals. The Board retains 90 percent of the fees it collects, with the remaining 10 percent deposited in the State General Fund. As illustrated in Table 1 (see page 3), the Board expends less than $100,000 per year and, as of June 30, 1996, had a fund balance of $178,000.

Licensing Trends

States began regulating occupational therapy practitioners in 1975, when Florida and New York passed licensing laws. Since then, all states have passed regulatory laws for the profession. While there are different levels of regulation, most states regulate occupational therapy practitioners through licensure, which protects both the profession's title and its scope of practice. Specifically, licensing prohibits the practice of a profession unless a license has been issued by the regulatory body. Currently, 39 states license OTs and 37 states license OTAs. Those states that do not regulate through licensure use certification, registration, or trademark. These are forms of title protection and do not preclude persons from practicing occupational therapy as long as they do not represent themselves as being OTs or OTAs or refer to their services as occupational therapy. Specifically, certification and trademark restrict the use of the profession's title to individuals meeting state entry-level competency requirements; whereas registration involves practitioners registering with a state authority without necessarily having to meet entry-level competency requirements.

Table 1

Board of Occupational Therapy Examiners
Statement of Revenues, Expenditures,
and Changes in Fund Balance
Years Ended June 30, 1994, 1995, and 1996
(Unaudited)

	1994	1995	1996
Revenues (90% of gross revenues) [1]	$ 94,788	$117,963	$ 130,917
Expenditures			
Personal services	39,678	46,445	52,634
Employee-related	7,943	9,364	10,732
Professional and outside services	812	2,903	4,103
Travel, in-state	2,302	2,064	945
Travel, out-of-state	568	879	298
Equipment	3,695	3,310	
Other operating	23,326	27,911	22,076
Total expenditures	78,324	92,876	90,788
Excess of revenues over expenditures	16,464	25,087	40,129
Fund balance, beginning of year	96,374	112,838	137,925
Fund balance, end of year	$112,838	$137,925	$178,054

[1] As a 90/10 agency, the Board of Occupational Therapy Examiners remits 10 percent of its gross revenues to the General Fund.

Source: The Uniform Statewide Accounting System reports titled *Revenues and Expenditures by Fund, Program, and Object* and *Trial Balance by Fund.*

Licensing Requirements

Pursuant to A.R.S. §32-3423, individuals applying for licensure must meet three basic requirements. Specifically, applicants must:

- Successfully complete the academic requirements of a board-approved educational program in occupational therapy (Bacherlor's degree for OTs and completion of a two-year program for OTAs);[1]

- Successfully complete a period of supervised fieldwork experience approved by the Board (six months for OTs and eight weeks for OTAs); and,

- Pass a board-approved exam.[2]

Persons licensed as occupational therapists or occupational therapy assistants in another state may be granted a license by reciprocity as long as the standards for licensure are equivalent to Arizona's. To maintain licensure, OTs and OTAs must annually provide documentation of their participation in relevant continuing education. OTs are required to complete ten hours of continuing education, and OTAs must complete six hours.

Scope and Methodology

The purpose of the audit was to determine whether the Board of Occupational Therapy Examiners is needed and the extent to which it has accomplished its statutory requirements. To that end, our work included a review of the Board's licensing and enforcement activities.

To assess the Board's performance and need for its overall regulatory function, we interviewed all board members and staff, and reviewed its procedures for licensing and managing complaints. In addition, all board minutes were reviewed, and two board meetings were observed to establish its compliance with Open Meeting Law requirements and to further examine its performance in the areas of licensing and managing complaints. We also examined all 26 complaint files opened by the Board since its inception, and reviewed 16 licensing files to review its compliance with statutory requirements. In addition, 4 on-site visits were conducted to observe OTs providing various occupational therapy services in a variety of settings and with different types of patients. Finally, we contacted the 2 national professional associations, the state professional association, the profession's major liability insurer, and 29 states to obtain comparative information.

Our preliminary review of the Board's licensing procedures did not identify any problems in this area that warranted additional audit work, although the Board may be able to improve its efficiency by changing to a biennial renewal period (see Sunset Factor 2, page 11). However,

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1 Board-approved OT programs must be accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the American Occupational Therapy Association, while OTA programs must be accredited by the American Occupational Therapy Association.

2 Currently, all states use the certification examinations offered by the National Board for Certification in Occupational Therapy.

we did identify problems with the Board's complaint-handling process. Therefore, this report presents a finding and recommendations regarding:

- The need to improve the Board's complaint-handling process to ensure that accurate and complete information is available to allow the public to make informed decisions when seeking the services of OTs and OTAs.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members and the administrative staff of the Board of Occupational Therapy Examiners for their cooperation and assistance during the audit.

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FINDING I

BOARD'S COMPLAINT-HANDLING PROCESS NEEDS IMPROVEMENT

The Board needs to improve its complaint-handling process to ensure accurate and complete information is available to the public so they can make informed decisions when seeking the services of occupational therapy practitioners. First, prior to categorizing information it receives as complaints, the Board should determine whether the information falls within its jurisdiction and indicates a violation of its statutes or rules. Second, the Board needs to clearly and concisely document all actions it takes to resolve complaints. Finally, in addition to properly handling complaints, the Board needs to consistently summarize and maintain complaint information in the licensing files of occupational therapy practitioners involved in a complaint.

The Board has received 26 complaints since its inception in 1990, most of which allege unlicensed activity and unprofessional conduct. While none of the complaints originated as a result of actual patient harm, 2 complaints involved situations with potential for harm. Twenty of these complaints were closed because the Board determined no statutory violation had occurred or the complaint did not fall within its jurisdiction. Three complaints resulted in probation, and 3 complaints were still pending as of June 1996.[1]

Board Incorrectly Establishes Some Information As Complaints

The Board exhibits two problems in establishing complaint files. First, the Board has established as complaints information received regarding licensed practitioners without any indication that a violation of its statutes or rules has occurred. Our review indicates that three cases against licensed practitioners were inappropriately established. For example:

- The Board itself initiated an unprofessional conduct complaint on an occupational therapist who had been in a serious accident. The therapist (as a courtesy) notified the Board of her injury, rehabilitation, and plans to participate in a work reentry program prior to resuming work as a therapist. Our review of the Board's minutes indicates that this "complaint file" was opened only as a means of storing information on the licensee. The Board finally closed

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1 Terms of probation may include participation in continuing education; submission to mental, physical, or competency examinations; restrictions on scope of practice; Board review of practice; or temporary suspension of license to practice.

this complaint after five months. Because this file was established only for storing information, it should not have been opened as a complaint file.

- The Board established a complaint file when an occupational therapist filed a complaint against his own license, because he was fired and wanted the Board to determine if the termination was appropriate. The Board's Attorney General representative instructed the Board that this matter did not fall within its jurisdiction, and the complaint was closed shortly thereafter.

- The Board established a complaint against an occupational therapist filed when her occupational therapy assistant complained to the Board about nonpayment for services provided by the assistant. This complaint was closed after one month when the Board determined it was a question of contract law and did not fall within its jurisdiction.

The Board should not open a complaint file on a licensed individual unless there is reason to believe a violation of its statutes or rules has occurred.

Second, the Board sometimes establishes complaints against individuals and agencies involved in practices that are lawful, but may overlap with the broad scope of services provided by OTs. For example:

- The Board established a complaint file on the Department of Economic Security's Arizona Early Intervention Program when an occupational therapist raised concerns about the Agency's proposed personnel standards for early interventionists.[1] The Board, responding to the Agency's "call for comment" regarding the proposed standards, sent two letters to the Agency identifying its concerns and disagreement with the proposed program. This complaint was open for nearly two months.

- The Board opened a complaint file on Good Samaritan Regional Medical Facilities after several occupational therapists notified the Board that the facility was considering contracting with an orthotics (support of weak muscles and joints) company to provide splinting services. Although the Board determined this activity did not violate law, it sent a letter to the facility outlining occupational therapists' scope of practice and requesting information on the orthotics company being considered. This complaint was open nearly six months.

Although the Board is authorized to investigate any information it receives regarding the practice of occupational therapy, it should not characterize information that does not involve violations of the law as complaints.

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[1] Early interventionists provide services to children in the State's Early Intervention Program.

Board Fails to Adequately Document Its Complaint Handling

Once the Board determines a complaint is a violation of its statutes or rules, it should adequately document all aspects of its complaint handling. None of the files reviewed contained a clear and concise summary of the complaint, the investigative actions taken by the Board, and the final disposition. In addition, some files lacked sufficient information documenting the actions that the Board took to investigate and resolve the complaint, requiring us to review several months' worth of board minutes that were not contained in the file. Although the Board has a complaint status and tracking sheet that could be used to document actions, it is used inconsistently and is not designed to provide a clear and concise summary of the complaint from its origination to final disposition. Further, the Board has drafted complaint-handling procedures, but they do not adequately address methods for documenting the Board's or staff's actions.

Because complaint files can be reviewed by the public and are a means for obtaining information on practitioners as well as judging the appropriateness of the Board's actions, it is important that they contain sufficient information that is clearly and concisely stated. For example, we reviewed the complaint-handling practices of the two national professional associations for occupational therapists. When these associations investigate complaints against a member therapist, they ensure that each complaint file contains a summary that includes the complaint number; a statement of the violation's nature; background information regarding how and when the complaint was received; an outline of investigative actions; a notice of hearing if a hearing is warranted; and finally, the final disposition or order, including the date of the final decision and the date notification of the action was sent to the complainant and the therapist.

Board Fails to Consistently Include Complaint Information in Licensing Files

In addition to properly handling complaints, the Board should consistently summarize and maintain complaint information in the occupational therapists' licensing files. Currently, the public can review licensing files but the information on complaints may not be complete. For example, although the files of the therapists who were placed on probation contained "Findings of Fact," the files of practitioners whose cases were dismissed contained incomplete information or no information at all. For example, three licensing files contained information that a complaint had been filed against the practitioner, but no additional documentation showing the complaint had been dismissed. On the other hand, six licensing files contained no information when complaints had occurred, leading to the erroneous belief that no complaints had been filed against these therapists.

Because the Board provides public access to its files to make it easier for the public to reach informed decisions about occupational therapy practitioners, it must ensure the complaint information in the licensing files is not misleading. To resolve this problem, the Board should place a copy of the formal disposition notification letter in the licensing file. This letter outlines the alleged complaint and the Board's disposition of it. However, to ensure the effectiveness of this practice, the Board would need to improve the timeliness of disposition notification. Our review found that in cases against licensed practitioners, once the Board rendered a decision, it took an average of 58 days to formally notify complainants and licensees of its final disposition. In most cases, there was no indication why there was a delay in processing the final disposition letter.

Recommendations

To ensure the Board maintains accurate and complete complaint information, it should consider implementing the following complaint-handling practices:

1. Establish complaint files only when the information indicates a violation of its statutes or rules has occurred;

2. Ensure that each closed complaint file contains complete documentation. Specifically, a summary that includes the complaint number; a statement of the violation's nature, background information regarding how and when the complaint was received; an outline of investigative actions; a notice of hearing if one is warranted; and finally, the Board's final disposition or order including the date of the final decision and the date notification of the action was sent to the complainant and licensee; and

3. Ensure that complete complaint information is included in the licensing files of occupational therapy practitioners involved in a complaint. Each file should contain information on the number and nature of complaints filed against a practitioner, as well as the outcome of those complaints.

SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Occupational Therapy Examiners should be continued or terminated.

1. The objective and purpose in establishing the Board.

The Legislature created the Board of Occupational Therapy Examiners in 1990 to license qualified occupational therapy practitioners and enforce standards of practice. Through these activities, the Board is expected to fulfill its mission "to safeguard the public health, safety, and welfare; to protect the public from incompetent and unauthorized persons; and to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants. . ."

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

Our review indicates the Board could further improve its efficiency and effectiveness in two areas. First, the Board can improve its efficiency in processing applications by renewing licenses on a biennial basis and staggering renewal dates. Currently, all licenses are renewed annually on the date of initial licensure. Because the majority of licenses were first issued between February and April 1992, most renewals are due every year during this 3-month period. The Board recognizes the workload strain this creates, and is currently considering changing to a biennial renewal period and using applicants' birth dates as their renewal dates.

Second, the Board needs to improve its effectiveness in handling complaints to ensure the public has accurate and complete information to make decisions about OTs and OTAs (see Finding I, pages 7 through 10).

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

The Board has operated within the public interest by licensing only those applicants qualified to practice occupational therapy in Arizona and ensuring that occupational therapists and occupational therapy assistants meet the established professional standards of practice.

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

Although current rules are consistent with its statutes, the Board is in the process of drafting revisions to update and clarify several of its rules. Specifically, the Board indicated it will seek to reduce fees; clarify continuing education requirements; and clarify supervision requirements for OTAs, aides, and unlicensed personnel providing occupational therapy services.

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.**

As part of its rule-making process, the Board encourages input from the public as well as the professional occupational therapy association. In the past, the Board has held public hearings and placed public hearing notices with the Secretary of State and in the association's newsletter. The Board indicated that it intends to implement additional measures to encourage public input on its upcoming rule revisions. For example, the Board plans to mail draft rules to the major facilities providing occupational therapy services in Arizona. It is considering putting the proposed rules on the Internet, publishing them in a board newsletter, and placing public hearing notices in local newspapers.

The Board also informs the public of its actions by complying with Open Meeting Law requirements regarding notifying the public of its meetings. The public may also learn about board actions through reviewing its records.

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

Although the Board has broad authority to investigate and act upon complaints within its jurisdiction, we were unable to adequately assess the effectiveness with which they were handled due to the Board's inadequate procedures. The Board will need to take several steps to improve its complaint-handling process (see Finding I, pages 7 through 10), including:

- Determining whether the information it receives as complaints falls within its jurisdiction and indicates a violation of its statutes or rules;
- Providing a clear and concise summary of the complaint and the Board's actions in each complaint file; and,

- Ensuring each licensing file of occupational therapy practitioners involved in a complaint contains information on the number and nature of complaints filed against the practitioner, as well as the outcome of those complaints.

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

Both the Attorney General and county attorneys have the authority to prosecute actions under the Board's statutes. In fact, the Board referred one complaint concerning the use of a fraudulent license to the Pima County Attorney for possible criminal prosecution.

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

The Board's statutes have remained unchanged since its inception. In 1992, the Board sought legislation to update and clarify several of its statutes, but the legislation failed.

The Board indicated it will seek legislation to clarify various definitional terms such as unprofessional conduct, clarify and restrict the use of limited permits, establish the license renewal period through administrative rules, and clarify complaint notification procedures during the 1997 legislative session.

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

As recommended in Sunset Factor 2 (see page 11), an extension of the license renewal period to biennial would require a statutory amendment.

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

Termination of the Board may pose harm to the public health and safety. Although certain aspects of the practice appear to pose little or no harm to the public, other facets may present risks to some consumers.

Some of the services or treatments provided by occupational therapy practitioners appear to pose little risk to patients. For example, activities such as providing training in daily living skills and play therapy do not appear to place a patient in danger. Further, in Arizona and nationwide, few complaints have been filed that resulted in disciplinary action against practitioners for patient harm. In fact, Arizona's Board has never disciplined

a practitioner for actions that resulted in actual patient harm, while the National Board for Certification in Occupational Therapy has sanctioned only eight practitioners nationwide for patient harm in the last nine years. Likewise, the profession's major liability insurer indicates that occupational therapy is a relatively low-risk profession as evidenced by its insurance premiums, which are lower than those of other health professions.

Despite the low risk of harm associated with some occupational therapy activities and the small number of complaints, there is not sufficient evidence to suggest the profession should be deregulated. Some aspects of the profession suggest a potential for harm does exist. For example:

- **The nature of certain occupational therapy services**—Occupational therapists provide some treatments that can be harmful if not properly rendered. For example, OTs fabricate splints which, if improperly designed, could result in torn ligaments and tissue or nerve damage. Occupational therapists may also use ultrasound, electrical stimulation, and other treatment techniques which, if applied incorrectly, could result in burns, destruction to bone, or damage to lymph glands.

- **The nature of some clientele**—Occupational therapists frequently interact on an intimate basis with clients who may be vulnerable to improprieties or unable to protect themselves because of the nature of their illness or injury. For example, a practitioner may deal with patients who have suffered strokes or head injuries, mentally or physically disabled children, or elderly patients.

- **The lack of alternative controls for therapists in private practice**—Therapists who have their own practices may not be subject to any controls other than those provided by licensure. For example, schools, hospitals, clinics, and other institutions that frequently employ OTs and OTAs provide oversight since these institutions could be held accountable for the therapist's actions. However, a therapist in private practice would not have this oversight. The American Occupational Therapy Association estimates that 15 percent of Arizona's OTs are employed in private practices, and thus would not be subject to additional oversight.

In addition to the reasons cited above, continuing regulation of this profession is consistent with decisions in other states. Audit reports were available on occupational therapy regulation in eight other states, including Alaska, Delaware, Maryland, Pennsylvania, Tennessee, Texas, Utah, and Washington, and continued regulation was recommended for seven of the eight states. Although deregulation was recommended in Washington, the state's General Assembly ultimately determined to continue licensing the profession.

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.

We found the current level of regulation for both OTs and OTAs to be appropriate.

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

The Board contracts for court reporter services when conducting hearings to ensure adequate documentation of the proceedings, and does not make use of any other private sector services.

Agency Response

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FIFE SYMINGTON
GOVERNOR

KENNETH D. FINK
EXECUTIVE DIRECTOR

ARIZONA BOARD OF OCCUPATIONAL THERAPY EXAMINERS
1400 W. WASHINGTON, SUITE 340
PHOENIX, ARIZONA 85007
(602) 542-6784
FAX: (602) 542-5469

October 8, 1996

Douglas R. Norton
Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Mr. Norton:

This Board received the performance audit report prepared by your office as the Sunset review of this Board. This letter is in response to that report.

FINDING 1

BOARD'S COMPLAINT-HANDLING PROCESS NEEDS IMPROVEMENT

1. The contents of each response to each portion of the finding shall include:

a. Brief statement or re-statement of the finding.

(1) A brief narrative to explain what or why the Board handled an investigation or complaint as they did.

(2) Action or recommendation.

2. **The Board incorrectly establishes some information as complaints.**

a. "The Board initiated an unprofessional conduct complaint on an occupational therapist who had been in a serious accident."

(1) The occupational therapist made reference to in this portion of the finding happened to be a member of this Board at the time she was involved in a serious automobile accident receiving a traumatic brain injury. After several months of rehabilitation, the licensee informed the Board that she wanted to return to her occupational therapy practice and would keep the Board advised of her progress. Due to the seriousness of her injury the Board had some concern for the safety and welfare of future patients and therefore, opened a investigative file (working file) in accordance with ARS 32-3442.A. The licensee stated that she would ask her doctors and

therapist to submit a letter to the Board stating that it was safe for her to return to work. Several letters were received and the ensuing reports from the licensee were all very good. Consequently, the file was closed.

Heretofore, the Board did not make a specific distinction between a complaint file and an investigative file. Files were viewed as "working files" and once the Board determined that a violation had taken place, then from that point in time the file was processed and resolved as a complaint. Otherwise, an investigative file would be closed.

(2) The Board does not disagree with this portion of the finding. In the unlikely event that something like this should ever happen again the Board will not assign a case number or identify such a file as an investigation or complaint.

b. "The Board established a complaint file when an occupational therapist filed a complaint against his own license, . . ."

(1) As a matter of internal control, the Board did open a working file and assign it a case number. At the ensuing Board meeting it was determined that there were no statutes or rules violations and the file was closed.

(2) The Board does not disagree with this portion of the finding. In the future, things of this nature will be carried to the Board for determination of unprofessional conduct before a file is opened or a case number assigned.

c. "The Board established a complaint against an occupational therapist filed when her occupational therapy assistant complained to the Board about nonpayment for services provided by the assistant."

(1) Unless a matter appears to be an urgent health or safety issue, the Board meets only once a month to handle investigations or complaint issues. As a matter of internal control, the Board did open a working file and assign a case number. At the ensuing Board meeting it was determined that the issue was outside the Board's jurisdiction and the file was closed.

(2) In the future, things of this nature will be carried to next Board meeting to determine if a violation of the state statutes or rules has occurred. If there is reason to believe a violation has occurred, then at that time an investigation or complaint file will be opened as appropriate and a case number assigned.

d. "The Board established a complaint file on the Department of Economic Security's Arizona Early Intervention Program when an occupational therapist raised concerns about the Agency's proposed personnel standards for early interventionists. The Board, responding to the Agency's "call for comment" regarding the proposed standards, sent two letters to the Agency identifying its concerns and disagreement with the proposed program. This complaint was open for nearly two months."

"The Board opened a complaint file on Good Samaritan Regional Medical Facilities after several occupational therapists notified the Board that the facility was considering contracting with an orthotics (support of weak muscles and joints) company to provide splitting services. Although the Board determined this activity did not violate law, it sent a letter to the facility outlining occupational therapists' scope of practice and requesting information on the orthotics company being considered. This complaint was open nearly six months."

(1) The aforementioned makes reference to information the Board received that alleges the possibility of the unlawful practice of occupational therapy, i.e. evaluation by unlicensed personnel. In addition there were health and welfare concerns because indications were that untrained people were performing occupational therapy which could result in patient injury.

Arizona Revised Statues (ARS) 32-3443.C reads "If an investigation indicates that a person may be practicing occupational therapy unlawfully, the board shall inform the person of the alleged violation. If the person does not immediately cease the unlawful practice of occupational therapy, the board may refer the matter for criminal prosecution pursuant to 32-3445."

In summary, after discussing the matter with as many as possible of those involved, the Board decided to express their concerns concerning this matter rather than sending a cease and desist letter or refer it for criminal prosecution pursuant to 32-3445."

(2) In the future, allegations similar to these will be investigated and a determination made as to the specific violations of law before an investigation or a complaint file are opened. The Board will adhere to the provisions of ARS 32-3443.C.

3. **Board fails to adequately document its complaint handling.**

a. "Once the Board determines a complaint is a violation of its statutes or rules, it should adequately document all aspects of its complaint handling. None of the files reviewed

contained a clear and concise summary of the complaint, the investigation actions taken by the Board, and the final disposition. In addition, some files lacked sufficient information documenting the actions that the Board took to investigate and resolve the complaint, . . ."

(1) All three of the licensees that were placed on probation were issued a Findings of Fact, Conclusions of Law and Order which describe in detail the specific charges, statutes or rules violated and the disciplinary action taken. A copy of each Findings of Fact, Conclusions of Law and Order are filed within each practitioner's file. This document describes in detail all the facts concerning the order and of course is available for public review. Only one licensee has served enough of their probationary period to have completed probation. A copy of the completion letter is filed in the licensee's file.

None of the remaining complaints resulted in a disciplinary action and were dismissed. In some cases there were no specific violations of the Board's statutes or rules; however, the Board thought that they should express their concern over the way a patient may have been treated resulting in the matter coming to the attention of the Board. Several letters of concern were issued; however, these were not considered disciplinary actions. Copies of documents were not filed in the licensure file in those case where no disciplinary action was taken or in those case where letters of concern were issued.

(2) Henceforth, each complaint file and the licensee's file will contain a summary of the complaint to include the number, nature of the violation, background information of how and when the complaint was received, investigative actions, notice of hearing if applicable, final disposition and date and the date of notification of the final disposition for each complaint.

When future complaints arrive the Executive Director will prefix the case number with an "I" indicating that the file is to be taken to the Board to determine whether a licensee is or may be guilty of unprofessional conduct or is or may be incompetent in accordance with ARS 32-3442.A. Within five days of receipt of an alleged complaint or an investigative issue, the Executive Director will notify the licensee about whom information described above is received in accordance with ARS 32-3442.B.

4. Board fails to consistently include complaint information in licensing files.

a. ". . . the files of practitioners whose cases were dismissed contained incomplete information or no information at

all. For example, three licensing files contained information that a complaint had been filed against the practitioner, but no additional documentation showing the complaint had been dismissed. To resolve this problem, the Board should place a copy of the formal disposition notification letter in the licensing file."

(1) Of the three licensees that were placed on probation and were issued Findings of Fact, Conclusions of Law and Order which describe in detail the specific charges, statutes or rules violated and the disciplinary action taken. A copy of each Findings of Fact, Conclusions of Law and Order are filed within each practitioner licensure file. This document describes in detail all the facts concerning the order and of course is available for public review. Only one licensee has served enough time of their probation to have completed their probation and a copy of the completion letter is filed in the licensee's file.

The remaining cases were dismissed or dismissed along with a letter of concern. Being that these were dismissed, the Executive Director was under the impression that copies were not necessary for the licensee file. Copies were filed in the case file.

(2) In the future, both the complaint file and the licensee file will contain a summary of the complaint to include the number, nature of the violation, background information of how and when the complaint was received, investigative actions, notice of hearing if applicable, final disposition and date and the date of notification of the final disposition for each complaint.

5. **Recommendation (Responses).**

a. The Board will open a complaint file only when the information indicates a violation of the Board's statutes or rules has occurred.

b. Complaint files will contain complete documentation of the violation and all events involved through resolution or dismissal of the complaint.

c. Complete complaint information is to be included in the licensure files.

Sincerely,

Kenneth D. Fink
(602) 542-5300