

Report of Investigation



Arizona Ombudsman-Citizens' Aide

Case # 1202725

Arizona Medical Board

October 9, 2013

The logo consists of a solid orange triangle on the left, which transitions into a white area on the right. The transition is achieved through a series of overlapping, semi-transparent orange shapes that create a sense of depth and movement.

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Report of Investigation
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Arizona Medical Board
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Executive Summary

An employee of the Arizona Medical Board (“AMB”) filed a complaint with the Arizona Ombudsman-Citizens’ Aide alleging the following:

- The AMB violated Arizona licensing laws for medical doctors,
- A Board member’s service time exceeded legal term limits and
- The AMB’s Executive Director and Deputy Director approved procedures and directed staff to operate in ways that violated state laws.

The complainant alleged the AMB enacted expedited licensing procedures in September 2011 that violated state laws and did not support the AMB’s mission, “To protect public safety through the judicious licensing, regulation and education of all allopathic physicians.” She claimed she and other staff members raised concerns about the legality of the new processes, but the AMB’s executive managers rebuffed them. During the course of this investigation, five others came to the Ombudsman-Citizens’ Aide Office as witness-complainants.

Within a year of the process revisions, the Licensing Division also experienced significant turnover. At one point in 2012, the department had two workers, with a year of experience each, handling all Arizona licenses for allopathic doctors and physicians assistants. The complainant asserted that because of law violations, imprudent processes, staff turnover, and confusing instructions, the AMB did not adequately protect the public from potentially unqualified physicians.

The Executive Director and Deputy Director acknowledged they and the AMB had no legal authority to enact the expedited practices, but proceeded nonetheless. She recommended the Board adopt policies to circumvent lawmaking processes in some instances. The Executive Director defended these practices by stating they addressed a mandate she perceived state leaders placed on the AMB to operate more efficiently and reduce regulatory burden on doctors. She argued the new policies were superior to “outdated” state laws, while meeting public demand for less regulation and satisfying physicians’ expectations for quicker licensure. She held the AMB must yield to trends such as online databanks (to verify qualifications), telemedicine and doctor mobility.

We investigated 20 issues detailing these allegations. We interviewed AMB staff, reviewed key documents, compared practices with six other medical boards and researched national trends. We found the Board ignored or violated many state laws and licensed potentially unqualified doctors from September 2011 to February 2013. Our investigation substantiated 19 allegations and found one indeterminate.

Our recommendations include changes to state laws to enhance public safety through criminal background checks, primary source verification of qualifications, use of national verification services and elimination of unnecessary steps. We recommend a review of AMB licenses issued since September 2011 by the Arizona Auditor General. Most importantly, until new licensing laws pass through authorized means, the Board must adhere to existing Arizona laws. This report details the allegations, our findings related to specific state laws and recommendations to address the findings.

Table of Contents

| | |
|--|----------|
| Executive Summary | i |
| Allegations | 1 |
| Summary of Issues Investigated | 1 |
| Issues Involving the Unlawful Licensure of Physicians..... | 1 |
| Issues Involving Inaccurate Public Profiles of Physicians | 3 |
| Issue Involving Adoption of Policies to Replace Laws..... | 3 |
| Issue Involving Term Limit Violation of Board member..... | 3 |
| Issues Involving Specific Employees Violating State Laws | 4 |
| Factual and Procedural Background | 4 |
| Overview..... | 7 |
| Sequence of Events..... | 8 |
| AMB Emphasized Speed Over Laws | 13 |
| AMB Leadership Defended Speedy Licensing..... | 16 |
| AMB Executives Asserted Agency Policies Trumped State Laws | 19 |
| Turnover in the Licensing Department..... | 21 |
| Inconsistent Instructions from Upper Management | 24 |
| Licensing Medical Professionals in Other States | 29 |

Scope of Investigation.....33

Allegations and Findings35

ISSUE 1: The Arizona Medical Board licensed physicians who did not provide documentation of citizenship or alien status as required by A.R.S § 41-1080 and A.A.C. R4-16-201(C)(1).37

ISSUE 2: The AMB did not consistently assess whether applicants met the requirements of A.R.S. § 32-1429(A)(3), before issuing licenses to physicians who temporarily take the place of colleagues (locum tenens registrations).41

ISSUE 3: The AMB violated A.A.C. R4-16-201(D)(1)(a) when it stopped reviewing primary sources of medical college certification for international medical graduate (IMG) applicants.48

ISSUE 4: The AMB violated A.A.C. R4-16-201(D)(1)(b) by discontinuing the review of applicants' postgraduate training certification.....51

ISSUE 5: The AMB did not verify each applicant's licensure from every state in which the applicant has ever held a medical license, as outlined in A.A.C. R4-16-201(D)(4).....53

ISSUE 6: The AMB discontinued asking applicants renewing active licenses to include a report of "disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. . ." as an attachment to their renewal form, in violation of A.R.S. § 32-1430.56

ISSUE 7: For physicians applying for licensure by endorsement who took required exams specified in A.R.S. § 32-1426(A), more than ten years before the date of filing, the AMB did not adhere to A.A.C. R4-16-204(F). The rule requires that such applicants either hold current certification from the American Board of Medical Specialty (AMBS) or take and pass the Special Purposes Examination (SPEX). Instead, the agency adopted an internal policy to review and accept applicants based on ten years' work and employment history, in violation of A.R.S. §§ 41-1001 to 41-1092.12.59

ISSUE 8: The AMB did not require physicians to submit their photos with license applications, as mandated by A.A.C. R4-16-201(B)(21).62

ISSUE 9: The AMB did not require notarized signatures on applications, as prescribed in A.A.C. R4-16-201(B)(22).....64

ISSUE 10: The AMB issued renewals to physicians, previously licensed by endorsement, who allowed their Arizona licenses to expire and did not hold an active license in another state, in violation of the Board's legal authority per A.R.S. § 32-1430(D). Further, instead of going through the legislative or rulemaking processes, the agency simply adopted a policy to deal with this situation, a violation of A.R.S. § 41-1030.65

ISSUE 11: The AMB did not comply with statutes and rules relating to continuing Medical Education (CME) documentation, verification and mailing of forms.70

ISSUE 12: The AMB did not follow state law with respect to license renewal timeframes outlined in A.A.C. R4-16-207(B)(1)(a).....74

ISSUE 13: The AMB did not comply with overall timeframes outlined in A.A.C. R4-16-206(A) and (B) in sending deficiency notices to physicians who did not comply with registration and renewal requirements set forth in A.A.C. R4-16-301. As a result, some physicians in Arizona dispensed controlled substances beyond their legal authority to do so.....77

ISSUE 14: The AMB did not review the full scope of a physician's postgraduate training, as required by A.R.S. § 32-1403.01(A)(6) and A.R.S. § 32-1422(A)(2). Consequently, public profiles of physicians on the AMB website were imprecise and the public was ill informed of potential issues involving a physician's postgraduate training, a violation of A.R.S. § 32-1403.01(A)(6).80

ISSUE 15: The AMB stopped verifying doctors' board certification as required by A.A.C. R4-16-201(B)(18). As a result, physicians' public profiles reflect incorrect information, a violation of A.R.S. § 32-1403.01.....85

| | |
|---|------------|
| ISSUE 16: The AMB employed policies to circumvent licensing laws, a violation of A.R.S. §§ 41-1001, 41-1001.01 and 41-1030(B)..... | 87 |
| ISSUE 17: The AMB has a board member whose time in office exceeds the statutory term limits of 5-10 years, prescribed by A.R.S. § 32-1402(C). | 94 |
| ISSUE 18: The AMB's Deputy Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443 by disregarding Arizona Medical Board licensing laws. | 95 |
| ISSUE 19: The AMB's Executive Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443 in her response to the Ombudsman Final Report of Investigation #1200132. She was informed A.A.C. R4-16-201(D)(5) existed and was a properly enacted rule, yet she authorized staff to disregard the law for several months after the report..... | 100 |
| ISSUE 20: The Executive Director chose to ignore Arizona Medical Board licensing laws, directed staff to disregard these laws, refused Attorney General advice on legal obligations and did not correct or redirect staff on occasions when she knew they were violating laws. This is a violation of A.A.C. R2-5A-501 (A)(1) and A.R.S. § 38-443. | 104 |
| Recommendations | 111 |
| Agency Response | 119 |
| Employee Responses..... | 129 |
| Exhibits..... | 135 |
| EXHIBIT A – 2012 Medical Licensing Practices in select Western States and FCVS..... | 137 |
| EXHIBIT B - Initial AMB License Application Used September 2011 - March 2013..... | 138 |
| EXHIBIT C - Initial License Application, revised by AMB March 2013..... | 147 |
| EXHIBIT D – AMB’S Statement of Citizenship and Alien Status..... | 167 |

| | |
|--|------------|
| EXHIBIT E - Screenshot of AMB website, taken March 25, 2013 | 170 |
| EXHIBIT F – Arizona Boards That Cited Errant Immigration Requirements for Licensing | 171 |
| EXHIBIT G - Arizona Legislative Council Memo Regarding Immigration Verification Requirements for State Agencies to Issue Licenses..... | 172 |
| EXHIBIT H – March 4, 2013 AMB Memo Outlining Revised Policies | 174 |
| EXHIBIT I – Laws 2004, Chapter 264, Section 5 Which Amended A.R.S. §32-1426..... | 176 |
| EXHIBIT J – AMB Licensing Staff, September 2011-September 2012..... | 177 |
| Terms and Abbreviations | 179 |

Introduction

The Arizona Ombudsman-Citizens' Aide conducted an investigation of the Arizona Medical Board, in accordance with A.R.S. §§ 41-1376-41-1380 and A.A.C. Title 2, Chapter 16.

It is our standard investigative practice to review agency records, interview complainants and employees and to conduct baseline comparisons with similar agencies in the state and around the country.

We investigated three primary allegations (right). The allegations were broad, so we subdivided them into 20 issues organized under the following categories:

- Unlawful Licensure of Physicians
- Inaccurate Public Profiles of Physicians
- Adoption of Policies to Replace Laws
- Term Limit Violation of Board member
- Employees Violating State Laws

This investigation substantiated 19 and found one of the allegations indeterminate.

Allegations

We received a complaint from an employee of the Arizona Medical board alleging that the Board's practices relating to medical licensure and board term limits violated Arizona Revised Statutes (A.R.S.) § Title 32, Chapter 13 and the Arizona Administrative Code (A.A.C.) Title 4, Chapter 16.

The employee, Licensing Coordinator LC-X, alleged she and other staff members alerted the Executive Director and the Deputy Director of the possible illegal actions and both either dismissed employees' concerns or directed employees to disregard state laws, in violation of A.A.C. R2-5A-501(A)(1).

Three Primary Allegations

1. The AMB violated Arizona licensing laws for medical doctors,
2. A Board member's service time exceeded legal term limits and
3. The AMB's Executive Director and Deputy Director approved procedures and directed staff to operate in ways that violated state laws.

Summary of Issues Investigated

The complaint's allegations were comprised of three main categories, "The Arizona Medical Board's practices relating to medical licensure and board term limits violate Arizona laws" and "The Board's Executive Director and Deputy Director condoned these violations and directed staff to continue disregarding state laws." We subdivided the allegations into the following twenty issues:

Issues Involving the Unlawful Licensure of Physicians

LC-X alleged the AMB violated medical licensure laws outlined in A.R.S. § Title 32, Chapter 13 and A.A.C. Title 4, Chapter 16, as outlined in ISSUES 1-16:

ISSUE 1: The Arizona Medical Board licensed physicians who did not provide documentation of citizenship or alien status as required by A.R.S § 41-1080 and A.A.C. R4-16-201(C)(1).

- ISSUE 2:** The AMB did not consistently assess whether applicants met the requirements of A.R.S. § 32-1429(A)(3), before issuing licenses to physicians who temporarily take the place of colleagues (*locum tenens* registrations).¹
- ISSUE 3:** The AMB violated A.A.C. R4-16-201(D)(1)(a) when it stopped reviewing primary sources of medical college certification for international medical graduate (IMG) applicants.
- ISSUE 4:** The AMB violated A.A.C. R4-16-201(D)(1)(b) by discontinuing the review of applicants' postgraduate training certification.
- ISSUE 5:** The AMB did not verify each applicant's licensure from every state in which the applicant has ever held a medical license, as outlined in A.A.C. R4-16-201(D)(4).
- ISSUE 6:** The AMB discontinued asking applicants renewing active licenses to include a report of "disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. . ." as an attachment to their renewal form, in violation of A.R.S. § 32-1430.
- ISSUE 7:** For physicians applying for licensure by endorsement who took required exams specified in A.R.S. § 32-1426(A), more than ten years before the date of filing, the AMB did not adhere to A.A.C. R4-16-204(F). The rule requires that such applicants either hold current certification from the American Board of Medical Specialty (AMBS) or take and pass the Special Purposes Examination (SPEX). Instead, the agency adopted an internal policy to review and accept applicants based on ten years' work and employment history, in violation of A.R.S. §§ 41-1001 to 41-1092.12.
- ISSUE 8:** The AMB did not require physicians to submit their photos with license applications, as mandated by A.A.C. R4-16-201(B)(21).
- ISSUE 9:** The AMB did not require notarized signatures on applications, as prescribed in A.A.C. R4-16-201(B)(22).
- ISSUE 10:** The AMB issued renewals to physicians, previously licensed by endorsement, who allowed their Arizona licenses to expire and did not hold an active license in another state, in violation of the Board's legal authority per A.R.S. § 32-1430(D). Further, instead of going through the legislative or rulemaking processes, the agency simply adopted a policy to deal with this situation, a violation of A.R.S. § 41-1030.

¹ Definition: a medical practitioner who temporarily takes the place of another. "Locum Tenens." *Merriam-Webster. Medical Dictionary.*

- ISSUE 11:** The AMB did not comply with statutes and rules relating to continuing Medical Education (CME) documentation, verification and mailing of forms.
- ISSUE 12:** The AMB did not follow state law with respect to license renewal timeframes outlined in A.A.C. R4-16-207(B)(1)(a).
- ISSUE 13:** The AMB did not comply with overall timeframes outlined in A.A.C. R4-16-206(A) and (B) in sending deficiency notices to physicians who did not comply with registration and renewal requirements set forth in A.A.C. R4-16-301. As a result, some physicians in Arizona dispensed controlled substances beyond their legal authority to do so.

Issues Involving Inaccurate Public Profiles of Physicians

The complainant alleged that because the Board stopped verifying each item listed on applications up to the point of licensure, the public profiles of physicians on the AMB website might be imprecise.

- ISSUE 14:** The AMB did not review the full scope of a physician's postgraduate training, as required by A.R.S. § 32-1403.01(A)(6) and A.R.S. § 32-1422(A)(2). Consequently, public profiles of physicians on the AMB website were imprecise and the public was ill informed of potential issues involving a physician's postgraduate training, a violation of A.R.S. § 32-1403.01(A)(6).
- ISSUE 15:** The AMB stopped verifying doctors' board certification as required by A.A.C. R4-16-201(B)(18). As a result, physicians' public profiles reflect incorrect information, a violation of A.R.S. § 32-1403.01.

Issue Involving Adoption of Policies to Replace Laws

As demonstrated in ISSUES 1-15, LC-X alleged the AMB negated medical licensure laws outlined in A.R.S. § Title 32, Chapter 13 and A.A.C. Title 4, Chapter 16. The agency adopted policies in place of those laws.

- ISSUE 16:** The AMB employed policies to circumvent licensing laws, a violation of A.R.S. §§ 41-1000.01 and 41-1030(B).

Issue Involving Term Limit Violation of Board member

LC-X alleged that the AMB violated A.R.S. § 32-1402(C) because a board member held a seat on the board since 1994.

- ISSUE 17:** The AMB has a board member whose time in office exceeds the statutory term limits of 5-10 years, prescribed by A.R.S. § 32-1402(C).

Issues Involving Specific Employees Violating State Laws

LC-X alleged the Executive Director and Deputy Director of the Arizona Medical Board violated state medical licensing laws. In accordance with A.A.C. R2-16-306, we investigated the following alleged misconduct of these employees.

- ISSUE 18:** The AMB's Deputy Director violated A.A.C. R2-5A-501(A)(1) by disregarding Arizona Medical Board licensing laws.
- ISSUE 19:** The AMB's Executive Director violated A.A.C. R2-5A-501(A)(1) in her response to the Ombudsman Final Report of Investigation #1200132. She was informed A.A.C. R4-16-201(D)(5) existed and was a properly enacted rule, yet she authorized staff to disregard the law for several months after the report.
- ISSUE 20:** The Executive Director chose to ignore Arizona Medical Board licensing laws, directed staff to disregard these laws, refused Attorney General advice on legal obligations and did not correct or redirect staff on occasions when she knew they were violating laws. This is a violation of A.A.C. R2-5A-501 (A)(1) and A.R.S. § 38-443.

Factual and Procedural Background

Overview

An employee (hereinafter, "LC-X" or "complainant") of the Arizona Medical Board (hereinafter, "AMB" or "Board") came to our office with concerns that the Board strayed from its mission. She alleged the Board violated state laws in its licensing of physicians and by allowing a board member to exceed term limits. In some cases, according to the complainant, the Board adopted internal policies that circumvented existing laws in lieu of following lawmaking or rulemaking procedures to change laws.

LC-X and other staff members alleged they attempted on numerous occasions to alert the Executive Director and Deputy Director that the agency may be licensing unqualified doctors. Both executives purportedly directed staff to follow their procedures, deeming that certain state licensing laws were inefficient and thus, no longer mandatory. LC-X asserted that the Deputy Director and Executive Director were aware of and openly acknowledged state laws the agency should have followed, but ignored laws in order to license physicians more swiftly and in ways that compromised public safety.

When we interviewed LC-X, she outlined the allegations and explained that she was a current employee of the Board. Within a few weeks of the initial allegation, five more former or current members of the AMB staff contacted us with similar concerns. One complainant was a former intern, LC-F. Another was the former Licensing Manager, LM-B. Three complainants requested privacy protection under the law, choosing to remain anonymous. We kept those individuals' identities confidential, per A.A.C. R2-16-201.

On October 1, 2012, we met with the AMB Deputy Director and Executive Director and reviewed the allegations and issues presented to our office. We interviewed AMB staff in the licensing and investigations divisions. We requested copies of correspondences, licensing policies, AMB resource handbook and other relevant documents from AMB staff. We requested some specific physician profiles relative to our investigation.

We did baseline comparisons of licensing practices of six other medical licensing boards, recognizing each has unique licensing laws. We met with the Executive Director and a licensing administrator of the Arizona Board of Osteopathic Examiners (AZDO). We spoke with licensing officers in California, Colorado, Idaho, Nevada and Utah. In addition, we interviewed a chief administrator of the Federation of State Medical Boards. We

Arizona Medical Board Facts

There are currently more than 21,300 allopathic physicians licensed in Arizona. The Arizona Medical Board regulates them.

The Board is comprised of 12 members: 8 physicians and 4 public members, including a licensed registered nurse. The Governor appoints each Board member.

The current Executive Director is the eighth person to serve in that role since the Board first created the position in 1961.

The mission of the Arizona Medical Board is:

"To protect public safety through the judicious licensing, regulation and education of all allopathic physicians."

Source: www.azmd.gov

studied relevant data from the American Medical Association, the Federation of State Medical Boards and research pertaining to medical licensing boards. We reviewed audio recordings of AMB board and staff meetings.

We examined Arizona Revised Statutes §§ 32-1435 et seq., Arizona Revised Statutes Title 41 Chapter 6 and Arizona Administrative Code Title 4 Chapter 16 Articles 1, 2 and 3.

Sequence of Events

APRIL 2011

In Board minutes from the April 6, 2011 meeting, the Executive Director praised the Licensing Manager, "LM-A" (see Exhibit J) and the licensing staff for "an excellent job in decreasing the amount of days it takes to process a license application to 21 days." She cited survey results that included "compliments of the Licensing Office staff's courtesy, professionalism, and prompt responses." At that point, the licensing staff consisted of five members, three of whom each had 6-12 years of experience at the AMB and two others hired within the previous year.

JUNE-JULY 2011

According to a former staff member, while Licensing Manager LM-A was on vacation, the Deputy Director and Executive Director "dismantled" the processes in the licensing department in an effort to accelerate physician licensure. The Executive Director confirmed this in several communiqués and told us she was "proud" of the "efficiencies" of the expedited licensing processes, asserting they were superior to state laws. She added that state laws "did not account for current trends" such as paperless applications and online databases for verification of credentials.

SEPTEMBER 2011

The executives asked Licensing Manager LM-A to relay the new processes to the staff. On September 30, 2011, the Licensing Manager outlined new steps to her staff in an e-mail message and copied the message to the Deputy Director. Some of the new procedures for processing licenses included:

- Stop requesting employment verifications or hospital privilege verifications.²

² Required per A.A.C. R4-16-201(D)(5)

- Stop verifying information from each state in which a physician held a license.³
- Accept copies of certificates, including medical school⁴ and post-graduate training.⁵
- Discontinue requiring copies of certificates, such as medical school degree, test scores or post-graduate training for *locum tenens* licenses.⁶

Licensing Manager LM-A informed staff that from that point forward, the Deputy Director had sole responsibility to review all deficient applications and decide if she would treat them as routine cases. In other words, the Deputy Director, instead of determining *how* to deal with missing or problematic information in applications, would now decide *whether* to investigate physicians with deficiencies. Furthermore, the message suggested the Deputy Director had the authority to determine which physicians could bypass critical verification processes required by law. Licensing Manager LM-A added that the Executive Director and Deputy Director “want to give us the leeway to be efficient and not waste our time on non-applicable paperwork.”

The AMB also terminated one licensing staff member in September 2011.

OCTOBER 2011

In an e-mail message dated October 1, 2011, the Deputy Director told the Licensing Manager and LC-X to disregard state laws requiring primary source verification of license applications. She asked them to “go paperless” effective the following Monday.

During that month, the agency also dismissed Licensing Manger LM-A.

NOVEMBER 2011

After the AMB terminated the employment of another licensing member in November, 2011, only three staff remained in the

³ Required per A.A.C. R4-16-201(D)(4)

⁴ Primary source submission required per A.A.C. R4-16-201(D)(1)(a)

⁵ Primary source submission required per A.A.C. R4-16-201(D)(1)(b)

⁶ Required per A.A.C. R4-16-203

Key Events

September 2011

Expedited licensing procedures began.

October 2011

Staff probed top executives about new processes.

Licensing Manager LM-A terminated.

December 2011

LC-X voiced fears the agency violated laws and licensed unqualified doctors. Executives acknowledged non-compliance, yet directed staff to continue the unlawful practices. Complainant audio recorded the meetings.

January 2012

Former AMB worker, dismissed November 2011, brought us 7 allegations (Case #1200132).

July 2012

Our investigation of Case #1200132 substantiated one allegation: AMB did not verify doctor’s employment according to law. Agency response admitted law violation with persistent refusal to comply.

August 2012

More complainants alleged 20 new issues, investigated in this report (Case #1202725).

Later that month, AMB Executive Director issued letter agreeing to comply with recommendation from Case #1200132.

February 2013

Executive Director requested meeting with Ombudsman one day after televised report about AMB, “Was Your Doctor Checked out before Becoming Licensed in Arizona?”

March 2013

AMB modified some licensing practices to comply with laws.

September 2013

AMB Board acknowledged law violations. Executive Director denied staff complained of licensing law violations. Some licensing practices remained non-compliant with state laws.

department to process all applications for both physicians and physician assistants. The Executive Director told us she was aware of growing anxiety in the department around staff turnover and new policies, so during the transition period, she charged the Deputy Director with the task of ensuring stability and encouraging staff to adopt the new efficiency measures.

In late November, a new Licensing Manager, LM-B, transitioned into the department. LC-X said the executives at the AMB warned her not to be “confrontational” and to give her new supervisor guidance, under the expedited licensing procedures during training. The Executive Director explained she grew concerned that unnecessary conflict developed which impeded progress in the department. She said she leaned heavily on the Deputy Director to build harmony while providing the new Licensing Manager direction and support.

Licensing Manager LM-B told us the Board did not train him for the position and asked him to rely exclusively on guidance from LC-X and the Deputy Director. He told us he sensed tension between them, but did not know the source. He said he could tell the policies in the division were in flux, so he requested meetings with LC-X and the Deputy Director. He thought such a meeting would help reduce conflict within his department and discuss the legality of the recently implemented processes and to develop clear processes for his new staff to follow.

DECEMBER 2011

LC-X told us she grew increasingly alarmed by the top executives' instructions, so she began making audio recordings of meetings. In a December 1, 2011 meeting, the Deputy Director said that, while she was ultimately responsible if the agency did not follow laws, she pleaded ignorance to many of the licensing laws. LC-X then suggested greater involvement of the Assistant Attorney General to ensure the agency complied with state laws. The Deputy Director rejected this suggestion, and told LC-X the agency's lawyer should not be bothered with such details.

Later that month, LC-X asked to meet with the Executive Director to emphasize her concerns about job security and directives she felt conflicted with state laws. In an audio recording of that meeting, we heard the Executive Director tell LC-X that while she knew the licensing processes did not comply with Arizona Administrative Code, she was not worried about it. She said she had her own philosophy and was prepared to defend it, if challenged by state officials.

Throughout those December 2011 meetings, we heard many similar statements from the Executive Director and Deputy Director confirming they knew the agency was not following lawfully enacted rules and statutes. We also heard Licensing Manager LM-B reiterating his superiors' expectations of staff. When staff questioned his directions, he assured them he would seek answers. He told us he became less comfortable with the executives' responses, he grew mistrustful of the Deputy Director, in particular, and eventually left the AMB. Both executives acknowledged in the recordings they were supposed to comply with laws, but opted instead to direct staff to disregard them.

APRIL 2012

During the ensuing months, the AMB approved licenses in an average of 18 days. At one point in April 2012, according to LC-X, the AMB licensed physicians in as few as three days. She said the AMB executives continued modifying instructions to speed up licensing, but there were fewer staff and those remaining had less institutional knowledge to implement them effectively.

JULY 2012

On July 2, 2012, the Licensing Manager LM-C told licensing staff to stop verifying whether doctors were "Board Certified" by the American Board of Medical Specialties.⁷ The AMB's public profiles listed Board Certification for anyone who claimed to possess it, simply based on a doctor's word, instead of formal verification.

On July 18, 2012, after the investigation of an earlier complaint, the Ombudsman issued a final report of investigation, substantiating one of seven allegations.⁸ We found the AMB violated law when it stopped requiring physicians to submit proof of previous employment on official letterhead, as required by A.A.C. R4-16-201(D)(5). That report contained a letter dated July 5, 2012 outlining the Board's response to our findings. In it, the Executive Director stated the board disagreed with our recommendation that the agency comply with the employment verification law and stated they would not abide with the recommendation.

AUGUST 2012

LC-X came to our office with additional allegations and we opened a new investigation of the AMB. Later that month, the AMB Executive Director sent us a message reversing the decision outlined in her July 5, 2012 response to Ombudsman Report 1200132 mentioned above. Effective August 28, 2012, she directed licensing staff to return to the practice of verifying employment as required by law.

SEPTEMBER 2012

We sent a notice letter to the AMB stating we opened this new investigation.

OCTOBER 2012

We held several meetings with AMB executives and licensing staff, gathering e-mails, procedural manuals and related evidence.

⁷ "Setting the Standard for Quality Medical Care: Certification Matters." *ABMS.org*. The American Board of Medical Specialties. Web.

⁸ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

JANUARY 2013

The complainant presented allegations of employee misconduct, outlined in A.A.C. R2-16-306, involving the Executive Director and Deputy Director. On January 28, 2013, we notified both individuals of our intent to investigate them for employee misconduct, in accordance with the rule.

FEBRUARY 2013

A televised report on ABC Channel 15 claimed the AMB licensed doctors at a pace that jeopardized public safety.⁹ The next day, the AMB Executive Director asked to meet with our office to discuss changes the Board enacted to be in line with state laws.

MARCH 2013

The meeting after the televised interview occurred on March 4, 2013. It included the Executive Director, Deputy Director, Licensing Manager LM-C and the Board's Assistant Attorney General. They explained the agency planned to return to the pre-September 2011 licensing practices. They also told us the agency, before September 2011, did not follow rules requiring physicians to notarize applications, submit photos or record their continuing medical education credits on mailed renewal forms. They said that within the following weeks, they expected to be in full compliance with licensing laws.

APRIL 2013

Because the complainant alleged the Executive Director and Deputy Director engaged in employee misconduct, in accordance with A.A.C. R2-16-306, we consulted with both executives regarding our investigative conclusions relating to them beginning on April 26 2013. The law required the employees to respond by May 17, 2013. Both individuals requested extensions allowable by law and the Ombudsman granted extensions through May 31, 2013.

JUNE-JULY 2013

We incorporated the employee responses into the preliminary report and forwarded it to the agency, in accordance with A.A.C. R2-16-306. The agency had 15 working days to respond to the preliminary report, as prescribed in A.A.C. R2-16-501. The AMB responded by the July 31, 2013 deadline.

AUGUST 2013

We submitted a draft of the final report to the Executive Director and former Deputy Director for allegations of employee misconduct on August 2, 2013, as required by A.A.C. R2-16-306. We invited both employees to respond.

⁹ Ducey, Joe. "Was Your Doctor Checked out before Becoming Licensed in Arizona?" *ABC 15 Investigators*. ABC. KNXV-TV, Phoenix, Arizona, 19 Feb. 2013. *ABC15.com*. Scripps Media, 19 Feb. 2013. Web.

SEPTEMBER 2013

The Deputy Director did not respond to the aforementioned draft of the final report. The Executive Director, for her response to the draft, requested an extension of one week as allowed by law, and the Ombudsman agreed to the extension. She submitted her response in accordance with the deadline of September 3, 2013. Her response, contained in this report (see "Employee Responses" section), included the following statement,

"I agree with the Board that our most productive course of action is to **accept your report and proceed accordingly**. Therefore, based on your initial findings and recommendations, I have continued to work closely with the Board and staff to return to practices that are in strict compliance with statutes and administrative rules as written. And I hereby confirm my intent to comply literally and explicitly with all statutes and administrative rules as they are written." [Emphasis added.]

The Executive Director, later in that response, contradicted herself. She rejected her initial position (above) that agreed with the Ombudsman Office report and reasserted her longstanding belief the Board's previous actions were superior to state laws and she did not violate laws by implementing them. (See section, "AMB Leadership Defended Speedy Licensing.")

AMB Emphasized Speed Over Laws

The complainant alleged the AMB issued licenses to doctors in as few as three days, skipping crucial verification steps in order to do so. LC-X said her supervisors ordered the licensing staff to implement misguided and law-evading processes to expedite licensure beginning September 2011. She said that the expedited licensing practices made it "easier to get a medical license than a driver's license" in Arizona. She thought management was negligent to elevate purported efficiency over what she saw as the rule of law. She believed the changes would culminate in the AMB straying from its mission and jeopardizing public health and safety by rushing licensure of physicians in Arizona.

The Arizona Medical Board issued licenses to doctors new to the state in two days and renewed doctors' licenses within 24 hours.

According to statistics provided by the Executive Director, the AMB processed licenses in 38 days during July 2011. Two months later, the agency enacted the controversial efficiency processes. In October 2011, the agency dismissed the Licensing Manager ("Licensing Manager, LM-A").

The licensing turnaround then temporarily slowed to 53 days. In an audio recording of a meeting on December 15, 2011, the Executive Director told LC-X that the Deputy Director discovered a backlog of cases and "got much, much more involved in the nitty-gritty of [licensing processes] than she had expected to." Eventually, the licensing department shrank to as few as two members. The new licensing procedures became fully implemented under the direction of the Deputy Director during this time and the pace of licensing accelerated. In our

review of various correspondences and reports from 2011 and 2012, we noted wide ranges of turnaround times, including approval times as low as two days to grant full licensure to first-time applicants and one day for renewals.

The AMB's 2011-2012 published Annual Report touted the Board's speed in renewing medical licenses announcing,

"1 day on average to renew a license."¹⁰

The annual report also addressed turnaround times for initial license applications:

"Restructured the licensing process resulting in issuing 20% more licenses than last year with fewer staff, and reducing the number of days to issue a license from 34 days to 15 days."¹¹

An AMB Board member wrote an e-mail message on September 5, 2012 to the Executive Director, following her meeting with the Chair of the Arizona Senate Health and Human Services Committee. She reported to the Executive Director that the legislator,

". . . expressed concern that licensing went from 14 employees and [processed applicants in] 40 some days to two employees and [processed applicants in] **just a couple days.**" [Emphasis added.]

The AMB Executive Director provided us a report that illustrated licensure turn-around times were as low as 12 days in November 2012, following the new processes. This is remarkable, compared to average turnaround times of 55 days for medical license approvals amongst other agencies we interviewed (see Exhibit A). Moreover, in July 2012, after several licensing staff left the department, only two employees remained. Two new employees moved into the department. Of the four staff members, only two had worked with the AMB for slightly more than a year while the other two moved into the licensing department within the previous five months. With very little experience amongst the licensing staff and 1,449 cases in 2012, the AMB processed applications in an average of 15 days, the quickest turn-around of any medical licensing agency we polled (see Exhibit A).

The AMB Executive Director explained to us that national trends lean toward speedy licensure of doctors, yet the American Medical Association's website advises new physicians to be patient when applying for medical licenses,

"Even for physicians with uncomplicated histories who submit complete and accurate applications, delays in obtaining a medical license may be encountered. **Physicians**

¹⁰ Arizona Medical Board. *2011-2012 Annual Report*. www.azmd.gov. Web.

¹¹ *Ibid.*

should plan for at least a 60-day period from the time they submit a completed application for license and the actual date licensure is granted. Physicians who are graduates of a medical school outside the United States should anticipate a slightly longer period.”¹² [Emphasis added.]

The Chief Advocacy Officer of the Federation of State Medical Boards (FSMB) concurred with the AMB’s assertion that states are under a lot of pressure to license physicians quickly. The officer said the average time it takes to approve a medical license varies widely around the country, depending on state laws, levels of authority given to Executive Directors to approve licenses and volume of applications received by each board. She reported that medical boards have approved “clean applications” in as few as three weeks or as long as six months in some states.

When we asked if the FSMB officer knew of any medical boards that may have licensed physicians in as few as three days, as LC-X alleged, she responded that she was unaware of states approving initial license applications so quickly, without cutting critical verification steps. The FSMB officer provided an example from a state that may take as few as three days: Idaho. That state’s laws allow the medical board to process licensure by endorsement¹³ through an expedited process, with higher criteria for physicians who have practiced for at least five years and have no discipline issues. She mentioned that the FSMB provides the Federation Credentials Verification Service (FCVS). Around the country, thirteen medical boards require applicants to use the service for license verification.¹⁴ On the FSMB website, it describes the FCVS as follows:

“FCVS establishes a permanent, lifetime repository of **primary-source verified core credentials** for physicians and physician assistants.”¹⁵ [Emphasis added.]

Utah is among the states requiring physicians to use the FCVS.¹⁶ We interviewed the Bureau Manager of Utah’s Division of Occupational and Professional Licensing, which approves medical licenses in that state. She said her office may occasionally issue a license in one day, but only after the FCVS approved the physician. In those cases, she explained, physicians typically communicate proactively with the Utah office to ensure completion of the application. Upon receipt of the FCVS approval of such applicants, her staff quickly cross-verifies all required documents, because the Division already reviewed submissions sent directly from the applicant

¹² FSMB. *Medical Licensure*. Rep. American Medical Association. Web.

¹³ Definition: “A process whereby a state issues an unrestricted license to practice medicine to an individual who holds a valid and unrestricted license in another jurisdiction.” Source: “Licensure by Endorsement: Final Report of the Ad Hoc Committee on Licensure by Endorsement.” *FSMB.org*. Web.

¹⁴ “Licensing Boards Accepting FCVS Physician Information Profiles.” *FSMB.org*. Federation of State Medical Boards. Web.

¹⁵ “Federation Credentials Verification Service (FCVS).” *FSMB.org*. Federation of State Medical Boards. Web.

¹⁶ “Licensing Boards Accepting FCVS Physician Information Profiles.” *FSMB.org*. Federation of State Medical Boards. Web.

to Utah. She explained the FCVS approval process might take up to six months. Thus, doctors submitting to the FCVS process are not saving time; they are just engaging in a form of pre-certification that formally gathers their credentials for ease of review by medical boards at a later period. The Utah executive said the Utah licensing staff then provides a “second eye” to ensure accuracy of all FCVS-approved licenses.

An administrator from the Arizona Board of Osteopathic Examiners (AZDO) told us her board does not require physicians to use FCVS because it would be costly for physicians and it might take longer for the service to license physicians than AZDO can. FSMB reported that seven medical boards have been “highly recommending” the FCVS. The AMB, along with 42 other boards accepts FCVS-processed applications.

We asked the Executive Director of AMB if the agency considered outsourcing the verification process to this private agency by requiring physicians to submit a FCVS verification packet and she replied on March 20, 2013:

“Board staff has discussed requiring the FCVS Packet for licensing. Of course, it would require a statutory change, and two other considerations are:

1. that it would require that the expense of the FCVS process be absorbed by the applicant and;
2. it is a somewhat slow process, so it would delay the time for some applicants to get licensed.”

The FCVS has essentially the same verification procedures as required in Arizona law for the Arizona Medical Board (see Exhibit A). The FCVS does not verify employment history as mandated by Arizona law, A.A.C. R4-16-201(D)(5). The FCVS verification process, however, does entail a criminal background check, a procedure not required in Arizona. FCVS requires primary source verification of documentation such as medical schools, postgraduate training and licenses from every state in which each applicant held a medical license. Arizona law also requires such verification, but the AMB stopped adhering to these primary source documentation laws beginning September 30, 2011.

Between October 1, 2011 and February 1, 2013, during which time it stopped following many processes required by law, the AMB issued 2,041 licenses. The staff-to-applications ratio for FCVS in 2012 was 1:347, compared to AMB’s 1:396. FCVS, with fewer applications per staff member than the AMB during that timeframe, averaged 45 days to approve applications, compared to a 15-day turnaround average for the AMB.

AMB Leadership Defended Speedy Licensing

When challenged in the February 2013 televised interview about the potential safety hazards of circumventing state laws or misrepresenting information in public profiles, the Executive Director stated the new changes eliminated, “A lot of work for state employees.” The investigative reporter suggested that a physician could lie on the initial application, and the

Executive Director replied, "Absolutely true." She also noted the Board investigates all problematic cases.

In an audio recording of a meeting with LC-X, the Executive Director expressed her aspirations for the Arizona Medical Board:

"We are going to be the premier licensing board. Other states are going to look at us and go, 'What the hell, they've got 4 full-time staff for 21,000 docs and look at how effectively they do licensing!' And then, boards will talk to each other. I will guarantee it."

When we interviewed complainants, we asked what prompted the changes in licensing procedures, particularly given the staff reductions and resulting inexperience in the Licensing Division. Several complainants independently reported to us that

The Executive Director believed the AMB could be the nation's "premier licensing board" by issuing licenses quickly with minimal staff.

upper management pressured them to "crank out more doctors" by processing licenses quickly. One former staff member said a colleague told her, "Don't ask questions." A former manager claimed to have sought advice from another AMB department head about how to handle the pressures from upper management. The colleague allegedly recommended, "Just do whatever [the Deputy Director] says and she'll move onto another department." Other staff told us AMB executives pressured them to meet their Performance Incentive Payment Plan (PIPP) levels, so all AMB employees could receive monthly bonuses.¹⁷

We listened to an audio recording of a meeting of the Licensing Division under the leadership of Licensing Manager LM-B held on December 20, 2011. Staff asked if he could explain why upper management expected such rapid turnaround times for licensure of doctors. He said he asked his superiors for justifications and did not receive them. He explained that he would continue to seek clarification and specific goals from the Executive Director and Deputy Director, and in the meantime, his position dictated that he pass along their marching orders to the licensing staff. He went on to explain that upper management, and particularly the Executive Director, listed specific rules they deemed "burdensome and time-consuming" the department should no longer follow. LC-X expressed concerns again during that meeting and Licensing Manager LM-B explained upper management assured him agency attorneys reviewed them. LM-B told us, "I certainly wasn't comfortable with what was going on." He wanted the executives to sign off on a policy that complied with laws and when they would not, he resigned within six months.

¹⁷ As authorized by A.R.S. §§ 38-618 et seq. through the Arizona Department of Administration.

The Executive Director and Deputy Director told us they developed the licensing efficiencies in response to the “realities” of telemedicine, online databases and the demands physicians place on the Board for quicker licensing. The Executive Director added that she yielded to calls from Arizona’s executive and legislative branches she believed mandated the AMB to reduce regulation and increase efficiencies. She cited Executive Order 2012-03 among such mandates.¹⁸

In the order, the Governor continued her previous partial moratorium on agency rulemaking with a stated aim to “promote job creation and retention” and to “prevent any additional burdens on Arizona’s private sector employees and political subdivisions.” The Order also authorizes state agencies to expedite rulemaking and,

“ . . . to quicken the pace on streamlining existing rules and reducing wasted time in regulatory processes to increase Arizona’s economic competitiveness and job creating, **while still protecting public health, safety and the environment.**” [Emphasis added.]

The Governor also asked the public and “regulated community” to **follow legal rulemaking processes to enact changes leading to greater efficiencies.** The AMB Executive Director explained that the Board, as a result of the Executive Order, had to interpret licensing rules and statutes “. . . in ways that protect the public but also consider the use of time and money saving resources as they become available in order to eliminate unnecessary steps for both board staff and the regulated community.”

LC-X and several other complainants asserted that the AMB did not follow the legal means to revise licensing rules and statutes and instead, simply circumvented or reinterpreted them in ways that violated state laws and jeopardized public health and safety. The AMB Executive Director, on the other hand, maintained the Board had no choice. On several occasions, she cited the aforementioned moratorium on rulemaking as a reason for not revising existing rules. She also argued that A.A.C. R1-6-111(A)(5)¹⁹ is an indication that rulemakers,

“ . . . specifically anticipated that there would be some rules that, whether through technological change or otherwise, could become so unworkable or antiquated that further or strict enforcement of them would be inappropriate and that they should then be identified within the five-year review report for appropriate amendment or striking.”

She acknowledged the board did not follow state laws, but defended the Board’s practices, arguing that they followed national trends, did not compromise public safety, eliminated

¹⁸ "Executive Orders." *Office of the Arizona Governor, Janice K. Brewer*. Version EO 2012-03. 26 June 2012. Web. 5 June 2013.

¹⁹ A.A.C. R-1-6-111(A) states, “To place a five-year review report on the Council agenda, an agency shall deliver to the Council office two copies of the five-year review report . . . the agency shall concisely analyze and provide the following information in the five-year review report. . . . 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement. . . .”

wasteful resources and enhanced services to doctors, hospitals and citizens. For example, in her response to the July 2012 Ombudsman Report # 1200132²⁰, the Director opined, “. . . verification [of physicians’ employment] offers no increase to public safety.” This theory presumes that a physician fired from a medical practice or hospital could never be a public safety risk. We do not find that to be a reasonable assumption.

Several months after we initiated this investigation, and several weeks before we reported our findings, the AMB Executive Director announced the agency would reinstate most verification practices. She cautioned us in a March 4, 2013 meeting that she believed physicians would call the Ombudsman’s office to complain the AMB took too long to approve their licenses and insisted the medical community and public created pressure to license doctors in a matter of days. We received no calls in the three months since the AMB reversed course and returned to following the laws pertaining to verification.

As noted earlier, in her September 3, 2013 response to the draft of the Final Report, the Executive Director indicated she and the board accepted the findings in this report. (See “Employee Responses” section of this report for full text of Executive Director’s response.) Yet, in direct contradiction to that statement, the Executive Director proceeded to defend actions this report contends violated state laws. Moreover, she remained embedded in her position that the expedited measures implemented in 2011 were superior to those enacted by lawmakers. Specifically, she stated,

“. . . while I categorically **reject, and will vigorously defend, any allegation that I knowingly broke any law** in the exercise of my discretion as ED, I do recognize as a result of your report the importance of adherence to laws in strict conformity with their language **even when we believe there are more efficient procedures that pose no risk to public safety.**” [Emphasis added.]

Our research confirmed there is pressure nationwide on state boards to issue medical licenses quickly. The current laws may not reflect the efficiency potential online applications and other state-of-the-art processes may offer. Nevertheless, we found no evidence Arizona lawmakers or citizens expected the AMB to be imprudent in their reviews or ignore state laws in order to license doctors at the rapid pace envisaged by agency executives. Moreover, the Board did not have the authority to do so.

AMB Executives Asserted Agency Policies Trumped State Laws

The AMB considered several licensing laws obsolete, yet the agency did not follow processes required in state law to pursue either legislation or rulemaking to address their concerns.

²⁰ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

State agencies adopt policies and procedures to guide internal processes. A state agency policy cannot take the place of laws and must flow from existing law. Elected state legislators are responsible for creating and revising Arizona Revised Statutes. Rules made for the Arizona Administrative Code follow elaborate processes aimed to involve the public in the decision-making. The Governor's Regulatory Review Council has the final say in the rule approval process.²¹

LC-X alleged the AMB adopted expedited licensing procedures that did not comply with laws beginning September 2011. The executives directed staff to follow internal policies in place of licensing statutes and rules.

The Executive Director told us in a meeting on October 2012 that she considered many licensing laws "outdated." She explained the Board planned to draft new rules to replace them but in the meantime, she expected staff to follow policies to circumvent the obsolete laws.

There was no evidence the AMB attempted to change the laws the agency claimed were outdated or unenforceable.

LC-X alleged the AMB did not follow the legal means to revise licensing rules and statutes and instead, simply circumvented or reinterpreted them in ways that violated state laws and jeopardized public health and safety. The AMB Executive Director, on the other hand, maintained the Board had no choice. On several occasions, she cited the aforementioned moratorium on rulemaking as a reason for not revising existing rules. The Executive Director also asserted, as mentioned earlier, that rulemakers created A.A.C. R1-6-111(A)(5)22 to give agencies an out if they found rules too difficult to enforce. She further defended the Board's practices, arguing that they followed national trends, maintained public safety, minimized wasteful red tape and improved services to the public.

In her employee response to the draft of the final report (see "Employee Responses" section of this report), she asserted that as the Board's Executive Director she was ". . . charged with **interpreting** the Administrative codes and statutes that govern the operation of the Board. . . ." In effect, the job description for the AMB Executive Director does state, "The Director must be able to **interpret** state and federal laws, rules and regulation for the implementation of the required programs." The job description lists several other requirements of the Executive Director, including "knowledge of the **legislative process.**" [Emphases added.]

²¹ Sciarrotta, Jr., Joseph, William Hylan, and Scott Cooley. "Rulemaking and Your Clients' Interests." *Arizona Attorney* 47.10 (2011): 34-40. Print.

²² A.A.C. R-1-6-111(A) states, "To place a five-year review report on the Council agenda, an agency shall deliver to the Council office two copies of the five-year review report ... the agency shall concisely analyze and provide the following information in the five-year review report... 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement..."

State personnel rule, A.A.C. R2-5A-501 explicitly requires state workers to comply with state laws. Lawmakers did not grant agency heads the authority to ignore laws or adopt policies to replace laws. If licensing laws proved to be too cumbersome for the AMB, the Board should have followed lawful means to modify them. We found no evidence of intractable barriers preventing the Board from asking the Arizona Legislature to amend medical licensure laws.

The Board could have also explored emergency rule-making options outlined in A.R.S. § 41-1026. Moreover, the Governor's moratorium on rulemaking encouraged the efficiencies the Executive Director said the Board desired. In fact, it explicitly allowed for exceptions permitting rulemaking "that affect the critical public health and safety functions of the agency, address the budget deficit . . . or are deregulatory."²³

In their July 31, 2013 agency response to our preliminary report, the Board told us the Executive Director had,

" . . . informed the Board that the Agency's Administration did not depart from a narrow reading of the Law unless there was a good faith basis for believing that the alternative regulatory policy would not prevent a threat to public health and safety."

In that response, the Board also acknowledged there was a breakdown in communication between staff and the Board of Directors. In response,

" . . . the Board determined it prudent by February 2013 to step into a more 'direct-management' role. As a result, the Board specifically informed the Administration that no policy 'interpretation' was allowed or permitted by the ED [Executive Director] or other staff. Moreover, the Board continues to make it very clear to the Administration that unless and until a law, statutes or rule is properly revised, eliminated or updated by legislation, the Law is to be enforced as written."

The AMB Board President told us on September 3, 2013 that he and other board members did not want staff interpreting laws any further. The physician said the Board understood the agency needed to rely on the Attorney General for that function. Furthermore, he said the Board directed staff to follow the law "to the point" from now on.

Turnover in the Licensing Department

Before we opened this investigation, a former AMB employee brought seven allegations to the Ombudsman in January 2012. We investigated those in case number 1200132.²⁴ In the Board's response to that report, the Executive Director dismissed the complaints about the expedited processes enacted in September 2011 by stating, "The only concerns regarding these changes

²³ Sciarrotta, Jr., Joseph, William Hylan, and Scott Cooley. "Rulemaking and Your Clients' Interests." *Arizona Attorney* 47.10 (2011): 34-40. Print.

²⁴ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

have come from a former employee.” Since we issued that report, six more complainants came to us with the issues outlined in this investigation.

All six of the complainants said they were uncomfortable with the direction of the Licensing Division after the September 2011 changes. Their descriptions included comments such as, “hostile environment,” “dysfunctional department” and “misleading directives from upper management.” The complainants also believed AMB executives habitually gave confusing and conflicting instructions and did not respond positively to concerns raised about the legality of procedures or protection of public safety. Some complainants claimed that many of those who had spoken up received reprimands. Some licensing staff alleged those who left became scapegoats of AMB executives when licensing department problems later surfaced.

The AMB terminated employment of four licensing staff members between September and November 2011. Licensing Manager LM-A, with seven years of AMB tenure, was among them. The complainant alleged the AMB terminated employment of those who disputed new procedures. She said she feared retaliation for questioning the processes and for participating in this investigation. Because an adequate remedy was available through the Arizona Department of Administration, as prescribed in A.R.S. § 41-1377(C)(1), we directed the complainant to that agency’s human resources experts so they could independently investigate those concerns. We understand the complainant’s allegations included an assertion that other employees experienced retaliation at AMB. The ADOA investigation did not substantiate the retaliation allegations.

The Executive Director explained to us that she was aware the remaining staff maintained some resentment and confusion about the dismissals of former colleagues. She said she grew concerned about conflicts impeding the department’s cohesion and therefore asked the Deputy Director to help ensure continuity during the transition into the new procedures. Throughout this and the previous investigation, the Executive Director was not only cooperative, but also appeared to encourage all staff to cooperate, answer our questions and provide us all requested documentation.

During our October 2012 interviews of the AMB licensing staff, we met with the newly appointed Licensing Manager (“Licensing Manager LM-C”). She explained that she came from the investigations department and had some familiarity with licensing processes. She understood the nature of our investigation. She said the Executive Director and Deputy Director assured her the Licensing Division did not need to follow all of the verification steps required by law because they deemed them “useless.” She said she would like to have a better understanding of the concerns raised by employees, both present and past. She expressed disappointment that LC-X, in her opinion, would not cooperate with upper management’s requests to help with her training and transition into the department. She did not express any concerns about job security, retaliation or difficulties adopting the revised procedures in the department. She did say she listened to LC-X’s concerns regarding violation of state laws and wanted to ensure the department complied when required to do so. She provided us with a copy of the licensing procedure manual.

We also interviewed the newest member of the staff, LC-G. She had been a front desk receptionist until July 2012. This new staff person told us that since July 30, 2012, four licensing

staff left. Two of those were with AMB for less than a month and one for two days. She told us she did not experience conflicts within the department and got along well with her supervisors. (See EXHIBIT J.)

Another staff member later noted to us via a November 21, 2012, e-mail message that department tensions were increasing since we began this investigation. She alleged her supervisors unfairly scrutinized her because the agency was under investigation. We told her she could seek assistance from the Arizona Department of Administration if she feared retaliation for participating in the report. We reiterated to her that the Executive Director encouraged her open participation in the investigation process. We explained to her our investigation focused on the three allegations identified in the Executive Summary of this report.

From September 2011 to September 2012, the licensing department lost seven staff members. At one point, only two staff remained to license all Arizona medical doctors and physicians' assistants. With less than one year on the job, the complainant became the most senior licensing staff member.

When the AMB dismissed LC-X's first supervisor, Licensing Manager LM-A, in October 2011, LC-X had been on the job for one year. By November 2011, LC-X, with only a year in the department, had the most seniority in the department. Staff turnover continued in the Licensing Division. A timeline from the Executive

Director (Exhibit J) revealed the AMB terminated five licensing employees between September 2011 and September 2012. Additionally, one resigned and one transferred out of the department. There were three different Licensing Managers between those dates, LM-A, LM-B and LM-C, the most recent of which transferred from another department in July 2012.

Several former and current employees independently reported they witnessed or experienced frequent reprimands, "passive-aggressive behavior" and poor communication from both executives. One complainant, former Licensing Manager LM-B, who served 25 years in government service, said the AMB "was the worst environment I've ever worked in." He warned the Executive Director his concern the Deputy Director was a major force behind the climate of mistrust in licensing until he eventually quit.

In the Board's response to our preliminary report, the Executive Director acknowledged, ". . . it is clear that [the Deputy Director] had a different management and communication style than I. Staff had reported to me that they were occasionally intimidated by her approach." She added, "Nevertheless, I accept full responsibility for the personnel actions that were made under my leadership. . . ." The Executive Director job description confirms, "The Executive Director is ultimately responsible for all internal and external operations of the Arizona Board of Medical Examiners" including "staff leadership; and for ultimate supervision of all employees."

In their July 31, 2013 response to our preliminary report, the AMB Board said,

"The Board is actively attempting to address the personnel issues of the ED and other remaining staff. . . . After issuance of the Ombudsman's final report, the Board will convene a meeting to address personnel issues."

Inconsistent Instructions from Upper Management

As mentioned earlier, in September 2011 the Deputy Director and Executive Director gave the Licensing Manager a list of new processes for the licensing department. The manager, concerned about the legality of the processes, met with the Deputy Director and Executive Director numerous times to review proposed changes. The executives allegedly told the Licensing Manager not to question the new processes and to direct her staff to abide by them. A September 30, 2011 email, highlighted previously in this report, from the Licensing Manager to staff copied the Deputy Director about new procedures for processing cases. As previously mentioned, she noted that both the Executive Director and Deputy Director gave the department the “leeway” to expedite the licensing of physicians in a way that was not consistent with state laws.

LC-X and several other complainants questioned the legality of these expedited procedures. Licensing Manager LM-A, at the prompting of anxious subordinates, allegedly raised these concerns with the Deputy Director. Soon thereafter, as mentioned earlier, the AMB terminated employment of

Even after our findings substantiated the allegation that the agency violated state laws by not verifying employment of physicians, AMB executives directed staff to disregard the Ombudsman report and maintain the practice.

Licensing Manager LM-A. The Executive Director explained she asked the Deputy Director to provide the department with guidance during the interim, until they appointed a new Licensing Manager. The remaining staff did not receive orders to revise the process from the new directives, to bring them into compliance with state laws. The previous investigation report by the Ombudsman (released July 18, 2012) brought to light similar concerns by one of the employees the AMB terminated in November 2011.²⁵ Throughout and after that investigation, six staff members left the department due to resignations, transfers or terminations, except LC-X and one other staff member, hired in September 2011. After less than one year with the AMB, LC-X became the most senior member of the department.

LC-X stated she sought input from the Deputy Director and Executive Director on numerous occasions, concerned that licensing processes conflicted with state laws. Even after our report substantiated the allegation that the agency did not verify employment of physicians, a violation of A.A.C. R4-16-201(D)(5), the complainant’s superiors directed her to maintain status quo and disregard the Ombudsman report.

In the Executive Director’s response to our draft of the final report (see “Employee Responses” section of this report), she said Licensing Manager LM-B was responsible for recommending the agency disregard our recommendation in its July 5, 2012 response to our report. This conflicts

²⁵ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

with LM-B's recollection of events, and is unlikely, because LM-B resigned prior to the response issuance, in June 2012 (see Exhibit J). Moreover, the AMB's job description describes the work product of the Executive Director as, ". . . the implementation or compliance with all statutory requirements. . . .as prescribed by law, rule or policy." The Executive Director is ". . . ultimately responsible" for Board operations, including internal policies she approved. Thus, responsibility for the official agency action rests with the Executive Director and not the subordinate licensing manager.

In November 2011, the AMB brought in a new Licensing Manager, "Licensing Manager LM-B." Licensing Manager LM-B relied heavily on the complainant's experience and input for rebuilding a fractured department. He told us he had no regulatory experience before he transferred from another department. Instead of formally training him, the executives told him to rely on junior staff in the department and seek input from the Deputy Director. LC-X advised her new supervisor she was reluctant to explain the most current practices to him, and recommended he seek the advice of the Deputy Director and Executive Director, whom she believed were ultimately responsible for the processing changes made under the previous Licensing Manager, LM-A. Shortly thereafter, LC-X alleged that the Deputy Director and Executive Director asked her to stop being "confrontational and defensive" with her superiors by questioning the legality of processes they directed her to follow. They cautioned her to provide the new Licensing Manager guidance and cooperation. She told us she did not feel comfortable doing so, fearful the agency was breaking state laws.

The Executive Director told us the complainant had the most knowledge of licensing processes, as the senior person in the department, but she was not helpful to coworkers when she refused to make "key decisions" about licensing policies and procedures. From the complainant's perspective, she was a subordinate. Therefore, she thought management ought to turn to agency lawyers, instead of her, before making the law-circumventing procedural changes. The complainant said she tried to explain to upper level management she felt it was hypocritical to follow the new AMB policies knowing the Ombudsman's report found certain of these practices illegal.

Sensing tension in the department, Licensing Manager LM-B arranged a meeting on December 1, 2011 with LC-X and the Deputy Director to review the department's processes so they were all "on the same page." He perceived high levels of conflict between LC-X and the Deputy Director and tried to mediate throughout the meeting. His goal was to get the AMB executives to "sign off on a policy" that gave the section's new staff clarity as to how to lawfully proceed. We listened to an audio recording of the meeting. LC-X asked the supervisors present to consider drafting clear policies, consistent with state laws. The Deputy Director agreed,

"It's totally unacceptable that we don't have policies and procedures for this as an agency, so we have to come to you . . . you've only been here a year."

LC-X reminded the Deputy that she, the subordinate, had the authority to neither make decisions nor lead staff away from her supervisors' instructions. Throughout the meeting, LC-X repeated concerns that process directives from upper level management did not follow state laws. The Deputy Director responded,

“The three of us, with [the Executive Director’s] support, we’re all in this together . . . barring some completely, intentional outrageous behavior, nothing’s going to happen to us. I mean, I feel very comfortable. . . I don’t feel like, I mean, I could be held responsible for all the crap that’s gone on in licensing. . . I don’t feel at risk of losing my job, you know, even though I oversaw this crap for six years It’s to the point where we had to **nuke the department**. . . .” [Emphasis added.]

I feel very comfortable. . . I don’t feel like, I mean, I could be held responsible for all the crap that’s gone on in licensing . . . I don’t feel at risk of losing my job, you know, even though I oversaw this crap for six years we had to nuke the department . . .

AMB Deputy Director

During the December 1, 2011 meeting, LC-X spoke about e-mail messages she said she brought to the meeting, to demonstrate conflicting messages various supervisors gave staff during her tenure with the AMB. She explained that it was difficult for licensing staff to know how to follow the instructions because they were often unclear and contradictory. She sought clarity and consistency from the meeting, and she expressed fears about speaking up about how to do that. The Deputy

Director responded,

“Just because you’re the last man standing, you don’t have to feel like you have to defend the licensing new standards. . . Just because you have institutional knowledge . . . I mean you didn’t decide these things”

The Deputy Director said she did not know about the ambiguous directions and said the responsibility belonged to the previous Licensing Manager. With this and similar comments, LM-B told us he perceived a pattern at AMB of scapegoating former staff when problems arose. For this reason, and because he did not trust the Deputy Director, he initially asked us to keep his identity confidential. On July 23, 2013, he changed his mind and said we could reveal his identity and comments.

The other complainant, LC-X, had already revealed e-mails with the directives in question from the previous Licensing Manager, LM-A, demonstrating the Deputy Director’s email appeared in the “cc” field. LC-X said she was not responsible for those policy decisions from fall 2011 and noted the chain of command at the agency. The Deputy raised her voice at that point, stating that while she was ultimately responsible if the agency was out of compliance with state laws, it was “unreasonable” for staff to expect her to take responsibility for all licensing “minutiae,” including the legality of policies, procedures and forms used in licensing. In fact, the AMB provided us a job description of the Deputy Director demonstrating the position required knowledge of state laws governing licensing of physicians.

Two weeks later, on December 15, 2011, LC-X met with the Executive Director to seek further input. The complainant explained, "Where I was before, you didn't turn a blind eye . . . it was so regulated." She went on to point out concerns she had specifically with immigration requirements for applicants, since the application specified federal statutes outside the AMB jurisdiction. The Executive Director explained her position during the meeting on following laws,

Just so you know, my regulatory philosophy . . . if it really serves no regulatory function that protects the public and if no person I can perceive that would argue with it, then . . . I tend to be pretty relaxed . . . that's not always good, and someday it may get me into trouble.

AMB Executive Director

"Just so you know, my regulatory philosophy. . . a lot of times is. . . especially with rule, less with statute, but now I mean statute too, if it really serves no regulatory function that protects the public and if no person I can perceive that would argue with it, then. . . I tend to be pretty relaxed. And that's not -- grant you -- that's not always good, and someday it may get me into trouble. . . . So that's my philosophy."

LC-X then asked the Executive Director if the Board intended to change the rules in the meantime, or if they could not do so, due to the Governor's moratorium on rulemaking. The Executive Director explained the moratorium,

". . . does not apply to [the Board] anymore . . . because we are a board with a director who is not appointed by the Governor I heard it straight from the Governor's office that the moratorium does not apply to us. We've got the PA rules in process . . . fee rules right behind them and then. . . eventually we're going to have policies, and then someday, a little later, we'll have revised rules, and the rules will reflect what we're doing . . . so we'll get there . . . so that's how the policies work. . . ."

In an audio recording of a meeting later held on December 20, 2011 with the licensing staff, Licensing Manager LM-B outlined the revised processes. He said with respect to the employment verification requirement,

"Now. . . [the Executive Director] is on board with this, even though, in the rules they clearly say that that's what we're supposed to do. Now, I've done a little bit of follow up on rules. Now, statutes . . . you have got to follow them, and that's what we're going to do. Rules need to be followed, but I think we know that PA rules are undergoing a massive change. . . they're going to do the same thing for MD rules in 2012 and there's going to be big role that I play. . . . So, just for clarification, are we violating a rule . . . ? Yes, we are. Do I agree with violating rules that were set? Of course not, but this is one of the rules that we're going to propose to the Governor's council that is changed The thought of management is that this rule was contemplated and put into effect long

before, uh, you know like the radiologists were licensed in every single state, so that's why it's there, but you know, now that's burdensome and time-consuming, is my understanding, so we're not going to do [employment verifications]."

LC-X sought further clarification:

"Okay, so for these things . . . because when I look at the rules, I'm saying, 'Okay we're kind of in violation here.' So if what I'm hearing . . . and again, this is just so that I feel comfortable . . . the directive from [Deputy Director] and [Executive Director] is, the statutes are in place, the rules we can ignore."

Licensing Manager LM-B responded:

"We're not ignoring rules, per se; we're looking at rules that are supposedly not feasible because they were written 10 years ago."

LC-X persisted, "But we can have practices that aren't in a line with the rules until they're rewritten?"

LM-B replied,

"That's correct, that is . . . and they're not going to be major, you'll see Okay, from [the Executive Director], she has told me, there's no way. She doesn't want to do [employment verifications], and the rationale was because it was done away with a long time ago But you folks can tell me if I was wrong, because I can only know what I have been told, because I've not experienced a lot, is that we never stopped anyone from being licensed anyway, because many are self-employed."

LM-B told us he approached upper management with the complaints raised by LC-X and each time the Executive Director and Deputy Director assured him he did not need to worry about the rule violations. To formalize the directives from his superiors so the licensing staff understood clear directives, he drafted a policy in line with the expedited processes. He said the management team discussed it at length over a meeting before the Executive Director signed off on it. He told us ultimately left the agency soon after, because he could not get the executives to adopt licensing policies that aligned with state laws. He added, "It was not a good environment. I certainly wasn't comfortable with what was going on there."

It was not a good environment. I certainly wasn't comfortable with what was going on there.

Former Licensing Manager LM-B

The complainants provided examples of numerous occasions when upper management told staff to follow processes they knew violated laws. The Executive Director denied any such communications. In a July 30, 2013 response to our preliminary report, the Executive Director

admitted this investigation exposed “breakdowns in communication” within the agency. She explained staff said the Deputy Director intimidated them, but they did not complain about law violations to her, despite her “open door policy.” She added,

“I regret that **I was not made aware of some of these concerns** directly. . . I believe that there was communication and direction given to Licensing staff by my Deputy without my knowledge or approval. . . . Throughout my tenure, **no staff member ever expressed concern** to me about the manner in which we were complying with statute and rule.” [Emphasis added.]

Again, on September 4, 2013, the Executive Director denied complaints of law violations from staff,

“. . . although I sometimes had discussions with employees about our policies, at no time did any employee express concern to me that we were not explicitly complying with the rules. . . . Finally, and to be clear, **none** of the other individuals referenced in your report has ever expressed concern to me regarding the Board’s licensing process or compliance with the rules.”

However, despite this claim, she contradicted the aforementioned assertion later in the same document (see “Employee Responses” section of this report). The Executive Director said the Licensing Manager LM-B “occasionally raised questions about our interpretation of certain rules.” This is one example of the conflicting messages complainants shared with us. In fact, our investigation yielded numerous examples of staff raising concerns about law violations, not the least of which includes the previous Ombudsman investigation.²⁶ In many instances, upper management acknowledged the agency was not in compliance, claimed it was philosophically acceptable to violate “outdated” laws, demonstrated knowledge of lawmaking processes to modify laws and promised to eventually change the laws through legal means. Those conceptual modifications to lawfully amend rules or statutes cited herein did not occur.

Licensing Medical Professionals in Other States

To benchmark typical medical board practices, we interviewed the Chief Advocacy Officer of the Federation of State Medical Boards (FSMB). She started the conversation with praise for the Executive Director of the AMB. We discussed licensing practices across the country. She stated medical boards in the United States are under significant pressure to find ways to license physicians quicker than they have been. We asked her for a range of turn-around times and her first response was 45 days to six months. We asked if she was aware of states issuing licenses in as few as three days and she mentioned that Idaho has an expedited process to license physicians by endorsement, or physicians who already hold a license in another state. She said

²⁶ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

18-21 business days could be a reasonable period to process “clean” applications – those without any problems requiring further investigation.

We then contacted the Executive Director of the Idaho Medical Board and asked her to expound on their expedited process for licensure by endorsement. The Idaho Director said that physicians already licensed by a state outside Idaho, who passed criminal background checks and verifications, may receive licenses in as few as three days. Idaho Administrative Code IDAPA 22.01.01.052 regarding expedited licensure by endorsement states,

“An applicant, in good standing with no restrictions upon or actions taken against his license to practice medicine and surgery in a state, territory or district of the United States or Canada is eligible for licensure by endorsement to practice medicine in Idaho. An applicant with any disciplinary action, whether past, pending, public or confidential, by any board of medicine, licensing authority, medical society, professional society, hospital, medical school or institution staff in any state, territory, district or country is not eligible for licensure by endorsement.”

Physicians applying for licensure by endorsement in Idaho must adhere to the following primary source requirement,

“The application form shall be verified and shall require the original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board or a Board approved credential verification service.”²⁷

We interviewed administrators of medical boards in five other states near Arizona. The majority of these states require primary source verification of documents. We also discovered a trend: many boards require physicians submit to criminal background checks. According to a report by FSMB dated April 2012, only 14 states do not require criminal background

TABLE: State Medical Boards Requiring Criminal Background Checks²⁸

| Total medical boards nationwide | Boards with authority to access applicants' criminal background history as condition of licensure | Boards with access to FBI database | Boards requiring fingerprinting |
|---------------------------------|---|------------------------------------|---------------------------------|
| 70 | 46 | 40 | 35 |

²⁷ Idaho Administrative Code, Rules for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery, IDAPA 22.01.01.052.04.

²⁸ *Criminal Background Checks: Board-by-Board Overview*. Rep. Federation of State Medical Boards, Apr. 2012. Web.

checks of physicians. Arizona is among them.²⁹

We then looked at the practices of some Arizona boards. The Arizona Board of Osteopathic Examiners does not require their physicians to submit to criminal background checks. In contrast, the Arizona State Board of Nursing requires fingerprinting of Certified Nursing Assistants, Registered Nurses and Licensed Practical Nurses applying for licensure in Arizona. We interviewed administrators from medical boards in California, Colorado, Idaho, Nevada and Utah, all of which require criminal background checks. The Texas Medical Board, according to a report by the American Medical Association, goes a step further and “runs periodic checks comparing its licensee database against Texas Dept. of Public Safety crime records.”³⁰

An American Medical Association (AMA) publication reported in April 2012, that since 1998, the FSMB has recommended medical boards require physicians to submit to criminal background checks. The report details the growing trend in the country toward fingerprinting:

“Of the nation’s 70 medical boards, 46 boards in 36 states can conduct a criminal background check as a condition of licensure. Of those, 40 boards in 31 states have access to the Federal Bureau of Investigation database, according to the Federation of State Medical Boards. Twenty-seven states require fingerprinting, compared with seven states that required them in 2001.”³¹

Arizona is among only 14 states not requiring criminal background checks of physicians.

While the Association of American Medical Colleges recommended background checks for all medical school applicants since 2006, many

schools do not require fingerprinting. This means state boards cannot rely on medical diplomas alone to safeguard the public. The FSMB President added, “Criminal background checks are a useful element in the checks and balances that are available to state medical boards to protect the public and promote quality health care.”³²

The AMB’s licensing staff circumvented critical primary source verification of physicians’ backgrounds even though the law required primary source verification. In many instances, the AMB relied on the FSMB Physician Data Center and the National Practitioner Data Bank (NPDB). We found this reliance problematic, as these sources might be outdated or incomplete. For example, the AMA article reported the director of consumer advocacy group Public Citizen’s Health Research Group said,

²⁹ *Criminal Background Checks: Board-by-Board Overview*. Rep. Federation of State Medical Boards, Apr. 2012. Web.

³⁰ Krupa, Carolyne. "Criminal Background Checks Provide Patchwork Protection against Rogue Doctors." *American Medical News* (2012): *Amednews.com*. 2 Apr. 2012. Web.

³¹ *ibid.*

³² *ibid.*

“The NPDB is supposed to include criminal convictions against health professionals, but many prosecutors don’t know they are required to report those convictions . . . There is serious underreporting.”³³

The Social Security Act established the NPDB, to collect additional information concerning negative findings and sanctions (imposed by state licensing authorities, peer review organizations, and private accreditation organizations), against health care practitioners and entities.

The NPDB depends on physicians to report one another, although a national survey of physicians demonstrated that 45% of the doctors polled had not reported incompetent or impaired colleagues. Researchers demonstrated that hospitals have failed to adequately report problems to the data bank. According to a report by Health and Safety, between 1990 and 2007, only 41.5% of Arizona hospitals reported to the NPDB. Only 15 other states had fewer hospitals reporting than Arizona during that time.³⁴ In addition to underreporting, research revealed errors in the NPDB, including lag time in reporting, inaccurate or misleading information and duplicate submissions to the databank.³⁵

The NPDB is supposed to include criminal convictions against health professionals, but many prosecutors don’t know they are required to report those convictions . . . There is serious underreporting.

Sidney Wolfe, MD, Director, Public Citizen Health Research Group

The Arizona Medical Board also relied on physician profiles kept by the American Medical Association, which the association maintains may not be accurate or were self-reported information provided by physicians. In many of its application procedures, the AMA relied on the honesty of applicants. One of the physicians on the Arizona Medical Board expressed concerns to the Executive Director in an e-mail message dated September 5, 2012 that said,

“I saw your email about confirming competency [of physician applicants] if someone says they have not been working for a while, but I’m still not sure how we find those persons applying for a license who are simply lying about their recent employment if we are not at least confirming that they actually had the job(s) they said they held.”

³³ Krupa, Carolyne. "Criminal Background Checks Provide Patchwork Protection against Rogue Doctors." *American Medical News* (2012): *Amednews.com*. 2 Apr. 2012. Web.

³⁴ Levine, Alan, and Sidney Wolfe, MD. *HEALTH AND SAFETY. Under-Reporting to National Practitioner Data Bank*. Public Citizen, 27 May 2009. Web.

³⁵ Fischer, MD, FACS, Josef E. "Current Status of the National Practitioner Data Bank." *Bulletin of the American College of Surgeons* 86.9 (2001): 20-24, 47. Print.

As noted in the AMA article, most physicians do not pose a threat to public safety. There have been many instances in other states, however, when physicians do not disclose criminal history. As a spokeswoman for North Carolina's Medical Board stated,

While the AMB may have acted with noble intentions, we could not find any state laws giving the agency legal authority to bypass or disregard state laws, without seeking amendments, through lawful means, to current statutes or rules.

"The board has grown frustrated with the lack of disclosure. . . [Checking criminal history is] another way that the board can make sure it is doing due diligence and it's not depending on the licensee to disclose that information."³⁶

On the other hand, the Arizona Medical Board Executive Director argued that she strongly believed many regulatory measures in Arizona laws impede physicians' ability to practice. She contended our state laws do not account for growing trends in telemedicine, which could benefit healthcare consumers. The AMB Executive Director also expressed a need to eliminate loopholes in order to offer the public broader accessibility. She said on September 3, 2013, that she recognized,

". . . as a result of your report the importance of adherence to laws in strict conformity with their language even when we believe there are more efficient procedures that pose no risk to public safety." (See "Employee Responses" section of this report.)

While the Executive Director may have acted with the most noble of intentions, we could not find any state laws giving the AMB discretion to do so without seeking amendments to loosen the current, more restrictive, statutes or rules.

Scope of Investigation

The primary role of the Ombudsman's office is, "Making government more responsive to the people of Arizona." In most of our investigations, we resolve problems between citizens and agencies informally, if all the parties are amenable to the resolutions. In such cases, we do not perform a full investigation and we do not issue a written report. In contrast, we conduct an investigation if the agency disagrees with our initial findings or is otherwise not amenable to informal resolution, or when legislators request action by the Ombudsman's office. In this investigation, there were complex allegations from internal staff and concern from legislative leaders on the Health and Human Services Committees, so we proceeded in the formal, more time-consuming manner detailed in statute and rule.

³⁶ Krupa, Carolyne. "Criminal Background Checks Provide Patchwork Protection against Rogue Doctors." *American Medical News* (2012): *Amednews.com*. 2 Apr. 2012. Web.

Some former employees did not wait for the report process to be complete, and took their concerns to the media. On Tuesday, February 19, 2013, the AMB Executive Director sent an e-mail message saying a local television station had scheduled a report on the Board that night. The station aired their report regarding two former AMB employees' concerns about the AMB licensing operations. The investigative reporter also interviewed the AMB Executive Director.³⁷

The day after a TV broadcast highlighted allegations the AMB licensed unqualified doctors, the Executive Director asked to meet with us. In the meeting, she promised to bring the agency into compliance with state laws. After more than 6 months, the AMB was still not in full compliance.

The day after the broadcast, the AMB Executive Director e-mailed our office requesting a meeting. That meeting took place on March 4, 2013 with Licensing Manager LM-C, the Executive Director, Deputy Director and the Board's Assistant Attorney General. They provided us a list of revised policies and procedures they intended to implement to comply with state laws. (See EXHIBIT H.) The agency implemented some, but not all of

processes and revised forms they showed us. The AMB, as of September 23, 2013, had not fully implemented the "procedural updates" alluded to in the February 20, 2013 e-mail message.

³⁷ Ducey, Joe. "Was Your Doctor Checked out before Becoming Licensed in Arizona?" *ABC 15 Investigators*. ABC. KNXV-TV, Phoenix, Arizona, 19 Feb. 2013. *ABC15.com*. Scripps Media. Web.

Allegations and Findings

ISSUE 1: The Arizona Medical Board licensed physicians who did not provide documentation of citizenship or alien status as required by A.R.S § 41-1080 and A.A.C. R4-16-201(C)(1).

FINDING 1: SUBSTANTIATED

LC-X alleged the AMB did not check the citizenship status of applicants consistently or in accordance with law. She said the AMB provided licenses to physicians before fully investigating immigration eligibility requirements or requesting proper, current documentation. She provided examples of AMB licenses issued to applicants who did not submit proof of citizenship or alien status as required by law.

Upon our review of this evidence, we noted the AMB granted “active” status to several physicians for up to four months without proof of legal immigration status. Further, we confirmed the AMB failed to follow the law in three respects.

Specifically, we found:

- 1A. The AMB forms, pertaining to proof of immigration status for licensure, cite two incorrect laws, Federal law, 8 U.S.C. § 1641 and State law, A.R.S. §1-501, instead of the two correct citations - A.R.S. § 41-1080 and A.A.C. R4-16-201(C)(1).
- 1B. The AMB was not following A.A.C. R4-16-201(C)(1), which requires applicants to submit *certified* copies of birth certificates or passports.
- 1C. The AMB was not following A.R.S. § 41-1080 and therefore, they were not requiring applicants to present proper documents to the agency as proof of their lawful citizenship or immigration status.

DISCUSSION

We looked up the AMB’s obligations under Arizona Revised Statutes and Arizona Administrative Code, relating to immigration status. We found A.R.S. § 41-1080(A) and A.A.C. R4-16-201(C)(1) are the two laws regulating the AMB on this topic.

A.R.S. § 41-1080(A) requires that,

“ . . . an agency or political subdivision of this state shall not issue a license to an individual if the individual does not provide documentation of citizenship or alien status by presenting any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law. . . ”

This statute goes on to list the acceptable documentation required to prove legal status. An additional condition exists in rule. A.A.C. R4-16-201(C)(1) requires physicians to submit with their license applications, “Certified copy of the applicant's birth certificate or passport. . . ”

We reviewed the AMB’s initial applications for licensees to see what the agency requested of applicants, including the initial application used between September 2011 and March 2013

(EXHIBIT B), as well as the most recent version (EXHIBIT C). The AMB developed the form in EXHIBIT C after the Executive Director announced the agency would reinstate practices consistent with state laws. Both forms had the following language,

“PROOF OF CITIZENSHIP: Effective January 1, 2008, based on Federal and State laws, all applicants must provide evidence that the applicant is lawfully present in the United States. **Federal law, 8 U.S.C. § 1641 and State law, A.R.S. §1-501, require documentation of citizenship or alien status for licensure.** If the documentation does not demonstrate that the applicant is a United States citizen, national, or a person described in specific categories, the applicant will not be eligible for licensure in Arizona.” [Emphasis added.]

These citations are incorrect for the purpose in which they are used. The AMB cited A.R.S. §1-501 on their applications for licensure, but A.R.S. §1-501 pertains to “eligibility for **federal public benefits**” [emphasis added] as “prescribed in 8 United States Code section 1611.” The federal law, 8 USC 14-1611(c)(A) defines “Federal public benefit” as “any grant, contract, loan, professional license, or commercial license **provided by an agency of the United States or by appropriated funds of the United States.**” [Emphasis added.] Therefore, A.R.S. §1-501 and 8 USC 14-1611(c)(A) are not relevant to AMB applications and the agency should not cite it. The correct, applicable laws with respect to citizenship or alien status for medical licensure are A.R.S. § 41-1080 and A.A.C. R4-16-201(C)(1).

We asked Legislative Council to research and then opine on this matter in formal memorandum. They did so (EXHIBIT F). Their findings concurred with ours. They reported the AMB is required under A.R.S. § 41-1080, not A.R.S. § 1-501, to seek proof of immigration status and that the agency should modify their forms with respect to citizenship or alien status and cite A.R.S. § 41-1080.

We examined 27 Arizona state boards and noted 20 made the same mistake as the Arizona Medical Board. Only three had correct information and four needed updated lists documents found to be acceptable to prove current, legal immigration status. We alerted the Attorney General’s Section Chief Counsel of the Administrative Law Section. A few days later, on March 29, 2013, he confirmed he asked the appropriate assistant attorney general leaders to correct the problem with their respective assigned agencies.

Physician applicants who check the box stating, “I am NOT a U.S. Citizen or U.S. National” are directed to submit with their applications “. . . a copy of your permanent resident card or Visa.” An asterisk next to this last statement reads,

“See Statement of Citizenship form for complete list of accepted documents available on the website.”

The application form on the AMB’s website (EXHIBIT D) was outdated and not in accordance with current state laws. A.R.S. § 41-1080 outlines the most current requirements for proof of citizenship or alien status. After March 4, 2013, the AMB added a link to this law on its website, but they did not reference the law anywhere on the license application (EXHIBIT E).

The complainant said the AMB accepted identity documentation that would not be sufficient for an Arizona driver's license or Little League registration.

The AMB Executive Director told us on May 28, 2013 she believed the Board complied with citizenship requirements. We found the AMB asked physicians for proof of legal immigration status. However, two staff members alleged the licensing department did not consistently follow up with deficient

applicants. These staff reported the agency did not consistently maintain and update immigration status of active or renewing physicians in AMB files. When a physician's visa expired, the agency sent a "courtesy" request for proof of citizenship, according to one of the current staff members. LC-X indicated that due to backlogs and staff turnover, the licensing staff did not consistently follow up with physicians after sending the courtesy reminders. As a result, she told us the agency did not know how many physicians continued to practice medicine in Arizona without legal immigration status.

LC-X witnessed another incident. Another AMB licensing employee questioned when a foreign-born physician only submitted a birth certificate from his native country as verification of immigration status. The employee knew about A.R.S. § 41-1080(A)(3) and A.A.C. R4-16-201(C)(1) requirements. Aware that a certificate of birth from another country was not sufficient proof of United States immigration status, the worker requested a certified copy of the applicant's passport. She said the Deputy Director then got upset with the worker for "holding up the license" and directed the employee to discontinue the practice in the future.

LC-X expressed her concerns about yet another immigration-related case to the Executive Director. In an audio recording of that meeting, held December 15, 2011, she said,

"... she [Deputy Director] wrote [Licensing Coordinator, LC-B] ... , 'Why is this one sitting out there? He's got a birth certificate.' But it was a souvenir one ... you couldn't even get a driver's license in the state with that, you know, I said ... I couldn't register my child at Little League ... with that ... it's not legal status ..."

LC-X added she believed staff should not violate the rule, A.A.C. R4-16-201(C)(1), unless upper management was aware of the violation and expressly directed staff to disregard it. The Executive Director responded:

"So, for example, you mentioned a birth certificate, with my lack of education on those things, my gut reaction would have been, 'Eh, close enough.' ... But I also process to myself ... Okay, he says he's born in the United States, I have this, whatever-it-is, that says he's born in the United States. What ... let's catastrophize (sic) for a minute. What is the worst thing that can happen? He murders a patient under the influence of alcohol and the fact that he never had a birth certificate won't matter ... we do an audit, and we find out his mom was a part of the Taliban, ok ... really remote ... I tend to not sweat that stuff."

In a meeting with the Deputy Director on December 1, 2011, LC-X reiterated the need for certified copies of birth certificates or passports, as per A.A.C. R4-16-201(C)(1). In recordings of that meeting, we heard the Deputy Director state she did not realize the Board should require certified copies. She went on to state it was “absurd” for staff to expect someone “at her level” to know all of the laws involved in licensing physicians. In fact, in addition to the personnel rule, A.A.C. R2-5A-501, requiring all state employees to comply with laws, job descriptions of both the Deputy Director and Executive Director require knowledge of “Federal, State and agency laws, rules, codes and policies governing licensing . . .”

What is the worst thing that can happen? He murders a patient under the influence of alcohol and the fact that he never had a birth certificate won't matter. . . I tend to not sweat that stuff.

AMB Executive Director

On May 28, 2013, the Executive Director said,

“I was made aware that we *cited* the incorrect law only after being noticed by the Ombudsman’s office of the investigation. We are in the process of correcting all inaccurate citations. Regardless of any citation errors, I believe we have always complied with all applicable citizenship requirements.”

In a meeting on March 4, 2013, the AMB director presented revised applications she said the Board would begin using. Yet, a month later, the revision we were shown was still not available on the AMB’s website (see EXHIBIT C). Three months later, by June 20, 2013, the AMB’s updated website still displayed the application with incorrect citations, a link to an outdated list of acceptable documents for proof of alien/citizenship status and another link to one of the correct laws, A.R.S. § 41-1080. Six months later, September 5, 2013, the latter two links reflected correct information, yet the initial application still cited incorrect laws.

Licensing Manager LM-C said the agency reinstated the practice of requesting proof of immigration status two weeks before the March 4 meeting. We asked her which documents they required. She said for foreign physicians, they request photocopies of their current visas. The AMB then scans them into their system and she reviews them on a “case-by-case basis.” She said U.S. citizen applicants provided copies of their passports or birth certificates. We asked if those documents were “certified” and Licensing Manager LM-C replied she was uncertain.

On March 11, 2013, that AMB Licensing Manager sent us an e-mail message that read:

“I have attached examples of correspondence with our legal advisor [Assistant Attorney General (A.A.G.)] regarding documentation of legal status in the USA. As I previously mentioned, many of the documents submitted with an application are sent to our legal advisor on a case-by-case basis, thus the three email examples attached. Email example #4 demonstrates [A.A.G.] referring us to A.R.S. 41-1080.”

The copies of e-mail exchanges included a January 3, 2013 message from a licensing staff member to a physician who inquired about the status of his application. The staff member replied, "I am still waiting for . . . an actual copy of your VISA or the I-94. . ."

The doctor replied on the same day that she "mailed **copies** of my passport / Visa DS 2019. If they did not reach u (sic) I can send new **copies**." [Emphasis added.] The licensing coordinator explained to the physician the copies the Board received were of expired visas. On January 25 2013, the Board's Assistant Attorney General said if the doctor submitted "a **copy** of her foreign passport then the visa would qualify under A.R.S. 41-1080(A)(6)." [Emphasis added.] The AMB accepted a photocopy instead of the certified copy of her passport required by A.A.C. R4-16-201(C)(1).

We could see from several e-mail messages that the licensing staff made efforts to collect photocopies of passports, visas and other documentation of citizenship or alien status. We could not confirm the AMB routinely checked the originals or certified copies of the documents as required by law. While the AMB licensing staff demonstrated they did not consistently check the citizenship status of applicants before approving them, the Deputy Director and Executive Director both maintained they did. The executives pointed to the laws stated in the initial license application and said they were in accordance with A.R.S. §1-501. In our March 4, 2013 meeting, the Assistant Attorney General for the AMB said she believed the appropriate law might be A.R.S. § 41-1080. The documents provided to our office in that meeting did not refer to that statute. We believe the AMB did not understand that A.A.C. R4-16-201(C)(1) requires certified copies of birth certificates or passports, versus photocopies. On July 31, 2013, the Board told us the agency corrected the error and process and also said,

"Agency staff acknowledges their mistake (as was the case of 20 other state agencies) in **citing the incorrect laws** for proof of citizenship and immigration status." [Emphasis added.]

ISSUE 2: The AMB did not consistently assess whether applicants met the requirements of A.R.S. § 32-1429(A)(3), before issuing licenses to physicians who temporarily take the place of colleagues (locum tenens registrations).³⁸

FINDING 2: SUBSTANTIATED

With respect to *locum tenens* registrations, we found:

- 2A. The AMB did not consistently assess documentation supporting *locum tenens* license applications between October 2011 and April 2013 to determine whether physicians

³⁸ Definition: a medical practitioner who temporarily takes the place of another. "Locum Tenens." Merriam-Webster. Medical Dictionary.

met the requirements of A.R.S. §32-1429(A)(3). Under the statute, the AMB must examine applicants to ascertain whether their licenses are current and unrestricted.

- 2B. The Arizona Revised Statutes do not specifically require a *locum tenens* license applicant submit and pay for a criminal background check, yet, without one, it would be unlikely the Board could be sure a *locum tenens* applicant is clear of criminal charges in other jurisdictions as other laws require. See A.R.S. §§32-1401(27)³⁹ and 32-1422(4).⁴⁰
- 2C. The AMB did not properly handle two physicians (Drs. X and Y, stories below) with numerous professional history problems, who nevertheless received *locum tenens* registrations. Dr. X's application for full licensure in Arizona was investigated by the Board.

DISCUSSION

A *locum tenens* (LT) registration is a special license given to a doctor who temporarily fills the position of another colleague. A *locum tenens* allows the physician to work with that license for 180 days. To qualify under A.R.S. § 32-1429(A)(3), the AMB must ascertain if the applicant's license, "is current and unrestricted and has not been revoked or suspended for any reason and there are no unresolved complaints or formal charges filed against the applicant with any licensing board."

LC-X alleged the AMB failed to investigate issues disclosed by applicants in a timely manner. After our preliminary consultation with the Executive Director, in response to allegations she encouraged the Board to ignore laws and sacrifice precision in favor of quick turnaround times in licensing, she said,

"I respectfully dispute the statement that the Board's processes 'favored speed over accuracy.' While the Board always strives to favor efficiency, we endeavor even more stridently to be meticulous about not compromising

Locum Tenens

Some states, including Arizona, issue temporary licenses to doctors from out of state who fill-in for colleagues. These are called *locum tenens* licenses.

Arizona laws require applicants to prove they hold current, unrestricted licenses without obstacles such as suspension, revocation or other disciplinary actions against them. The AMB is required to review disclosure of problems to ensure doctors meet state requirements to practice with *locum tenens* licenses.

Our investigation revealed two cases in which the AMB issued *locum tenens* registrations to unqualified doctors. Both doctors, upon receipt of the *locum tenens* registrations in Arizona, also applied for full licensure.

³⁹ A.R.S. §32-1401(27) defines "unprofessional conduct" of physicians.

⁴⁰ A.R.S. §32-1422(A)(4) says physicians must have a professional record that indicates the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee.

accuracy or public safety. With respect to the one physician at issue in this allegation, no processes were implemented that should have allowed this single applicant to receive a locum tenens license; rather this one specific license was issued as a result of human error by a new licensing employee under the leadership of a previous licensing manager."

Later, on September 3, 2013, in her response to a final draft of this report, the Executive Director denied any doctors slipped past the AMB's licensing reviews. She said, "There is no indication that at any time any unqualified physicians were licensed. . ." as a result of the expedited licensing polices enacted since September 2011.

After interviewing AMB staff, we discovered two documented cases of unqualified physicians, "Doctor X" and "Doctor Y," granted *locum tenens* licenses by the AMB, later found out of compliance with A.R.S. § 32-1429(A)(3). In both cases, the doctors had disciplinary actions against them in other states. The AMB did not investigate either physician before issuing the *locum tenens* licenses, leaving patients open to potential risks.

A September 30, 2011 email from Licensing Manager LM-A to staff, with respect to *locum tenens* applications said,

"No longer require copy of certificates (MD Degree, ECFMG [certificate from Educational Commission for Foreign Medical Graduates] or PGT [post-graduate training])."

While the staff worked on implementing these new procedures, the AMB also terminated four staff members over the next two months. (See EXHIBIT J, for one year licensing staff overview from September 2011.) LC-X alleged that as the department shrank and the pressures of quick turnaround times grew, it became increasingly difficult to maintain the levels of accuracy expected of the full staff.

In January 2012, Doctor X applied for and received *locum tenens* under the new procedures. Licensing Manager LM-C, who worked for AMB at the time of this report, explained in an e-mail message dated March 8, 2013,

"On January 12, 2012, [Employee A] correctly uploaded the FSMB and NPDB reports to Dr. [X's] file. These two reports contained information that could have caused Dr. [X's] file to undergo an investigative review prior to issuing the license. Secondly, [Employee A] correctly noted in two task areas within the database that information was noted on the FSMB and NPDB reports. Thirdly, [Employee A] made notes in the file on January 12, 2012, that said '2 Malpractice Reports, 5 State Licensure Actions, 1 Clinical Privilege Action'. (sic)"

She added that even though one employee correctly followed the steps, another coworker skipped the most important task of alerting the Licensing Division that they needed to investigate the applicant.

In addition to the employee flagging error, we discovered a letter from the Federation of State and Medical Boards of the United States (FSMB) dated January 12 2012, directed to the AMB's

Executive Director, reporting Dr. X received discipline in the four other states where he held licenses. The letter stated Dr. X,

“May not practice medicine in North Dakota prior to completion of specified conditions and without first notifying the Board.”

The letter added that North Dakota required Dr. X to begin the application process anew if he ever intended to practice there again due to a “Violation of Prior Agreement.” Furthermore, FSMB noted the state of Washington denied Dr. X a medical license due to “Unprofessional Conduct.” It went on to outline the discipline enacted by California, but noted that effective February 2007, California restored Dr. X’s license to “clear status.”

Despite a two-page letter from the FSMB outlining problems in his history, the AMB issued Dr. X a *locum tenens* license effective January 27, 2012 with an August 4, 2012 expiration date.

In June 2012, Dr. X applied for full licensure to practice in Arizona. As noted on EXHIBIT J, Licensing Manager LM-B left the AMB that same month, after only seven months in his position. This left the licensing staff with LC-X again as the most senior person. Only one other worker was in the unit until another staff person transferred in from her receptionist position. In July, LM-C transferred from another department to become the new Licensing Manager.

LC-X said under normal circumstances, with fully trained staff, the Licensing Division should have quickly been able to process a physician’s request for full licensure if the doctor held the *locum tenens* registration. If the Licensing Division followed procedures leading up to *locum tenens* verification in compliance with A.R.S. § 32-1429(A)(3), the physician should be eligible for full licensure. Instead, she discovered the problems in his file. No one in the Licensing Division followed up on the unmistakable problems in his application. Licensing Manager LM-B, employed briefly during the *locum tenens* registration of Dr. X, had resigned, so LC-X brought the issue to the attention of the newest licensing manager (the third manager during LC-X’s tenure with the AMB). The new manager, LM-C, was transitioning in, and LC-X attempted to explain her concerns about the problematic *locum tenens*. LC-X alleged Licensing Manager LM-C told her not to investigate the physician, since his *locum tenens* license would expire soon.

When we addressed this issue with the Deputy Director and LM-C, both attributed the mistake to “human error.” Licensing Manager LM-C explained,

“I spoke to [Licensing Coordinator, LC-B] on August 2, 2012, about her error in sending the prior Locum Tenens’s application for approval. [LC-B] said she believed it was the first Locum Tenens application that she had processed and acknowledged her error when speaking to me about the file. . . Again, I believe the approval of the locum tenens license for [Dr. X] was an honest mistake and oversight by two well-meaning employees of the Board. The correct documents for review were timely obtained and correctly added to the file. It is unfortunate that those documents were not reviewed.”

We asked AMB executives if, in addition to this being the employee’s first time, the error could also be the result of pressures to process licenses quickly, high staff turnover and unclear

directions. The Deputy Director countered that the staff member who made the mistake should have known better.

We looked into the matter of Dr. X and learned that North Dakota's Commission on Medical Competency filed a complaint against this same physician in 1995 charging that he:

“. . . engaged in a continued pattern of inappropriate care . . . performed surgical procedures on the basis of inaccurate diagnoses . . . failed to transfer patients to another health care facility in a timely manner as required by the best interest of the patients.”

The physician denied the charges, entered into a stipulated agreement with North Dakota, accepted two-year probation and paid fines of \$10,000. A year later, the state filed another complaint against him for failure to comply with the agreement. The doctor provided documents to the court to demonstrate he paid the fines. The court accepted his evidence regarding compliance with the fine assessment, however, the North Dakota Medical Board “did order respondent to start the application process anew if he ever decided to renew his license.”

The doctor began a medical practice in California before North Dakota disciplined him and continued to practice under a California license until 2006. Later, California ordered two years of probation. The doctor violated the terms of California's disciplinary actions. California authorities then extended Doctor X's probation for:

“. . . violating the terms and conditions of his board-ordered probation by aiding and abetting the unlicensed practice of medicine; practicing without a fictitious name permit; committing dishonest acts and providing false and misleading information; failing to maintain adequate and accurate medical records; failing to submit quarterly declarations; and failing to pay costs.”

As a result, a California judge ordered the physician's California license:

“Suspended for 6 months, suspension stayed, current probation extended for 18 months from the effective date of this decision with additional terms and conditions including, but not limited to, completing an ethics course.”

On March 7, 2013, we spoke with California Board of Medicine's Chief of Licensing about the case. He acknowledged the physician's probation period ended so he could practice in California again. He cautioned that, as of the date of that conversation, while Dr. X is qualified to practice in California under a restored license, his California profile still indicated he practiced at an address in Arizona. The licensing chief said California law obligated Dr. X to notify the California medical board of practice address changes within 30 days of a move, yet his *locum tenens* expired in Arizona on September 4, 2012. We noted AMB records showed a pending MD license application for Dr. X, dated February 11, 2013. On March 8, 2013, Licensing Manager LM-C informed us, Dr. X “applied for a permanent license on July 3, 2012, and an investigation was opened on August 3, 2012, to review the issues not addressed during the *locum tenens* application stage” On July 31, 2013, the AMB informed us the agency

recommended denial of Dr. X's request for full licensure and offered Dr. X "the opportunity to withdraw his license application in lieu of license denial." They confirmed on June 24, 2013 Dr. X withdrew his application.

On January 24, 2013, LC-X discovered another unqualified physician, Doctor Y, practicing in Arizona under a *locum tenens* license. On that *locum tenens* application, dated November, 2011, the physician marked "yes" to the question, "Have you ever been the subject of disciplinary action or are you currently under investigation with regard to your health care license, been sanctioned by any healthcare licensing authority, health care association, licensed healthcare facility or healthcare staff of such a facility?" With the application, Dr. Y submitted a two-paragraph

AMB provided to us. shading, possibly due to obscured the version of reviewed so that it was said the AMB received it the licensing staff did applicant to clarify what

Despite hard evidence demonstrating two physicians did not qualify, the AMB granted licenses so they could practice medicine temporarily in Arizona.

narrative, which the We told LC-X that dark fax transmission, the narrative we largely illegible. She in that condition, yet not follow up with the was in the narrative.

A letter from the Medical Boards of the

Federation of State and United States (FSMB)

dated December 20, 2011, was directed to the AMB's Executive Director, one month after Licensing Manager LM-B moved into the department. The letter reported that in 1997 the physician was "ADMONISHED" for "Unprofessional Conduct." Despite evidence provided directly from the physician (albeit unreadable) and the FSMB letter demonstrating the physician did not qualify for the *locum tenens* registration, the AMB licensing staff did not investigate.

The AMB granted the *locum tenens* license effective January 2012. On February 3, 2012, the physician applied for a full medical license in Arizona. At that point, staff opened the applicant's file and discovered he should not be practicing in Arizona. On February 9, 2012, the AMB sent a letter stating,

"... you did answer affirmative to questions about Board action on your locum tenens application. Queries indicate board action in Colorado. Please provide a narrative as to why you did not answer 'yes' to these questions, and in your narrative include details about this board action and supporting documents related to the incident."

Despite discovering the physician's disciplinary action after the fact, the AMB did not appropriately act upon the information. We looked up the physician's Colorado record online and discovered the link to the file explaining the discipline was missing. We made a public records request to Colorado's Division of Registration (DORA) and received the court-related documents which revealed the physician accepted responsibility for unprofessional conduct in 1991 which led to the death of one patient and a stroke "which resulted in mild cognitive deficits and loss of fine motor movements. . ." in another patient. We also noticed that as of February 20, 2013, one year after the AMB's request for information from him, the physician's Colorado profile states he is currently practicing at an Arizona address. Thus, the agency did

not revoke or remedy the *locum tenens* license of the unqualified physician who practiced medicine in Arizona.

LC-X explained this was,

“ . . . another example of a person who was given a locum tenens license, but should have had an investigation. . . . Due to high staff turnover errors like this happen due to exit of years of knowledge and inexperienced people in licensing etc. . . rather than recalling the LT license. . . let it ride and in interim the doctor applies for a **full license.**” [Emphasis added.]

Shortly after sending this information to our office, LC-X resigned from her position with the AMB.

The Board confirmed that Licensing Manager LM-C alerted the Deputy Director and Executive Director the agency issued *locum tenens* to both Drs. X and Y and “was instructed that investigation could not be opened regarding the application after the license had been granted.” The AMB told us the agency has changed that policy and in the future will investigate cases if they discover similar errors and report those cases to the AMB Board of Directors.

Two unqualified doctors received *locum tenens*. The agency did nothing to stop them from practicing medicine in Arizona until each doctor applied for full and permanent licenses.

We benchmarked the AMB’s practices against another Arizona agency involved in licensing physicians, the Arizona Osteopathic Board (AZDO). We noted that agency had only one statute pertaining to licensing, A.R.S. § 32-1822, with broader authority than those of the AMB. We asked a licensing administrator at AZDO about their *locum tenens* licensure process. She said they do nearly all the verifications required for full osteopathic licensure, although AZDO only required primary source verification from every state in which the applicant is licensed. AZDO staff initially review the applications for completeness. Next, if the physician does not note problems (“Yes” answers) on the application form, before issuing *locum tenens* licenses, the AZDO licensing staff double-checks every *locum tenens* applicant’s profile, using the National Practitioner Data Bank and the American Osteopathic Association. They review each profile for red flags, such as disciplinary action. AZDO will accept photocopies of diplomas and scores if they do not see any problems after doing thorough searches. She said AZDO *locum tenens* licenses are good for 90 days, renewable once.

Regardless of root causes – human error, mistrustful culture, fear or conflicting instructions – we find the agency in violation of A.R.S. § 32-1429(A)(3). The AMB issued 30 *locum tenens* registrations between October 1, 2011 and February 1, 2013. By granting *locum tenens* licenses to at least two verifiably unqualified physicians who filled in temporarily for colleagues in Arizona, and allowing them to fulfill the six-month term of the license upon detecting problems with their practice histories, the AMB jeopardized public safety.

ISSUE 3: The AMB violated A.A.C. R4-16-201(D)(1)(a) when it stopped reviewing primary sources of medical college certification for international medical graduate (IMG) applicants.

FINDING 3: SUBSTANTIATED

With regard to primary source verification of medical school for international medical graduates, we found:

- 3A. The AMB did not obtain applicants' primary source medical school certification as required in Arizona Administrative Code, R4-16-201(D)(1)(a).
- 3B. The AMB used the Educational Commission for Foreign Medical Graduates (ECFMG) certification as a substitute for primary source medical school certification.
- 3C. The laws in Arizona relating to this topic (e.g., A.A.C. R4-16-201(D)(1)(a)) are not precise enough to have a likelihood of thwarting the presentation of false documents. Other states' medical boards have stronger laws about reviewing primary source documentation.

DISCUSSION

Doctors in Arizona who graduated from international medical school are required to submit an Educational Commission for Foreign Medical Graduates (ECFMG) certification, completed by someone other than the applicant. This certificate is listed in A.A.C. R4-16-201(D)(1), in addition to forms required of all applicants for medical licenses.

Within the list of primary source documents, A.A.C. R4-16-201(D)(1)(a) requires an applicant to submit a Medical College Certification form. The AMB did not follow this, however, for international medical graduates (IMGs). Instead, the agency accepted the ECFMG alone, without the Medical College Certification form from IMGs. The law does not state ECFMG certification may serve as a substitute for primary sourced medical college certification required by the law.

In her May 28, 2013 response to our preliminary consultation with the Executive Director, provided under A.A.C. R2-16-306(B), she said,

“ECFMG certification is an effective and more efficient verification of the qualifications of a foreign medical graduate and eliminates the need for translation of international medical transcripts. However, in response to the initial findings, we have revised our process to require international medical college certification for IMGs.”

Certification of IMGs by ECFMG,

“... is the standard for evaluating the qualifications of these physicians before they enter U.S. graduate medical education (GME), where they provide supervised patient care.”⁴¹

The ECFMG offers a Certification Verification Service which, according to its website,

“... provides prompt, **primary-source confirmation** of the ECFMG certification status of international medical graduates (IMGs).”⁴² [Emphasis added]

We spoke with an Applicant Information Services representative at ECFMG. She explained that in order to get ECFMG Certification, the Commission requires primary source documents from medical schools and proof the physician passed three components of the United States Medical Licensing Exam (USMLE). Upon verification, ECFMG issues a certificate that enables the physician to practice medicine in the United States. She added that the only way for a medical board to get a certified copy of a physician's ECFMG Certification would be to go through the organization's Certification Verification Service.

The Licensing Chief of California's Medical Board said his agency accepted the ECFMG program's Certification Verification Service in addition to, not in lieu of, primary source documents from IMGs' medical schools. He said the ECFMG's Certification Verification Service accepts some items that are not primary sourced. He added that the Commission's verification service is, however, good at identifying those documents that are not from primary sources. He suggested it would be reasonable for a medical board to accept verified records through ECFMG and then follow up with applicants whose records did not come through the Certification Verification Service from primary sources.

The Bureau Manager of Utah's Division of Occupational and Professional Licensing explained that her state, like Arizona, uses the ECFMG Certificate for IMGs. She added this is in addition to reviewing original transcripts from medical schools, which

Managing International Medical School Records

Of the five medical boards we interviewed outside Arizona, all required primary source verification of medical college transcripts from international medical graduates. (See Exhibit A.)

Nevada's licensing chief explained her agency requires primary source verification of all medical school transcripts, including doctors from international schools. She explained she is able to accommodate applicants who come from war-torn countries or other challenging situations because Nevada's laws provide her agency with clear contingency options for such cases.

Current Arizona laws do not provide exceptions for international medical graduates. All doctors, including those who graduated from international medical schools, are required to have their medical school records sent directly to the AMB for verification.

⁴¹ "About ECFMG." *ECFMG*. Educational Commission for Foreign Medical Graduates. Web.

⁴² "Certification Verification Service (CVS)." *ECFMG*. Educational Commission for Foreign Medical Graduates. Web.

Arizona is required to do by law, but was not doing between September 2011 and March 2013. The Licensing Chief of Nevada's Medical Board reported her board requires primary source verification of medical schools for IMGs. She added there are some realities that necessitate exceptions:

"YES, direct source verification is required. This over the many recent years has presented new challenges, as there are many foreign medical schools that are in war torn countries. Obtaining verifications from these areas has become increasingly challenging. If we receive a response that the school is no longer or refuses to respond or provide information we have built into our law that we may receive information from another reliable source. Generally we will inquire with a sister Board who the applicant may have held a license with or inquire with ECFMG. We go to great lengths to make sure we've got a solid / reliable / secure / accurate verification.

If we cannot obtain information that truly confirms that the IMG completed his or her medical training, they are made to appear before the full Board and the Board makes the determination as to whether the documents obtained are authentic and or acceptable."

International Medical Graduates comprised approximately 30% of the AMB's overall caseload in 2011 and 2012.

According to ECFMG, "International medical graduates (IMGs) comprise one-quarter of the U.S. physician workforce."⁴³ The Arizona Medical Board processed 477 applications for licensure from IMGs in 2011 and 451 in 2012. International Medical Graduates

comprised approximately 30% of the AMB's overall caseload both years.

In an October 1, 2012 meeting, the Executive Director explained her rationale for requiring only ECFMG and not the primary source medical college certification required by law: this followed a precedent set by the FSMB. She added the Board is in the process of "drafting new rules to bring the agency's procedures in line with state laws." The Director said an AMB board member also served as a trustee of the ECFMG and she had assured her that the service provided sufficient verification for International Medical Graduates.

A memo dated March 4, 2013 from the AMB stated that the licensing department revised their practices. They stopped relying exclusively on ECFMG and began requiring "copies of medical school records from international medical schools before considering the application administratively complete." (See EXHIBIT H.)

⁴³ "About ECFMG." *ECFMG*. Educational Commission for Foreign Medical Graduates. Web.

Although the agency may be requiring new IMG applicants to submit primary source documents, we could not verify how many physicians received licenses under the AMB's previous processes.

We substantiate the allegation the AMB did not follow A.A.C. R4-16-201(D)(1)(a) because they accepted ECFMG Certification as a substitute for primary sourced medical college certification.

ISSUE 4: The AMB violated A.A.C. R4-16-201(D)(1)(b) by discontinuing the review of applicants' postgraduate training certification.

FINDING 4: SUBSTANTIATED

The AMB used an expedited process to process applications for licensure and this process did not comply with A.A.C. R4-16-201(D)(1)(b) requiring the primary source verification of postgraduate training.

DISCUSSION

Arizona Administrative Code, R4-16-201(D)(1)(b) compels physicians to have someone other than themselves submit Postgraduate Training Certification (PGT) forms. Until the fall of 2011, the AMB asked administrators of postgraduate training programs to answer specific quality questions about applicant breaks in work, investigations, probation and disciplinary issues on a postgraduate training verification form. The postgraduate training administrators returned the completed certification forms to the AMB.

Starting in the fall of 2011, to speed the licensure process along, the AMB stopped requesting the primary source certification required by state law and instead started to rely on queries with the American Medical Association to verify postgraduate training of each applicant. The flaw in this approach, according to the FSMB Chief Advocacy Officer, is AMA profiles are self-reported. She added that they are sufficient "as a backup reference," but postgraduate training "must be primary source verified."

In her May 28, 2013 response to our preliminary consultation under A.A.C. R2-16-306(B), the Executive Director denied the AMB did not use primary source verifications of postgraduate training:

"I respectfully dispute this allegation. The Board has obtained the American Medical Association Profile for each applicant for licensure and verified postgraduate training from that source. The AMA is cited in numerous provisions of the Medical Practice Act as a source for accrediting approved schools and programs."

On its "Request Agreement for Physician Profile Data from the Physician Masterfile," the AMA has the following disclaimer:

"AMA endeavors to maintain its physicians' records with information that is complete, current and timely, however, because of possible reporting and processing delays, **no**

representations or warranties as to the accuracy or completeness can be made.”⁴⁴
[Emphasis added.]

According to the AMA, physicians report current practice information for their respective profiles. In addition to self-reporting practices, the AMA collects PGT data directly from administrators. There is a lag time in reporting, so at any given point, a physician's AMA profile may not be up-to-date.

On November 20, 2012, we met with the Executive Director and a licensing administrator of the Arizona Board of Osteopathic Examiners in Medicine and Surgery (“AZDO”), to compare processes. AZDO has similar requirements to the AMB, as A.R.S. § 32-1822(A)(4), necessitates verification of postgraduate training. We asked how the AZDO licensing department dealt with physicians who had breaks in postgraduate training. The licensing administrator replied, “If there is a gap in training we ask for complete history.” We asked if AZDO licensing staff relied on any outside databanks to query instead. She responded they would not consider doing so because outside sources, such as the National Practitioners Data Bank, is “not sufficient” for AZDO's verification purposes. The AZDO licensing administrator confirmed the agency relies on primary sources for verification.

The Nevada Medical Board's Licensing Chief told us they review a minimum of 36 months of applicants' postgraduate training. Furthermore, they require training that is “progressive” and consistent. She explained if a physician has one year PGT in pathology and then moves into pediatrics, they would require the physician to demonstrate 36 months of postgraduate training in pediatrics. If Nevada's board sees any “red flags” or gaps, they send the application back to the physician for supporting evidence of complete training. Nevada's Board uses primary source information, requesting each training site's director to complete, sign and notarize their form before they will accept it.

The Licensing Chief from California's Medical Board told us his agency requires “primary source of all [postgraduate] training that an applicant has completed at the time of application.” Colorado Medical Board's Director of Licensing and Idaho Medical Board's Executive Director confirmed both their respective agencies also require primary source PGT verification.

On March 4, 2013, the AMB staff reported to us the Arizona Board reversed their position and said they would no longer consider an application administratively complete without a postgraduate training certification. The Executive Director added they would no longer rely on AMA profiles for new applications. In the previously mentioned May 28, 2013 response to our preliminary consultation with her, she said, “. . . despite the lack of any perceived benefit, we now also require verification directly from the postgraduate training programs in all instances.”

Effective March 12, 2013, the AMB's website displayed a Postgraduate Training Verification Form, stating:

⁴⁴ Request Agreement for Physician Profile Data from the Physician Masterfile (form).” *Ama-assn.org*. American Medical Association, Nov. 1999.

“AUTHORIZATION: The Arizona Medical Board requires all applicants for licensure to obtain verification of all postgraduate training programs attended. This form must be completed by the Program Director. This is authorization to release any information in your files of record, favorable or otherwise, DIRECTLY to the Arizona Medical Board.” [EXHIBIT C]

We substantiate that from September 2011 to at least February 2013, the AMB relied on applicants' AMA profiles instead of completed postgraduate certifications prepared by each program director as required by A.A.C R4-201(D)(1)(b). The AMB's March 4, 2013, policy revision corrects this problem henceforth, although the Board does not know which physicians they approved in error during the period they did not follow the rule.

ISSUE 5: The AMB did not verify each applicant's licensure from every state in which the applicant has ever held a medical license, as outlined in A.A.C. R4-16-201(D)(4).

FINDING 5: SUBSTANTIATED

With respect to verification of licensure from every state in which a physician has ever practiced medicine, we found the AMB did not comply with A.A.C. R4-16-201(D)(4) and verify physicians' licenses from every state in which the applicants ever practiced medicine.

DISCUSSION

The Arizona Administrative Code R4-16-201(D)(4) requires applicants to submit directly to the board,

“Verification of licensure from **every state** in which the applicant has ever held a medical license.” [Emphasis added.]

The complainant alleged that starting September 2011, management told the licensing staff to discontinue the practice of verifying licenses applicants hold in other states. The Licensing Manager, who worked at AMB on September 30, 2011, sent an e-mail message to staff with the subject line, “Policy/Procedure

National Practitioner DataBank (NPDB)

The AMB relied heavily on the NPDB to check the background of doctors, in lieu of many primary source documentation requirements under Arizona laws. The NPDB website describes the data base as “a confidential information clearinghouse created by Congress with the primary goals of improving health care quality, protecting the public, and reducing health care fraud and abuse in the U.S.”

The website warns, “The NPDB is primarily an alert **or flagging system** intended **to facilitate a comprehensive review** of the professional credentials of health care practitioners, health care entities, providers, and suppliers; the information from the Data Bank **should be used in conjunction with, not in replacement of, information from other sources.**” [Emphasis added.]

Source: <http://www.npdb-hipdb.hrsa.gov/topNavigation/aboutUs.jsp>

Changes.” The e-mail message included the Deputy Director in the “cc” line and contained the following statement:

“ . . . **No data is entered** in GL suite [the AMB’s case management software] **regarding each state license held**, mark the task as complete, scan all AMA profiles to include your notes if you want to indicate each license was verified. Otherwise scan the AMA profile and upload as misc. licensing document and AMA profile for description. Please note: If physician has multiple state licenses and all can be verified except SD (or any state we can’t verify online or by phone) we won’t request verification of this state license. **ONLY** request verification of state license if it is the only license of record that we are unable to verify. Go forward with this; [Deputy Director] will discuss with [Executive Director] as rules indicate we will verify all states; may end up going back to that process; wait for more direction. . . ” [Emphasis added.]

As indicated by the Licensing Manager’s e-mail message, the Executive Director and Deputy Director knew state laws required the agency to verify licenses from every state. The complainant said employees alerted management this new process was not in compliance with A.A.C. R4-16-201(D)(4).

We asked the Executive Director in our meeting with her on October 1, 2012 if the practice continued. She confirmed the allegation. She acknowledged it was inconsistent with law. She said she supported the new process because she considered many of the AMB’s rules to be “outdated.” She noted the Board was “in the process of rule-making” to make the laws correspond with the new agency practices.

This is improper. The current rule is the law that the AMB must follow, instead of a policy created outside the law-making process. We also checked with the Governor’s Regulatory Review Council to determine whether the AMB opened a docket with proposed changes to the rule. There are no open AMB dockets at the time of this report pertaining to this issue.

In a May 28, 2013 response to this issue, the Executive Director explained her rationale for circumventing this rule:

“Because so many physicians, particularly radiologists, are licensed in many states, a National Practitioner Data Base has been developed to determine if a physician has been disciplined in any state. This Data Base eliminates the need to do up to 50 independent verifications, and like many other states, we began to utilize this National Practitioner Data Base because doing so was more efficient and did not risk public safety. Additionally, for every applicant, we run reports from the AMA and the Federation of State Medical Board to verify the status of licensure in each state.”

The AMB relied entirely on the NPDB to check each doctor's out-of-state license histories, despite the database's warning that it should not be used in place of primary source verification.

The Executive Director explained to us in October 2012 she directed the Licensing Manager to rely on the National Practitioner Databank (NPDB) to determine a physician's eligibility. She said this national databank does a decent job of "vetting" out physicians who may have issues from other states to disqualify them. As our July 2012

Ombudsman Final Report of Investigation 1200132⁴⁵ demonstrated, the NPDB's website states that it

“. . . should be used in conjunction with, not in replacement of, information from other sources.”⁴⁶

A report by the Federation of State Medical Boards (FSMB) advocated the creation of a

“. . . central credentials verification service or depository wherein verified/authenticated documents could be securely maintained on behalf of state medical boards. . . [and until that exists]. . . recommends that state medical boards implement a process for licensure by endorsement which sufficiently evaluates an applicant based on the authentication/verification of core documents . . . In addition, the committee advocates thorough investigation into the background and professional experience of all applicants.” [Emphasis added.]

We compared the AMB practice with the Osteopathic Board (AZDO) processes to understand other agency approaches to the topic. In our November 20, 2012 meeting with the Osteopathic Board (AZDO) staff, we asked if they utilized the NPDB or the FSMB to verify each applicant's licensure from every state in which each osteopathic physician has ever held a license. The Executive Director said the AZDO does verify each state, using primary source verification. The licensing administrator added that NPDB "is not sufficient for our purposes. . ." and the AZDO continues to "check every state" to determine the eligibility of applicants for licensure.

Utah's Division of Occupational and Professional Licensing Bureau Manager told us she would only consider using NPDB to cross-verify applications already approved through the FCVS. She explained her agency would only use NPDB as supplemental documentation for approval of doctors, but never in lieu of primary source verification.

We substantiate that from September 2011 to February 2013, the AMB did not verify the licensure of applicants from every state in which the physician-applicants had previously

⁴⁵ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

⁴⁶ "The Data Bank - About Us." *The National Practitioner Data Bank*. U.S. Department of Health and Human Services. Web. <<http://www.npdb-hipdb.hrsa.gov/topNavigation/aboutUs.jsp>>.

practiced medicine, as required by A.A.C. R4-16-201(D)(4). The Executive Director maintained her position regarding this practice on May 28, 2013:

“ . . . in response to the initial findings, we have returned to the practice of verifying licensure in each state in which a physician is licensed, regardless of the number of states in which the physician is licensed, and despite the existence of a far more efficient alternative and in addition to three nationally accepted sources.”

The AMB’s March 4, 2013, policy revision corrects this problem henceforth.

ISSUE 6: The AMB discontinued asking applicants renewing active licenses to include a report of “disciplinary actions, restrictions or any other action placed on or against that person’s license or practice by another state licensing or disciplinary board or an agency of the federal government. . .” as an attachment to their renewal form, in violation of A.R.S. § 32-1430.

FINDING 6: SUBSTANTIATED

With respect to physicians reporting prior disciplinary actions or other problems with their practice histories, we found:

- 6A. The AMB did not adhere to the current law, A.R.S. § 32-1430, and did not require physicians to attach a report to their renewals listing all, “disciplinary actions, restrictions or any other action placed on or against that person’s license or practice by another state licensing or disciplinary board or an agency of the federal government.”
- 6B. The Arizona Revised Statutes do not specifically require a license applicant submit and pay for a criminal background check, yet, without one, it would be unlikely the AMB could be sure an applicant is clear of the criminal

Criminal Background Checks

Arizona laws do not require the AMB to conduct criminal background checks on applicants for medical licenses. Around the country, 65% of state medical boards require physicians to pass criminal background checks.

Current state laws do require doctors to report problems with their licenses when they renew. The AMB stopped requiring physicians to attach such reports to their renewal applications. The AMB Executive Director argued that self-reporting by physicians, regardless of state law requirements, was not sufficient to vetting out problematic doctors. In lieu of the state requirement, the AMB reviewed online physician profiles registered with the American Medical Association and National Practitioner Databank. Research demonstrates that the databases are not sufficient to highlight doctors with criminal or malpractice histories.

aspects of “unprofessional conduct” as defined and stipulated in A.R.S. §§32-1401(27)⁴⁷ and 32-1422(4).⁴⁸

DISCUSSION

A.R.S. § 32-1430 requires applicants to,

“ . . . attach to the completed renewal form a report of disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government ”

The Executive Director explained the AMB licensing discontinued requiring this information with the renewal form, so physicians could automatically renew online. In a May 28, 2013 message, she explained her position in this shift away from the law:

“I was not directly involved in this change, although I supported the practice of obtaining disciplinary actions directly from individual states or other on-line verification systems rather than depending on the physician to self-report.”

She acknowledged in an October 2012 meeting this was in violation of the statute, but said the “statute does not account for an electronic database” such as the National Practitioner Data Bank (NPDB), that facilitates an efficient, paperless renewal process. She said the majority of physicians do not have issues barring them from automatic renewals.

⁴⁷ A.R.S. §§32-1401(27). "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

- (a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.
- (b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.
- (c) False, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.
- (d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (e) Failing or refusing to maintain adequate records on a patient.
- (f) Habitual intemperance in the use of alcohol or habitual substance abuse.
- (g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment. . .

⁴⁸ A.R.S. §32-1422(4). Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter.

As stated earlier in this report, despite employees and our office notifying the AMB executives the agency was non-compliant with state laws, the Executive Director told us on September 3, 2013,

“I categorically reject, and will vigorously defend, any allegation that I knowingly broke any law in the exercise of my discretion as ED, I do recognize as a result of your report the importance of adherence to laws in strict conformity with their language even when we believe there are more efficient procedures that pose no risk to public safety.”

Instead of following the statute, the AMB automatically and immediately renewed the license of every physician who used the online process. For physicians who disclosed problems on their licenses, the agency relied on the NPDB for reports of disciplinary actions or restrictions. The Executive Director told us because the NPDB reports information that may disqualify a physician, Arizona’s Board no longer sought this from the physicians directly, as the law requires. The Executive Director said the agency is drafting new rules to reflect procedures currently employed by the Board.

Instead of following state laws, the AMB automatically and immediately renewed the license of every doctor who renewed online. Staff later checked the NPDB for problems revealed on individual applications.

This is a flawed idea for three reasons. First, the Governor’s Regulatory Review Council (GRRC) is required to reject any rule proposal that runs counter to existing statute. Thus, because it would conflict with A.R.S. § 32-1430, the rule proposal would not pass their core review. Second, the practice ignores the fact the NPDB is not a primary source verification option. The caution on the NPDB’s website states,

“The Data Bank is primarily an alert or flagging system . . . the information from the **Data Bank should be used in conjunction with, not in replacement of, information from other sources.**”⁴⁹

Finally, the NPDB also has an online renewal process for physicians, which means the databank may not have the most current information about problematic issues pertaining to a physician’s practice as reported by other state medical boards.⁵⁰ Moreover, according to an article published by the American Medical Association, there is “serious underreporting” of criminal

⁴⁹ "The Data Bank - About Us." *The National Practitioner Data Bank*. U.S. Department of Health and Human Services. Web. <<http://www.npdb-hipdb.hrsa.gov/topNavigation/aboutUs.jsp>>.

⁵⁰ "Renew Registration." *The National Practitioner Data Bank*. U.S. Department of Health and Human Services. Web. <<http://www.npdb-hipdb.hrsa.gov/hcorg/howToRenewRegistration.jsp>>.

history of physicians in the databank, because some prosecutors are unaware they are required report criminal convictions against health professionals to the NPDB. The AMA article suggests self-reporting by physicians may not be sufficient to weed out doctors with problematic backgrounds. The report recommends state medical boards bolster public safety by requiring criminal background checks of applicants for licensure.⁵¹

On August 13, 2013, the Licensing Manager disclosed the AMB's information technology staff had not yet fully updated the online renewal process to be in compliance with state laws at that time. We substantiate the allegation the agency violated A.R.S. § 32-1430 when it stopped asking applicants renewing active licenses to attach a report of "disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. . . ." to renewal forms.

ISSUE 7: For physicians applying for licensure by endorsement who took required exams specified in A.R.S. § 32-1426(A), more than ten years before the date of filing, the AMB did not adhere to A.A.C. R4-16-204(F). The rule requires that such applicants either hold current certification from the American Board of Medical Specialty (AMBS) or take and pass the Special Purposes Examination (SPEX). Instead, the agency adopted an internal policy to review and accept applicants based on ten years' work and employment history, in violation of A.R.S. §§ 41-1001 to 41-1092.12.

FINDING 7: SUBSTANTIATED

With respect to physicians, applying for licensure by endorsement who took required exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing, we found:

- 7A. Laws currently do not exist to allow licensure of physicians by endorsement, when they passed exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing, but the AMB is granting licenses to such applicants. In so doing, the AMB violated A.A.C. R4-16-204(F).
- 7B. The AMB rule, A.A.C. R4-16-204(F), is out of date because it cites an amended statute section in A.R.S. § 32-1426 that was moved.
- 7C. The AMB is following an internal policy instead of adhering to existing law in A.R.S. § 32-1426 and A.A.C. R4-16-204(F). By adopting policy over lawfully enacted statutes and rules, the agency violated A.R.S. § 41-1030.

DISCUSSION

⁵¹ Krupa, Carolyne. "Criminal Background Checks Provide Patchwork Protection against Rogue Doctors." American Medical News (2012): Amednews.com. 2 Apr. 2012. Web.

The Federation of State Medical Boards (FSMB) defines licensure by endorsement as

“A process whereby a state issues an unrestricted license to practice medicine to an individual who holds a valid and unrestricted license in another jurisdiction.”

LC-X alleged the AMB granted licensure by endorsement for physicians who did not take exams or hold Board Certification, as required by law. Arizona Administrative Code R4-16-204(F) states,

“An applicant for licensure by endorsement under A.R.S. § 32-1426(C) who provides proof of passing an examination specified in A.R.S. § 32-1426(A) more than ten years before the date of filing shall:

1. Hold a current certification in an American Board of Medical Specialty (“ABMS”), or
2. Take and pass the Special Purposes Examination (SPEX).”

We reviewed the rule and noted there is a flaw, because the Arizona Revised Statute § 32-1426 does not have an item “C.” The AMB Executive Director said the agency knew item “C” did not exist. In a March 4, 2013 memo, she stated,

“Because of changes in statute, the rules in question, A.A.C. R4-16.204(F)(1) and (2) refer to statute that appears to have been repealed. No changes are necessary in order for the board to comply.”

To resolve the matter of licensing physicians who took exams more than ten years before laws changed to require currently offered medical examinations, she developed an internal policy to deal with this. She directed us to the AMB’s Policy LIC-007(C)(9) which states that in such cases,

“. . . the applicant’s work and employment history for the past ten years will be carefully reviewed. . . It is assumed that an applicant in good standing in another state is competent and Licensing [Division] has the burden of proving otherwise. . . ”

Licensing Physicians by Endorsement

Doctors who hold an active medical license in another state can apply for Arizona licenses by “endorsement.” State laws require doctors to provide essentially the same documentation required of new doctors, with some exceptions outlined in A.A.C. R4-16-204.

The Federation of State Medical Boards recommends primary source verification of documents even for doctors with current out-of-state licenses. AMB implemented practices in September 2011 that circumvented many of the primary source verification steps required by Arizona laws for doctors applying for licensure by endorsement.

Idaho laws provide an expedited process for licensure by endorsement. The Idaho Medical Board’s Executive Director explained physicians already licensed by a state outside Idaho might receive such licenses in as few as three days. The agency issues the license by endorsement once a doctor provides proof of a current license and passes a criminal background check. The Idaho Board also reviews primary source verification documents in the expedited process.

In her May 28, 2013 response to our preliminary consultation with the Executive Director in which we discussed this specific rule violation, she said,

“As an executive director, it is expected that when circumstances warrant, I do provide the Board with recommendations on various issues. In doing so, I work with my managers, my assistant attorney general, and other subject experts before making any policy recommendations. It is then the Board’s decision whether to approve any such recommendation. . . I do not have specific memory of this particular issue, but I am confident that we are currently in full compliance with the requirements of A.A.C. R4-16-204(F).”

We asked Legislative Council to review this issue. Our attorney found Laws 2004, Chapter 264, Section 5, which amended A.R.S. § 32-1426. (See EXHIBIT I.) He explained:

“This amendment re-lettered (sic) subsection C as subsection B, because the old subsection B was stricken. The old C and the new B have always applied where an applicant for licensure by endorsement and who hasn't taken an examination in the past X number of years. It was 15 and is now 10 years. They were required to take a special exam, although the nature of the exam has changed over the years. The 2004 amendment was the latest amendment to the section, so it now requires a special purpose licensing exam. In addition, the board may review records, practice history and physical and psychological assessments.

AAC R4-16-204(F) appears to be implementing the old C and the current B **The fact that they haven't updated the rule in the 8 or 9 years since the lettering of the statute was changed, does not mean that they can ignore the statute.**”

In their response to our preliminary report, the AMB argued the statute is non-existent. We disagree. The section was renumbered by legislative amendment, yet its context was unchanged and remained in law. This is a common occurrence when rules cite re-numbered statutes. The proper protocol is to correct the rule to match the proper statutory citation. The agency should have contacted the Secretary of State and GRRRC and engaged in the rulemaking process within the year of the statutory change. The Board agreed with this point, stating,

“The Agency recognizes that it needs to move immediately to either renumber the rule or amend the rule to specify the criteria by which the Agency would determine whether an applicant will be required to be ABMS certified or take the SPEX exam.”

In a report on expanding requirements for instances of licensure by endorsement, the FSMB recommended state medical boards grant such licenses based on key information. They

included primary source verification and “. . . authentication of documents by the entity issuing the documents.”⁵²

By adopting a policy to resolve a problem not available in existing laws, the AMB violated A.R.S. § 41-1030. The statute specifically orders that agencies,

“. . . shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact.”

An agency policy may influence only internal procedures of the agency and may not impose additional requirements that laws would otherwise define.

We substantiate the allegation the AMB did not follow the Arizona Regulatory Bill of Rights because the AMB charted internal policies to circumvent the rule, A.A.C. R4-16-204(F) and the statute, A.R.S. § 32-1426. By adopting policy over law, the agency further violated A.R.S. §41-1030. If the AMB wants to legitimize their licensing policy, they must ask the Legislature to amend the statute first.

ISSUE 8: The AMB did not require physicians to submit their photos with license applications, as mandated by A.A.C. R4-16-201(B)(21).

FINDING 8: SUBSTANTIATED

Regarding photos submitted with applications, we found the AMB failed to maintain the practice of requiring physicians to submit photos, as mandated by A.A.C. R4-16-201(B)(21).

DISCUSSION

Arizona Administrative Code R4-16-201(B)(21) requires physicians to submit with initial applications,

“. . . photograph of passport quality no larger than 2 1/2 x 3 inches taken not more than 60 days before the date of application.”

When we met with the AMB Executive Director on March 4, 2013, she noted the agency had not been requiring photos of applicants, for an unspecified amount of time. On May 28, 2013 she added,

“. . . no one currently employed by the Board can recall when we last required photos. The Board may have stopped requiring photos when the state medical examination was

⁵² "Licensure by Endorsement: Final Report of the Ad Hoc Committee on Licensure by Endorsement." *FSMB.org*. Web.

eliminated. A number of states have never required a photograph and many others stopped requiring them when they eliminated a state medical exam.”

Of the medical licensing agencies we surveyed, all but one required photos with applications.

She told us in a March 14, 2013 meeting the licensing staff planned to begin requesting photos on the newly created applications. On March 12, 2013, new applications appeared on the AMB’s website requesting photos according to law (EXHIBIT C).

We compared the AMB practice with a number of other entities. We reviewed the application form of the Arizona Board of Osteopathic Examiners and noted the AZDO requests physicians submit a photo on their application.⁵³ Utah only accepts physicians approved through FCVS, which requires a photo with applications. Idaho’s medical board also requires physicians to submit photos with applications, even for its expedited licensure by endorsement process. Nevada’s board requires notarized photos with applications, while Colorado does not require photos submitted with applications. EXHIBIT A, lists photo requirements of medical boards in a number of these nearby states. Of the seven medical licensing agencies we surveyed, all but one required photos of physicians.

In an audio recording of a meeting with LC-X on December 21, 2012, Licensing Manager LM-B explained what he heard the Executive Director tell him:

“She said, ‘Look, we’re not going to do them [photos] . . . Who’s negatively impacted when we’re not getting a photo anymore? The media.’ And that’s about what she said, because when a doctor gets in trouble, they want a photo. Ok, so now we don’t have a photo, so they have to go get a mugshot.”

Shortly thereafter, LM-B left the AMB because he was not comfortable with the directives he received from his superiors. As staff questioned the practices, he began to realize the expedited processes did not comply with laws. The Executive Director acknowledged in her response to our draft of the final report that LM-B “. . . occasionally raised questions about our interpretation of certain rules. . . .” He said he left because he could not in good conscience continue telling staff to violate rules.

We found no evidence the Board ever asked the Legislature or GRRRC for legal authority to discontinue the gathering of physician photos. Therefore, we substantiate that from September 2011 to March 4, 2013, the AMB did not require physicians to submit photos with their applications in accordance with A.A.C. R4-16-201(B)(21).

⁵³ "Osteopathic Medicine & Surgery License Application (form)." *Azdo.gov*. Arizona Board of Osteopathic Examiners In Medicine and Surgery, May 2013. Web.

In a response to our preliminary report, the Board explained the agency fully complied with the law as of April 13, 2013. The revised application form on the agency's website (See Exhibit C) in fact reflects this change.

ISSUE 9: The AMB did not require notarized signatures on applications, as prescribed in A.A.C. R4-16-201(B)(22).

FINDING 9: SUBSTANTIATED

Regarding notarized signatures on applications for licensure, we found the AMB failed to require notarization of applications as prescribed in A.A.C. R4-16-201(B)(22) from at least September 11, 2011 until early March of 2013.

DISCUSSION

Arizona Administrative Code R4-16-201(B)(22) requires physicians to submit:

“A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, and that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and authorizing release of any required records or documents to complete application review.”

In our March 4, 2013 meeting with the Executive Director, she told us the AMB was not requiring notarized signatures from physicians. We confirmed the Board's application did not request notarization at that time (EXHIBIT B). In a May 28, 2013 response to a preliminary consultation with the Executive Director, she rationalized this practice,

“No one currently employed at the board can recall when this requirement was eliminated, but it is believed that it was over ten years ago because is not possible to accept on-line applications with this requirement. It is unclear how a notarized signature contributes to public protection. Regardless, we now require applicants to notarize their application for initial licensure.”

On March 12, 2013, the AMB made a new application available on their website, which reinstated the notarized signature requirement (EXHIBIT C). The Board, in their response to our preliminary report, confirmed that as of April 13, 2013, the licensing staff complied with this law,

“On March 12, 2013, Agency staff updated the MD License application to require a notarized signature. The Agency allowed a phase out period of the previous application (that did not require a notarized signature) and determined April 12, 2013 as the last day to accept the previous MD application.”

We found no evidence the Board ever asked the Legislature or GRRC for legal authority to discontinue the gathering of notarized affidavits prescribed in A.A.C. R4-16-

We found no evidence the AMB pursued or acquired legal authority to discontinue requiring notarized affidavits or photos required by state law.

201(B)(22). Therefore, we substantiate that from September 2011 to March 2013, the AMB did not require physicians to submit notarized applications, we substantiate the allegation that the AMB did not comply with A.A.C. R4-16-201(B)(22). The AMB's March 2013 application revision corrects their failure to adhere to rule. .

ISSUE 10: The AMB issued renewals to physicians, previously licensed by endorsement, who allowed their Arizona licenses to expire and did not hold an active license in another state, in violation of the Board's legal authority per A.R.S. § 32-1430(D). Further, instead of going through the legislative or rulemaking processes, the agency simply adopted a policy to deal with this situation, a violation of A.R.S. § 41-1030.

FINDING 10: SUBSTANTIATED

Regarding physicians previously licensed by endorsement, who allowed their Arizona licenses to expire and did not hold an active license in another state, we found:

- 10A. The Board issued licenses to physicians who allowed their Arizona licenses to expire and did not hold an active license in another state, in violation of A.R.S. § 32-1430(D).
- 10B. The Board created agency policy, LIC-018, cited by the Executive Director in a February 2, 2012 board meeting. This policy treats the licensee as if they held an inactive license, so it is substantive in nature. It does not conform to A.R.S. § 41-1030 and is improper because a policy cannot override a law.

DISCUSSION

According to A.R.S. § 32-1430(D),

“A person whose license has expired may reapply for a license to practice medicine as provided in this chapter.”

The law is reasonably straightforward for physicians who applied for initial licensure in Arizona, because they ostensibly passed all of the state's testing requirements to receive the initial license. Physicians in Arizona obtain a license in Arizona, however, through one of two possible routes: (1) initial licensure as outlined in A.R.S. § 32-1425 or (b) licensure by endorsement, per A.R.S. § 32-1426. According to the Executive Director of the AMB,

“There is a dilemma currently whereby physicians who were previously licensed in Arizona are not eligible for licensure if they do not meet specific examination requirements unless they are first licensed in another state. This is inefficient and offers no public protection, so it was placed on the Board’s last off-site meeting agenda in February 2011 for discussion.”

More specifically, a physician who received an Arizona license through endorsement, whose out-of-state license(s) and Arizona license expired, would face severe consequences. Some of those physicians passed exam requirements to receive initial license from other states many years ago. Those exams no longer exist and are not in current Arizona law. A.R.S. § 32-1430(D) requires physicians with expired licenses to start over with an initial license application. The law pertaining to initial application, A.R.S. § 32-1425, requires physicians to pass the United States Medical Licensing Examination (USMLE). This is not possible, as the FSMB Chief Advocacy Officer explained,

“USMLE was first administered in 1992 with the merger of the examination programs of the National Board of Medical Examiners and the Federation of State Medical Boards (FLEX). There was a formula of hybrids that was accepted by states during the transition for the purpose of licensure. **If a physician has been licensed in a U.S. jurisdiction, it is my understanding that s/he would not be eligible to take the USMLE.** . . . There is a fair amount of policy work underway to address the issue of physician re-entry to practice and mechanisms to assess their competence.” (Emphasis added.)

We spoke with the Director of Program Management of the National Board of Medical Examiners, a partner organization with FSMB that administers the USMLE. She explained many state licensing boards continue to accept hybrids of the FLEX and USMLE to accommodate physicians who may have entered the practice before or during the transition to USMLE-only testing. Arizona laws do not accommodate those physicians.

As reflected in minutes from the AMB’s February 2, 2012 board meeting, the Executive Director explained the dilemma to the Board members,

The board circumvented the law and lawmaking processes by enacting an internal policy to license certain doctors who could not be licensed under current state laws. This is prohibited by law.

“When a physician who had previously been licensed by endorsement allows their Arizona license to expire and they do not hold an active license in another state, they are no longer eligible for licensure by endorsement.”⁵⁴ The AMB Executive Director explained our state laws require physicians to take the USMLE, but those who received their

Arizona license by endorsement, who let their Arizona licenses and their previously held

⁵⁴ Arizona Medical Board. Offsite Planning Meeting. 2 February 2012.

licenses from another state expire, have no recourse available to practice medicine, because the required exam is not accessible to them. In other words, physicians in this predicament, under current law, have no legal means for obtaining licensure to reenter the field of allopathic medicine in Arizona.

To sidestep this quandary, the Executive Director in the February 2, 2012 Board meeting, "requested that the Board review the proposed Agency Policy LIC-018 regarding reinstatement of applicants with expired licenses."

Board minutes reflect the Executive Director said:

"The proposed policy was drafted for the Board's review and that it treats the licensee as if they held an inactive license. . . this would not be an issue if the licensee had requested inactive status."

A board member responded with the suggestion,

"If a physician re-entering practice demonstrates satisfactory evidence that the physician possesses the medical knowledge and is physically and mentally able to safely engage in the practice of medicine and that if they adhere to that and have kept current on their CME, **there is no reason why they could not be licensed.**"⁵⁵

There is, in fact, a reason to prevent the AMB from giving those doctors licenses: current laws did not permit the practice. As reflected in the minutes, the Board's Assistant Attorney General advised,

". . . **the Board needs a statute** to address this issue as the only provision that we have currently states that the applicant can reapply pursuant to this chapter . . . **in rule, alternatives which could be used** for determining medical knowledge should be specified."

Board members ignored the assistant attorney general's advice and continued to propose various suggestions for codifying processes to parallel other laws or policies. Minutes reflected a Board member offered another proposal,

". . . if a physician's license has been expired for over five years, a Physician Assessment and Clinical Education (PACE) evaluation could be a requirement for reapplying, and suggested that there be some term limit."

The meeting minutes reflected a second Assistant Attorney General also asserted,

". . . **a statute would be required** to define a timeframe."

⁵⁵ Arizona Medical Board. Offsite Planning Meeting. 2 February 2012.

The minutes showed the Executive Director then,

“... summarized that the Policy addresses physicians who were initially licensed in Arizona through endorsement and no longer hold an active license in any other state. She stated that she wanted the Board to be aware of the Agency Policy and requested their support of the Policy. She stated that they could introduce legislation as early as the current session or possibly do an amendment, and **in the interim use the Agency's Policy.**” [Emphasis added.]

One board member asked if the procedural change required a formal vote of the Board. The Executive Director stated, “Agency policies are approved internally and signed by the Executive Director.”⁵⁶

The AMB acknowledged current laws do not address the predicament faced by physicians, licensed by endorsement, who let their Arizona and out-of-state licenses expire. Until state laws address the problem, the agency decided to implement an internal policy, written by the Executive Director, to resolve it. By doing so, the AMB violated Arizona Revised Statutes §41-1030. A.R.S. §41-1030(B) says, “An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact.”

We then compared processes with Arizona Board of Osteopathic Examiners (AZDO), another medical board in Arizona. We noted that, unlike the statutes for allopathic licensure that govern the AMB, there is only one broad statute, A.R.S. § 32-1822, outlining AZDO's requirements for licensure of osteopathic physicians in Arizona. We met with AZDO's Executive Director and a licensing administrator on November 20, 2012. When the license of an osteopathic physician (DO) lapses, the AZDO requires the individual to proceed as a new applicant would. We asked if the board contemplated any workarounds for physicians whose licenses lapsed and both administrators answered immediately, “No.”

We also noted, in an article by the AMA, the FSMB president mentioned the State Medical Board of Ohio requires background checks when a physician applies to restore a medical license that has lapsed for more than two years.⁵⁷

The AMB Executive Director explained that many physicians, especially those holding licenses in multiple states, hire professional services to help navigate them through licensing processes of state medical boards. Quite often, these services neglect to remind their physician clients to renew licenses. Further, many physicians licensed in Arizona by endorsement find themselves staying in Arizona indefinitely, with retirement in mind. They neglect to renew their previously held licenses, not realizing they risk losing their Arizona licenses as a result. Thus, navigating the laws can be daunting for physicians.

⁵⁶ Arizona Medical Board. Offsite Planning Meeting. 2 February 2012.

⁵⁷ Krupa, Carolyne. "Criminal Background Checks Provide Patchwork Protection against Rogue Doctors." *American Medical News* (2012): *Amednews.com*. 2 Apr. 2012. Web.

The Executive Director believed implementing a policy as an interim measure, was the prudent solution. She told us the Board has two known cases involving this predicament. While it is unfortunate for physicians caught in this position, the Board overreached its legal authority with this resolution.

The AMB Executive Director told us on February 1, 2013, the AMB introduced a bill in the First Regular Session of the Fifty-first Legislature, to resolve the issue. On May 28, 2013 she outlined the Board's interim plan, until a new law is passed to resolve this matter:

"In the meantime, we are telling physicians who allowed their Arizona license to expire, even if they had an unblemished career in our state and it was simply an administrative oversight on their part, that they cannot obtain a new license until they are licensed in another state with different examination requirements."

In the preliminary report response to the Ombudsman Office, the AMB suggested these laws could lead to an absurd result and their solution was,

". . . the AMB elected to follow a policy that provided equal protection to expired licensees as to inactive licensees by according the same process for license reinstatement that relied on an evaluation of the physician's overall ability to safely practice medicine. There is a legal maxim that if a statute is subject to different interpretations that it should not be interpreted in a way that will lead to an absurd result."

We consulted with our legal counsel, who said,

"The argument has applied this maxim to a situation in which the law is clear and it produces a result which they view as unfortunate. The maxim does not allow an agency to ignore a clear law."

That is precisely our point.

The Board later acknowledged,

". . . that it should have sought to amend the expired license statute immediately to avoid the need to reinstate any licenses under the new policy. The Agency did manage, however, to get the statute amended during the 2013 session, so the quandary presented by the prior statutory scheme will no longer be an issue."

We substantiate the Board acted prematurely in authorizing this policy and violated A.R.S. §§ 32-1430(D) and 41-1030. They did not wait for the legal authority required to enact their policy. Eventually, however, House Bill 2409 passed and the Governor signed it. Once it is in effect, the new law will resolve this issue. The Board told us,

“In the meantime, Agency staff has removed policy LIC-081 from the Agency’s intranet (internal website) and instructed Licensing staff not to follow the policy. Thus, the Agency ceased the practice of issuing licenses to physicians who allowed their Arizona licenses to expire while not holding an active license in another state and so became compliant with A.R.S. § 32-1430(D).”

The Agency acknowledges it should have sought to amend the expired license statute immediately to avoid the need to reinstate any licenses under the new policy. The Agency did manage, however, to get the statute amended during the 2013 session, so the quandary presented by the prior statutory scheme will no longer be an issue.

Arizona Medical Board, Board of Directors response to Ombudsman preliminary report, July 31, 2013

ISSUE 11: The AMB did not comply with statutes and rules relating to continuing Medical Education (CME) documentation, verification and mailing of forms.

FINDING 11: SUBSTANTIATED

Regarding the allegation the AMB failed to document continuing medical education (CME) credits as required by law, we found:

- 11A. The AMB did not document CMEs in accordance with A.R.S. § 32-1434 (A) and (B) and A.A.C. R4-16-102(D). The rules guiding the AMB are nebulous concerning the time and manner for which they will document physicians’ CMEs.
- 11B. The AMB did not check whether licensed physicians complied with A.R.S. § 32-1434 or A.A.C. R4-16-102 (A) or (D).
- 11C. Because the AMB is neither verifying nor documenting CME credits, the agency did not have sufficient evidence to enforce A.R.S. § 32-1434(C).

Regarding the mailing of forms requiring doctors to document CME credits, we found:

- 11D. The AMB did not mail renewal forms to physicians for them to attest to their CME as required by A.A.C. R4-16-102 (D).

DISCUSSION

DOCUMENTATION OF CME

A.R.S. § 32-1434 (A) requires the following of physicians with respect to continuing medical education (CME):

“A person who holds an active license to practice medicine in this state **shall satisfy a continuing medical education requirement** which is designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine in such amount and during such period as the board establishes by rule and regulation.” [Emphasis added.]

A.R.S. § 32-1434(B), goes on to say,

“Compliance with subsection A (of A.R.S. § 32-1434) **shall be documented** at such times and in such manner as the board shall establish.” [Emphasis added.]

The rule, A.A.C. R4-16-102 (A), further defines the CME amount and period. A.A.C. R4-16-102 (A) states,

“A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration.”

Then A.A.C. R4-16-102 (D) specifies more of the AMB's and the physicians' obligations to document CMEs. Specifically, it states,

“The Board **shall mail** to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician **shall sign and return** the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) **shall not relieve the physician** of the requirements of subsection (A). . . .” [Emphasis added]

Continuing Medical Education (CME)

The American Medical Association reports that 62 of the nation's medical boards require doctors to have continuing medical education in order to renew medical licenses. Many states also mandate specific CME coursework requirements.*

Arizona MDs must take 40 CME credits every two years. State laws outline acceptable programs qualifying for CME credits.

State laws obligate the AMB to establish measures for documenting doctors' CME credits. The Board is also required to mail a renewal form for doctors to sign and return, attesting to their compliance. State law authorizes the Board to audit a certain percentage of those physicians' attestations.

In September 2011, the AMB implemented online renewal processes. Doctors were relicensed immediately upon completion of the online form and payment of renewal fees. The AMB stopped mailing the attestation forms. The staff was directed to discontinue the CME compliance audits.

*Source: American Medical Association

The only means by which a physician could renew a license was through the AMB's online system. As a result, the AMB discontinued the practice of mailing the aforementioned renewal form, thereby removing the requirement that physicians "sign and return" the form as required in A.A.C. R4-16-102 (D). In a meeting on March 4, 2013, the Executive Director confirmed the agency, prior to that meeting, was not mailing renewal forms requesting CME attestation. As a result, she confirmed the agency did not document CMEs as required by A.R.S. § 32-1434(B). At that meeting, however, she told us the Board reinstated the practice with revised renewal forms.

We substantiate the AMB did not adhere to the legal requirements for documenting CMEs from at least October 2011 to March 2013.

VERIFICATION OF CME

A.A.C. R4-16-102 (D) closes by stating,

"... The Board **may randomly audit** a physician to verify compliance with the continuing medical education requirements under subsection (A)."

When we interviewed the Executive Director and Deputy Director in October 2012, both stated they directed staff to no longer audit physicians' CMEs, because the Board considered the process too burdensome for busy doctors and limited staff. The Deputy Director added they "haven't seen evidence of CMEs not being done." The Executive Director and Deputy Director maintained that because this rule states the Board "*may*" randomly audit, versus "*shall*" audit, the AMB was not obligated to require physicians submit CME credit information. In the July 2012 Ombudsman report #1200132, we concurred with this assertion.⁵⁸ The complainant in this investigation, LC-X, presented a new allegation: the AMB is not *documenting* CMEs.

We examined the way six other medical boards handled CMEs. In our November 20, 2012 meeting with the Arizona Osteopathic Board (AZDO), we learned osteopathic physicians (DOs) are required, under A.R.S. § 32-1825, to have 20 CME hours every two years. While there is no specific law requiring the Board to audit DOs, to ensure their physicians are compliant with specific CME documentation requirements outlined in A.A.C. R4-22-207, the AZDO licensing staff audits approximately six percent of physicians for CME compliance per year.

The Nevada Medical Board's licensing chief told us that prior to 2007, her board collected and recorded documentation of CMEs manually. The Board did not renew licenses for physicians who did not provide CME documentation. From that point forward, the Board began renewing licenses online. She explained,

"Going from a manual process to an electronic process brought some new circumstances. So it was decided that when processing the online renewals, a random audit would be conducted during the renewal period. Those licensees that were

⁵⁸ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

included in the random audit have a flag on their online record and must submit proof of their CME requirement otherwise; the license will NOT be renewed. We still conduct our audit this way. We do not keep the CME; however do make certain the CME is appropriate and the required amount has been received. Once the audit of that licensee is completed, it is noted on an electronic record that the licensee passed the audit.

Licensees are to send copies of the actual certificates or official transcript from a credible CME source that indicates how many hours of CME they have completed and what courses were taken. NV has some specific CME requirements (ethics for example).

The licensees also attest on either the paper or online renewal that they have completed the CME requirement. So if it is found that someone, who was not included in the audit must for some reason show proof of CME (being investigated, etc.) and they cannot provide proof, then the Board can prosecute the licensee for misrepresentation on an application for renewal.”

The AMB is not required to audit physicians, however, by not systematically requiring physicians to report CME credits, the AMB is ill prepared to effectively document physicians' CME credits as required by A.R.S. §32-1434. A.R.S. §32-1434(A) says,

“A person who holds an active license to practice medicine in this state **shall** satisfy a continuing medical education requirement which is designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine in such amount and during such period as the board establishes by rule and regulation.” [Emphasis added.]

A.R.S. §32-1434(B) goes on to state; “Compliance with subsection A shall be documented at such times and in such manner as the board shall establish.”

By not gathering CME documentation, the agency was not complying with A.R.S. §32-1434(B). They were also unable to enforce A.R.S. § 32-1434(C), which states, “Failure of a person holding an active license to practice medicine to comply with this section without adequate cause being shown is grounds for probation, suspension or revocation of such person’s license.” A.R.S. § 32-1434, makes clear lawmaker expectations that physicians fulfill CME requirements. Furthermore, as previously mentioned, A.A.C. R4-16-102 (D) obligates the AMB to request documentation of CMEs from physicians renewing their medical licenses.

For nearly 18 months, physicians with active licenses did not report CMEs as required by law. Beginning October 1, 2011, the Deputy Director asked staff to discontinue requesting CME attestations and auditing CME reports and go “paperless.” The Deputy Director and Executive Director said they saw no need to monitor CMEs of physicians because they did not see evidence of noncompliance with CMEs. As a result, the Board stopped documenting CME credits altogether. Without documentation, the AMB could not monitor whether physicians adhered to CME standards required by state law. Therefore, we substantiate the Board could not adequately track CME compliance, as required in A.R.S. § 32-1434(C).

On March 4, 2013, the Executive Director told us the Board henceforth reinstated the program of conducting random audits of five percent of licensees. Thus, between October 2011 and March 2013, the Board was not documenting or monitoring physicians for compliance with the CME requirements listed in A.R.S. § 32-1434. The AMB was not documenting CME, so they had no evidence to enforce A.R.S. § 32-1434(C) regarding “probation, suspension or revocation of such person’s license” for lack of continuing education because they were not documenting CME credits.

The Executive Director said they could consider including CME audits in the investigation process, so physicians who answer “yes” to the renewal questionnaire (indicating they have had issues needing further evidence to qualify them for renewals) would be given further scrutiny.

MAILING OF CME FORMS

A.A.C. R4-16-102 (D) specifies,

“The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician **shall sign and return the form** certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) **shall not relieve the physician** of the requirements of subsection (A). The Board **may randomly audit** a physician to verify compliance with the continuing medical education requirements under subsection (A).”

Before September 30, 2011, the AMB’s renewal form included an “attestation page” where physicians listed their CMEs. Later, the licensing department removed that section of the renewal form. In so doing, the AMB fell out of compliance with A.A.C. R4-16-102 (D) because they stopped mailing the document to physicians. Simultaneously, the AMB discontinued the random audits of the physician CME attestations.

Because the AMB did not mail renewal forms in accordance with A.A.C. R4-16-102(D) we substantiate this allegation. We acknowledge the Board’s revised practice of mailing renewal forms to comply with the law as of March 2013.

ISSUE 12: The AMB did not follow state law with respect to license renewal timeframes outlined in A.A.C. R4-16-207(B)(1)(a).

FINDING 12: SUBSTANTIATED

With respect to the activation of license renewals before administrative completeness, we found:

- 12A. The Board failed to require physicians submit supporting documentation necessary to explain deficiencies (“yes” answers to questions on renewal applications).

12B. The Board staff then failed to consistently review problematic applications before approving renewal applications as administratively complete.

DISCUSSION

According to A.A.C. R4-16-207(B):

“For license renewal, the **administrative completeness** review time-frame described in A.R.S. § 41-1072(1) is 45 days and begins on the date the Board receives the renewal application.” [Emphasis added.]

A.R.S. § 41-1072(1) defines “administrative completeness” as

“. . . the number of days from agency receipt of an application for a license until an agency determines that the **application contains all components required** by statute or rule . . . does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.” [Emphasis added.]

In other words, the Board has 45 days to review a physician’s renewal application to determine whether the physician has answered the required questions and provided responses. If an application is not administratively complete, A.A.C. R4-16-207(B)(1) requires the Board to send a deficiency notice to the physician. Applicants have 60 days to “submit to the Board the requested documentation or information specified in the notice.”

Doctors who renewed their licenses online were automatically and immediately relicensed. AMB staff marked all renewal files “administratively complete” even before staff completed administrative reviews or obtained all follow-up documentation required by law.

LC-X alleged the AMB, in order to speed up licensure processes, did not send deficiency notices in accordance with state laws.

On its website, the AMB tells physicians the online renewal process takes 10-15 minutes.⁵⁹ As soon as physicians complete the online renewal form and make payment, the AMB automatically activates the physician’s renewal status. Yet, physicians are required to answer questions regarding disciplinary actions or other problematic issues that may have arisen since the last time the physician renewed.⁶⁰ The agency then must address the issues.

⁵⁹ "Online License Renewal." *Www.azmd.gov*. Arizona Medical Board. Web.

⁶⁰ "License Renewal Form." *Www.azmd.gov*. Arizona Medical Board. Web.

Staff acknowledged it was difficult to tell how honestly physicians completed their renewal forms. Staff also knew doctors did not always turn in supporting documentation when they revealed problematic or disciplinary issues. Agency executives did not always direct staff to follow up on such cases.

In October 2012, one of the newer AMB licensing staff members told us that when a physician answered “yes” to any of these questions, the physician’s license was “flagged” for staff to follow up. She reported it was difficult to determine how honestly physicians reported information. She said she knew physicians were supposed to turn in documentation to explain their “yes” answers, but they were not doing so. She said she was unaware of time limits, but upper management directed staff to

mail deficiencies only to physicians whose visas (for immigration status) expired. She said “yes” answers, were not necessarily sent deficiency notices, but sometimes they sent e-mail messages to physicians requesting further information or explanation. According to this licensing staff member, if the doctor paid the fee and there were no glaring problems, except simple issues such as pages or doctor’s signature missing, staff would not send deficiency notices. They may have called or e-mailed the doctor instead. She said physicians who answered “yes” to any of the flagging questions showed up immediately in the AMB’s system and staff processed them as quickly as possible. She added that they “usually” sent notices as soon as the system flagged the physician.

According to LC-X, the AMB licensing staff marked all renewals as “administratively complete” automatically and later followed up on the “flagged” cases. In some cases, she alleged, staff far exceeded the 45 days required in A.A.C. R4-16-207(B). She said the licensing staff mailed deficiency notices to physicians long after they issued license renewals and in many cases, not in a timely manner.

When we interviewed the Deputy Director in October 2012, she confirmed physicians who used the online system received automatic renewals. She said staff investigated cases with “yes” answers on the renewal applications. She said it would be “absurd” to review all renewal applications. She added that even those physicians with flagged answers “have the right to continue practicing.”

On March 4, 2013, the Executive Director provided a memo stating,

“The Board is requiring that all supporting documentation to ‘yes’ answers is received on paper applications before the renewal application is considered administratively complete. IT [information technology department of the AMB] is working to come into compliance for the o n-line (sic) renewal application.”

Because the AMB automatically activated license renewals before determining whether they were administratively complete, we substantiate the allegation the AMB did not comply with A.A.C. R4-16-207(B)(1).

ISSUE 13: The AMB did not comply with overall timeframes outlined in A.A.C. R4-16-206(A) and (B) in sending deficiency notices to physicians who did not comply with registration and renewal requirements set forth in A.A.C. R4-16-301. As a result, some physicians in Arizona dispensed controlled substances beyond their legal authority to do so.

FINDING 13: SUBSTANTIATED

With respect to notices to and dispensing privileges for physicians with deficient registration and renewal requirements, we found:

- 13A. The AMB kept physicians with deficient, administratively incomplete renewal applications in “active” status and in so doing, permitted them to dispense medication when those dispensing privileges should have been suspended.
- 13B. The AMB sent correspondence and internally referred to “11 A.A.R. 2944” inappropriately. 11 A.A.R. 2944 is an outdated *proposed rule* from 2005, cited in the Arizona Register. It is inappropriate to cite the Arizona Register citation in a current letter to physicians when the proper rule, A.A.C. R4-16-301(B), is available for citation.
- 13C. The AMB failed to timely notify physicians of their application deficiencies.

DISCUSSION

Arizona Administrative Code R4-16-301(A) states:

“A physician who wishes to dispense a controlled substance as defined in A.R.S. § 32-1901(12), a prescription-only drug as defined in A.R.S. § 32-1901(65), or a prescription-only device as defined in A.R.S. § 32-1901(64) shall be **currently licensed** to practice medicine in Arizona and shall provide to the Board . . . (list of requirements)” [Emphasis added.]

The rule, A.A.C. R4-16-301(B) says,

“A physician shall renew a registration to dispense a controlled substance, a prescription-only drug, or a prescription-only device by complying with the requirements in subsection (A) on or before June 30 of each year. **If a physician has made timely and complete application for the renewal of a registration, the physician may continue to dispense until the Board approves or denies the renewal application.**”

In other words, in addition to renewing their medical licenses every two years, physicians must also renew their registrations to dispense medicine annually. The dispensing renewals are due by June 30 every year, in accordance with A.A.C. R4-16-301(B). When a physician’s dispensing renewal is incomplete, the AMB must mail a deficiency notice within 45 calendar days of receipt of the renewal application, notifying the doctor of the problem, per A.A.C. R4-16-206(A). Furthermore, the law gives doctors 30 days to respond to deficiency notices to

maintain dispensing privileges. Without the deficiency notices, unqualified doctors would not know their applications are incomplete and may continue dispensing drugs, as noted in A.A.C. R4-16-301(B) above.

LC-X alleged an intern, LC-F, managed licensing deficiency notifications, timelines and documentation for physicians with dispensing licenses until the AMB dismissed LC-F, in July 2012. LC-X alleged that after LC-F left, a backlog of cases resulted in licensing staff following up with problematic renewals beyond the 45-day timeframe outlined in law. From that point forward, the Board did not comply with timelines and routinely processed "active" licenses that were not administratively complete, granting automatic renewals for dispensing privileges. As a result, many doctors with incomplete renewal applications did not receive deficiency letters from the AMB in accordance with timelines outlined in A.A.C. R4-16-206(A) and (B). Because A.A.C. R4-16-301(B) allows physicians to continue dispensing until notified otherwise, the burden of investigating physicians' reported deficiencies and providing notification to physicians thereof rests on the AMB. LC-X alleged the AMB, because of this lapse, allowed countless physicians to dispense drugs who may not have been qualified under law.

The Executive Director, on May 28, 2013, rationalized the timing issues:

"Occasionally, due to either workforce shortages or unusual application volumes, there are unintentional and unavoidable delays. To the extent these have occurred, however, to my knowledge they have been resolved, and we are aware of no physician who is currently dispensing beyond his authority to do so."

The Executive Director further explained the Board is:

". . . prohibited by due process considerations from withholding a license from an active physician based on an application disclosure without emergency need for a summary action."

She added:

"If a renewal application must be acted upon before all open questions are resolved, the application is approved, but at the same time an investigation is opened into the physician to resolve the remaining application deficiencies. We endeavor to resolve all such deficiencies as promptly thereafter as possible under the circumstances." LC-X showed an example of a physician, Dr. Z, who completed a "DISPENSING PHYSICIAN ANNUAL RENEWAL FORM" in May 2012. On July 5, 2012, the AMB mailed a letter to Dr. Z noting a deficiency: the address on her Drug Enforcement Administration (DEA) license did not match her current dispensing location. The letter also stated,

"In accordance to 11 A.A.R. 2944, you have 30 days from the date listed above to provide proper documentation. At that time if no documentation is provided and should you desire to pursue dispensing licensure in Arizona; a new licensure application must be filed with the Arizona Medical Board. . ."

We noted 11 A.A.R. 2944 is an outdated proposed rule from 2005, cited in the Arizona Register. It is inappropriate to cite the Arizona Register citation in a current letter to physicians when the proper rule, A.A.C. R4-16-301(B), is available for citation. A.A.C. R4-16-301(B), states physicians must renew dispensing licenses before June 30 of each year. A.A.C. R4-16-207 outlines the timeframes guiding renewal completeness.

A.A.C. R4-16-301(C) lists the consequence to a physician who does not fulfill the requirements in time:

“If the completed annual renewal form, all required documentation, and the fee are not received in the Board’s office on or before June 30, the physician shall not dispense any controlled substances, prescription-only drugs, or prescription-only devices until re-registered. The physician shall re-register by filing for initial registration under subsection (A) and shall not dispense a controlled substance, a prescription-only drug, or a prescription-only device until receipt of the re-registration.”

According to their own letter, the AMB gave the physician a deadline of August 5, 2012 to respond or lose dispensing privileges. Instead of suspending her dispensing privileges, on September 18, 2012, the AMB sent an e-mail reminder to Dr. Z. The AMB staff sent another e-mail reminder on October 23, 2012. The physician replied on October 24 stating she was out of town and did not have access to her DEA card. On October 26, the AMB gave the physician another opportunity to respond to a “final request for correct DEA card.”

LC-X sent an e-mail message explaining the issue to the Licensing Manager,

“. . . final withdrawal date given to the physician as 10/30th. . . .I think we should still use the date of 10/30 as we have had this app since 5/11/2012; late in getting deficiency notice out in July, not withdrawn 30 days after the late deficiency sent and now here it is end of October and we are still chasing up.”

The AMB finally sent a notice to Dr. Z dated October 30, 2012 telling the physician the AMB withdrew her application for a dispensing registration because,

“Your renewal application was not administratively complete and we cannot issue your registration. Therefore you are not allowed to dispense from any location.”

Aside from the agency sending this letter 112 days after their initial deficiency letter said she had 30 days to respond, this last letter was the most accurate, because Dr. Z’s file was not administratively correct in the beginning. Dr. Z filed her renewal in May 11, 2012 before the deadline of June 30, in accordance with A.A.C. R4-16-301(B). To comply with timeframes specified in A.A.C. R4-16-206(A), the AMB should have mailed a deficiency notice approximately

June 25, 2012, to be within 45 calendar days of receipt of her renewal application to dispense controlled substances to notify her of the problem. The Board mailed the first deficiency notice to Dr. Z on July 5, 2012. They told her she had 30 days to respond, which would have been within timeframes outlined in A.A.C. R4-16-207.

When Dr. Z did not present the necessary documents within the time frame required by A.A.C. R4-16-207(B)(1)(b), the Board should have withdrawn her dispensing privileges on August 6, 2012. Instead, she was permitted to continue dispensing for at least two more months.

This example, along with others LC-X alleged, showed the AMB did not mail deficiency notices in a timely manner for dispensing licenses. Furthermore, the agency did not suspend dispensing privileges when they did not receive responses from doctors to deficiency notices. We substantiate the AMB did not comply with overall time frames outlined in A.A.C. R4-16-206(A) and (B) in sending deficiency notices to physicians who did not comply with registration and renewal requirements set forth in A.A.C. R4-16-301. On March 4, 2013, the Executive Director reported the Board would no longer place a renewal on "active" status before the agency completed an administrative review to determine if it was deficient. Nevertheless, between July 2012 and March 2013, the Board enabled some physicians to dispense controlled substances beyond their legal authority.

ISSUE 14: The AMB did not review the full scope of a physician's postgraduate training, as required by A.R.S. § 32-1403.01(A)(6) and A.R.S. § 32-1422(A)(2). Consequently, public profiles of physicians on the AMB website were imprecise and the public was ill informed of potential issues involving a physician's postgraduate training, a violation of A.R.S. § 32-1403.01(A)(6).

FINDING 14: SUBSTANTIATED

With respect to reviewing scope of postgraduate training and updating the information on physician profiles, we found:

Dispensing Drugs beyond Legal Authority: The Case of Dr. Z

The following timeline documents the case of Dr. Z, who dispensed controlled substances when the AMB failed to ensure she complied with licensing laws.

May 9, 2012 – she applied for dispensing renewal with incomplete information. AMB considered her application complete, but did not review.

June 25, 2012 – on this date, AMB should have sent deficiency notice to Dr. Z. AMB failed to review her application within the timeframe prescribed in law and thus, did not discover the deficiencies or send a deficiency in a timely manner.

July 5, 2012 – AMB sent Dr. Z deficiency notice.

August 6, 2012 – AMB should have withdrawn Dr. Z's dispensing privileges

September 18, 2012 – AMB sent reminder to Dr. Z

October 23, 2012 – AMB reminded doctor again in e-mail and voicemail message

October 24, 2012 – doctor replied she was out of town

October 26, 2012 – AMB sends "final" reminder to Dr. Z

October 27, 2012 – doctor replied she is still out of town

October 30, 2012 – AMB withdrew Dr. Z's dispensing privileges.

Dr. Z was permitted by the AMB to dispense controlled substances 112 days after the agency sent an initial deficiency letter stating she had 30 days to comply.

Ultimately, her privileges continued 86 days beyond the date the AMB should have suspended them.

- 14A. The law requires physician applicants to have internship, residency or clinical fellowships of at least 12 months duration, yet the AMB permitted the applicants to instead combine multiple, shorter duration internship, residency or clinical fellowships to meet the 12 month requirement.
- 14B. The AMB did not show due diligence when they failed to examine the broader scope of a physician's training, such as breaks in employment and training, transfers, or disciplinary issues after graduation from medical school.
- 14C. The AMB web site profiles did not list whether the physician received postgraduate training from more than one institution, the name of each institution and the date of completion of the postgraduate training. The AMB did not post the information as completely as required by A.R.S. §32-1403.01(A)(6).

DISCUSSION

According to A.R.S. § 32-1422(A)(2), for physicians to receive a license to practice medicine they must,

“Successfully complete an approved twelve-month hospital internship, residency or clinical fellowship program.”

With this requirement in mind, the AMB asked administrators of postgraduate training programs to answer specific questions about applicant breaks, investigations, probation and disciplinary issues via the Postgraduate Training (PGT) Verification form. The AMB discontinued this line of questions in the fall of 2011. The AMB removed the questions from the form and simply relied on queries to the American Medical Association to verify post-graduate training of each applicant.

We questioned the Board's process in two respects:

1. What counts as an acceptable twelve-month internship?
2. How does the AMB handle applications with gaps or irregularities in training?

WHAT COUNTS AS AN ACCEPTABLE TWELVE-MONTH INTERNSHIP?

Instead of examining whether the applicant ever completed one twelve-month hospital internship, residency or clinical fellowship as required in A.R.S. § 32-1422(A)(2), the AMB allowed any twelve-month combination of these activities and accepted them in lieu of the legal requirement.

We asked our attorney at Legislative Council to examine the statute and compare it to the AMB practice of accepting partial segments of advanced training to count toward the requirement. He examined the law and opined,

“The plain language of the statute, which says that a physician must ‘complete an approved twelve month’ internship, suggests that the physician must complete a single twelve month internship. Additionally, the word ‘complete’ implies that the internship

would have set start and end dates and could not be put together in a piecemeal fashion. The statute does not provide for three four-month internships. Nor does it require twelve months of internship, which would indicate that it could be broken up. Courts do give administrative agencies some leeway in interpreting statutes, but where the statute is clear, as here, I do not think they would allow them to ignore the language.”

WHAT ABOUT GAPS OR IRREGULARITIES IN TRAINING?

The next concern was over the full scope of each physician’s postgraduate training and how the AMB dealt with gaps and irregularities in training. AMB staff said the licensing workers examined applicants’ postgraduate training information listed on their American Medical Association (AMA) profiles. However, the workers looked only for the irregularities AMA noted on their website with an asterisk. AMB licensing staff disregarded gaps or unusual notations on the profile and instead of noting them as such, continued onto the next PGT experience listed in each physician’s profile, until they gathered enough evidence to reflect a year’s worth of postgraduate training. A licensing staff member told us they would then note such a combination of experiences as a “qualifying year” on the physician’s profile. The AMB would take the information gleaned and later post it to their web site listing of licensed physicians. The complainant believed that by posting portions of a physician’s incomplete internships and the “qualifying year,” the agency was not adhering to A.R.S. §32-1403.01(A)(6), which states,

“The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile shall contain the following information. . . The **name and location of the institution** from which the licensee received graduate medical education and the **date that education was completed.**”
[Emphasis added.]

We asked our attorney at Legislative Council to consider some questions regarding the information the AMB posts about physicians. The aforementioned law states the AMB must post the name, location and completion date of the licensee’s

Postgraduate Training for Medical Doctors

According to the Federation of State Medical Boards,

“Postgraduate training from the American Council on Graduate Medical Education (ACGME) approved program is required by all state medical boards for full licensure. The number of years of postgraduate training varies from one to three years from state to state. However, every state board requires postgraduate training for full licensure.”*

Arizona law (A.R.S. § 32-1422(A)(2)) requires medical doctors to “successfully complete” one year of postgraduate training. That may consist of the following options:

- Hospital internship,
- Residency or
- Clinical fellowship program.

*Source: <http://www.fsmb.org/foundation-training-guide.html>

graduate medical education. We asked if the agency should post physicians' "qualifying year" by the agency's interpretation or the full scope of postgraduate training, location and dates.

Our legal counsel said,

"The language of the statute is in the singular, but in the statutes, 'words in the singular number include the plural.' A.R.S. section 1-214. Therefore, if the physician received graduate medical education from more than one institution, each institution and date of completion of the graduate education at each institution should be included in the profile."

Thus, the AMB web site profiles should be listing whether the physician received training from more than one institution, the name of each institution and the date of completion of the graduate education. LC-X alleged the AMB was not posting the information at this level of completion.

AMB executives told us their Assistant Attorney General advised them it was beyond the Board's authority to base approval decisions on, or post the entire history of a physician's PGT on the public profile, particularly if the physician had problems during training. They cited a court decision in *Doe v. the Arizona Medical Board*, as having set this precedent.⁶¹

Our attorney at Legislative Council disagreed with this conclusion and said,

"This case was actually dismissed because the issue was declared moot after the parties settled. The court did not reach a decision on whether the AMB may condition a license on criteria not listed in statute. . . . the case does not discuss what the AMB may or may not publicize. Finally, the case was not published meaning it has no precedential value. In other words, it cannot be cited to a court a precedent, it only binds the parties to the case."

We discussed the matter with the A.A.G. on September 6, 2013 and she explained her advice to the executives, in which she cited the *Doe v. the Arizona Medical Board* case, was regarding a tangentially related matter. She believed they heard her advice, pertaining to doctors applying for *postgraduate training permits* in Arizona, and mistakenly believed the court's ruling also applied it to all postgraduate training matters, including issues outlined herein. After our conversation, she said she agreed with our finding pertaining to the allegation.

We then compared the AMB posting practices and methodologies of dealing with irregularities with AMA and medical boards.

According to the AMA, physicians self-report current practice information for their respective profiles. The association conducts an annual online survey of postgraduate training sites in the U.S. The AMA gives the program directors up to four months to complete the surveys. The

⁶¹ Doe v. Arizona Medical Board. State of Arizona Court of Appeals Div I. 26 May 2011.

AMB staff overlooked red flags in applicants' postgraduate training and cobbled together shortened experiences to pass as a "qualifying year."

AMA denotes partial segments by a physician with the word "incomplete" and does not investigate or expound on reasons for the unfinished postgraduate

training.⁶² For such cases, the Arizona Medical Board does not alert the public that a physician may have completed certain segments of postgraduate training in the public profiles.

On November 20, 2012, we met with staff of the Arizona Board of Osteopathic Examiners in Medicine and Surgery ("AZDO"), to compare processes. A.R.S. § 32-1822(A)(4) requires osteopathic physicians in Arizona to complete "an approved internship, the first year of an approved multiple year residency or board approved equivalency." Furthermore, A.A.C. R4-22-103 specifies approved postgraduate training includes "One or more years of a fellowship training program. . . ," current certification in an approved medical specialty or, for those who began practicing before 1946, a minimum of 10 years' experience. Unlike the AMB, the AZDO statute does not mention "successful completion" of a program, but it does specify a minimum timeframe of one year. We asked how AZDO dealt with breaks in postgraduate training of applicants. A licensing administrator replied, "If there is a gap in training, we ask for complete history." We asked if AZDO relied on any outside databanks to query instead. She responded that they did not. She added that the National Practitioners Data Bank is "not sufficient" for verification purposes. The AZDO confirmed they rely on primary sources for verification. In fact, she gave an example of an osteopathic physician who had a six-month gap during a two-year period. The doctor explained that during the break, he was in an unaccredited training program and he believed the Board would not accept the training. AZDO staff asked him for additional documentation and made a determination based on an extensive review of the evidence.

The Nevada Medical Board's Licensing Chief told us her state's laws require a minimum of 36 months "progressive" postgraduate training. She explained her Board reviews applicants' consistency in training. For example, if a physician has one year PGT in pathology and then moves into pediatrics, they would require the physician to demonstrate 36 months in pediatrics. She said if they see any breaks in postgraduate training, her agency would not consider processing a physician's application. When her staff notices any PGT "red flags," they send the application back to the physician. Nevada's Board uses primary source information, requesting each training site's director to complete, sign and notarize the form before they will accept it.

Utah's Division of Occupational and Professional Licensing requires physicians submit proof of 24 months of postgraduate training. The Bureau Manager told us her staff reviews the entire

⁶² "How the Data Elements on the AMA Physician Masterfile Are Collected, Maintained, and Verified." *Amassn.org*. American Medical Association, 21 Dec. 2004. Web.

scope of postgraduate training. She said physicians with specialties must have the full 24 months of progressive and successfully completed postgraduate training within the specialty.

We substantiate this allegation because the AMB stopped verifying each item listed for postgraduate training on applications up to the point of licensure. The AMB did not examine the broader scope of a physician's training, such as breaks in employment or training, transfers or disciplinary issues after graduation from medical school, which may constitute a less-than-successful completion of postgraduate training. The Board's response to the preliminary report indicated they instructed staff comply with applicable laws as written.

ISSUE 15: The AMB stopped verifying doctors' board certification as required by A.A.C. R4-16-201(B)(18). As a result, physicians' public profiles reflect incorrect information, a violation of A.R.S. § 32-1403.01.

FINDING 15: PARTIALLY SUBSTANTIATED

With respect to verification of ABMS Certification ("Board Certification"), we found:

- 15A. Physicians are required pursuant to Arizona Administrative Code R4-16-201(B)(18) to submit verification "on a form provided by the Board" if they are certified by the American Board of Medical Specialties. Beginning July 2012, the AMB discontinued providing the form to doctors; therefore, we substantiate the allegation that the AMB violated the rule. Moreover, the agency failed to verify, validate or update this information in physicians' files consistently between July 2012 and February 2013.
- 15B. The AMB violated A.R.S. § 32-1403.01(C), by not verifying, validating or updating correct information pertaining to physicians' ABMS certification on their public profiles.

DISCUSSION

Arizona Administrative Code R4-16-201(B)(18) requires doctors to submit verification of Board Certification "on a form provided

Board Certification

Doctors are "Board Certified" when approved by the American Board of Medical Specialties (ABMS). Peers in specialized areas of medicine evaluate candidates' aptitudes for certification.

According to the ABMS,

"Medical specialty certification in the United States is a voluntary process. While medical licensure sets the minimum competency requirements to diagnose and treat patients, it is not specialty specific. Board certification—and the Gold Star—demonstrate a physician's exceptional expertise in a particular specialty and/or subspecialty of medical practice."*

Arizona law does not mandate Board Certification. State law requires AMB to maintain accurate public profiles of doctors. Physicians who are ABMS certified, are obligated to submit verification to the Board. The AMB stopped sending the verification form and discontinued updating doctors' ABMS profiles.

*Source: American Board of Medical Specialties, www.abms.org

by the Board.” On July 2, 2012, the AMB stopped providing the form to doctors and quit verifying whether doctors were Board Certified. Furthermore, top-level executives directed the licensing staff to accept doctors’ verbal attestation of Board certification over the phone in lieu of the verification form.

Specifically, A.A.C. R4-16-201(B)(18) states an applicant for a medical license shall submit on the AMB-provided form, verification that,

“ . . . the applicant is currently certified by any of the American Board of Medical Specialties. . . ”

The American Board of Medical Specialties (ABMS) is a nonprofit organization that certifies physicians in addition to state boards’ licensing requirements. The ABMS claims its certification is the “gold standard,” due to its rigorous requirements.⁶³ Excerpts from the ABMS website explain Board Certification:

“Medical specialty certification in the United States is a voluntary process. While medical licensure sets the minimum competency requirements to diagnose and treat patients, it is not specialty specific. Board certification—and the Gold Star—demonstrate a physician’s exceptional expertise in a particular specialty and/or subspecialty of medical practice.”⁶⁴

“To practice medicine in the United States, doctors must be licensed by the states in which they work. However, being licensed does not indicate whether a doctor is qualified to practice in a specific medical specialty, such as family medicine, surgery or dermatology. One of the best ways to know if your doctor has the qualifications to provide care in a specialty is to find out if he or she is Board Certified and participating in activities to stay up-to-date with the latest advances in medicine and patient care.”⁶⁵

On July 2, 2012, the Licensing Manager e-mailed staff,

“Effective immediately, in an attempt to streamline our process, **we will no longer be verifying ABMS certification**. This means (1) If a licensee calls and provides verbal notification of ABMS certification, we will make the change in our database based on the phone call. (2) Licensees will not need to submit proof of ABMS certification with their MD Renewal Application. (3) Licensees will have access to enter their own ABMS certification information during the online renewal process. . . .”

⁶³ "Setting the Standard for Quality Medical Care: Certification Matters." *ABMS.org*. The American Board of Medical Specialties. Web.

⁶⁴ "What Board Certification Means." *ABMS.org*. The American Board of Medical Specialties. Web.

⁶⁵ "About Board Certification." *www.certificationmatters.org*. ABMS Maintenance of Certification. Web.

The Board discontinued the practice of requiring physicians to submit documentation required by law beginning with that directive. Later, on March 4, 2013, the AMB's Executive Director provided us a memo that stated,

The AMB stopped verifying Board Certification of doctors and misrepresented their online profiles available to the general public.

"This (verification of ABMS Certification) reflects a best practice because at the time of renewal, it is not required by statute or rule that the Board verify current status of Board certification(s), since they are not a condition of licensure. The Board verifies board certifications as part of the initial licensing process. Because there was a three-week period in which initial board certification was not verified due to an error, the Board is auditing the applications issued during that period in order to ensure that all board certification is verified. Although it is a best practice rather than a requirement, the Board is also now verifying board certification at the time of renewal."

The Executive Director argued that the burden of proof of ABMS certification rested with doctors and the AMB is not legally obligated to seek proof of Board Certification. Our attorney at Legislative Council agreed with that assertion.

Nevertheless, while Board Certification is voluntary, state law, A.A.C. R4-16-201(B)(18) requires physicians who are Board Certified to submit verification thereof to the AMB on a form provided by the Board. The Board discontinued sending the verification form to doctors, required by A.A.C. R4-16-201(B)(18) and stopped verifying the accuracy of doctors' self-reporting.

LC-X alleged that by not verifying board certification of both initial applications and renewals, the agency misrepresented the public profiles of physicians, as required by A.R.S. § 32-1403.01. We substantiated this allegation, because the AMB demonstrated to us that the Licensing Division did not consistently verify Board Certification of physicians between July 2012 and March 2013. Without proof of Board Certification, the AMB posted inaccurate or incomplete information in physicians' public profiles.

ISSUE 16: The AMB employed policies to circumvent licensing laws, a violation of A.R.S. §§ 41-1001, 41-1001.01 and 41-1030(B).

FINDING 16: SUBSTANTIATED

16A. The law precludes agencies from adopting policies that trump state laws. As demonstrated in numerous instances throughout this report, the AMB leadership directed staff to follow law-circumventing policies and procedures and therefore, we substantiate the allegation, the AMB adopted policies to supersede licensing laws.

16B. Given finding 16A, along with other findings in ISSUES 1-15, the AMB could not know which applicants the agency approved in error.

DISCUSSION

State laws prevent agencies from adopting policies to undermine or replace statutes or rules. Policies describe an agency approach to laws; they are not laws in and of themselves.

Arizona Revised Statutes § 41-1030 specifically orders that agencies,

“ . . . shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact.”

A.R.S. § 41-1001(18) defines “rule” as,

“ . . . an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.”

A.R.S. § 41-1001(21) then says a “substantive policy statement,”

“ . . . means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. **A substantive policy statement is advisory only.**” [Emphasis added.]

A.R.S. § 41-1001.01(A)(7) and (8) say,

“A. To ensure fair and open regulation by state agencies, a person: . . .

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

Rulemaking in Arizona

The Arizona Secretary of State publishes the Arizona Administrative Code (A.A.C.), the official rules of the state.

Rules are laws that guide the way an agency “implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” (A.R.S. §41-1001(18)) Rulemaking is a very involved process, which includes the agency opening a docket to propose the rules. The Governor’s Regulatory Review Council then reviews the proposals and invites public comment. After full review, GRRC makes final approvals on rules and they are published in the A.A.C.

Agencies are allowed to develop internal policies to guide the day-to-day procedures of the office. Those policies must flow from laws (rules or statutes) and may not supersede or circumvent laws.

8. Is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in section 41-1030, subsection C. . . .”

State agencies adopt policies and procedures to guide internal processes. Agencies may publish substantive policies pursuant to A.R.S. § 41-1013(A)(15). According to A.R.S. § 41-1091, a substantive policy statement “. . . does not include internal procedural documents that only affect the internal procedures of the agency.” A state agency policy cannot take the place of laws and must flow from existing law. Laws require vetting and encourage full public participation. Elected state legislators are responsible for creating and revising Arizona Revised Statutes. Rules made for the Arizona Administrative Code follow a very involved process, which includes the agency opening a docket with proposed rules, public comments and full review by the Governor’s Regulatory Review Council (GRRC). The rulemaking process exists so the public,

“. . . can participate in the rulemaking process at multiple levels and can have a direct impact on whether a proposed rule does or does not get approved. In other words . . . have a seat at the table, a direct voice in the democratic process. . . .”⁶⁶

Ultimately, GRRC “decides whether the rules should be approved. . . .”⁶⁷

The AMB considered various laws obsolete, yet the agency did not follow processes required in state law to pursue either legislation or rulemaking to address their concerns. Pursuant to A.A.C. R1-6-111(A)(5), the AMB is required to submit a Five-Year Review Report. In 2010, the AMB noted in their 5-year Review Report they were not following rule A.A.C. R4-16-201 (B)(21), concerning the submittal of passport photos of all applicants. The AMB neither adhered to the rule nor worked to rescind it via rulemaking procedures or legislation. The 5-Year Report explains,

“The Board determined that the Board rule should be amended to follow the Board’s website application. The Board attempted to amend R4-16-201 by filing a Notice of Docket Opening on May 26, 2006. Because the office-based surgery rules took precedence, the rulemaking for R4-16-201 was put on hold. After the office-based surgery rules became effective in 2008, the rules moratorium was issued and the Board was unable to complete the rulemaking.”⁶⁸

⁶⁶ Sciarrotta, Jr., Joseph, William Hylan, and Scott Cooley. "Rulemaking and Your Clients' Interests." *Arizona Attorney* 47.10 (2011): 34-40. Print.

⁶⁷ "The Arizona Rulemaking Process in a Nut Shell." *Az.gov*. Governor's Regulatory Review Council. Web.

⁶⁸ Wynn, Lisa S. Arizona Medical Board Title 4, Chapter 16, Article 2. Licensure, Five-Year-Review Report. Rep. Arizona Medical Board, 2010. Print. Submitted to Arizona Governor's Regulatory Review Council.

The Executive Director did not explain why a docket filed in 2006 was not ready for final rulemaking at GRRRC by 2008 or why the agency assumed the proposed rulemaking would not qualify for an exception to the moratorium.

Staff members under the AMB executives were wary that the agency was not properly obtaining legal authority for their improvement ideas. After the September 2011 procedural changes, concerns grew within the Licensing Division staff that the new processes were not in accordance with state laws. Several former staff members alleged that instead of addressing employees' concerns, executive management dismissed their apprehensions.

At some point in the fall of 2011, LC-X allegedly requested guidance directly from the AMB's Assistant Attorney General regarding the legality of processes and forms employed by the licensing department. The complainant said the Executive Director reprimanded her for disregarding the AMB chain of command. The Assistant Attorney General did not have specific recollections of that conversation, but did confirm that the Deputy Director had a policy regarding chains of command and prevented staff from approaching the A.A.G. directly with questions. Another complainant, Licensing Manager LM-B, who had two decades of management experience in government, purportedly sought input from the Executive Director, as to whether or not the AMB should ignore rules. The A.A.G. confirmed LM-B also came to her with concerns about the new licensing policies. LM-B said managers discussed at length a draft of the policy revisions before the Executive Director signed off on it. LM-B said the Executive Director concurred with the Deputy Director's perspective on changes in the licensing department, reiterating that the Board did not need to comply with Arizona Administrative Rules if it used policies it deemed to be superior to the rules. LM-B did not agree and resigned from the AMB.

The Executive Director told the AMB board she had the authority to implement a policy that circumvented laws.

Throughout this report, we demonstrated occasions where the AMB executives implemented policies or procedures they championed as superior to state laws. In particular, as discussed in ISSUE 10, the Executive Director recommended the Board disregard the

need to draft laws to solve a problem some physicians in Arizona faced. In a February 2, 2012 Board meeting she asked the Board to "review the proposed Agency Policy LIC-018 regarding reinstatement of applicants with expired licenses." In response, as reflected in the minutes, the Board's Assistant Attorney General advised, "... the Board **needs a statute** to address this issue. . . ." [Emphasis added.] The Executive Director persisted by explaining the licensing problem could be resolved by adopting a new internal agency policy. The minutes reflect that the Executive Director,

"... stated that she wanted the Board to be aware of the Agency Policy and requested their support of the Policy. She stated that they could introduce legislation as early as this session or possibly do an amendment, and **in the interim use the Agency's Policy.**" [Emphasis added.]

When a Board member asked if they needed to vote on the proposal, the Executive Director responded it was not necessary, because she has the authority to implement policies. While the Director has authority to approve internal policies, agency heads and their Boards may not implement policies that violate, exceed or circumvent state laws. State laws outline clear and precise procedures for changing rules and statutes. The two primary legal processes the Board could have employed are legislation and rulemaking through GRRRC, as described earlier in this report. The AMB considered various laws obsolete, yet pursued neither legislation nor rulemaking to resolve these concerns.

In October 5, 2011 Board minutes, the Executive Director,

“. . . reported that the Agency will be looking into what **legislative changes may be necessary to keep the rules and statutes current** as they pertain to the Board's licensing processes." [Emphasis added.]

In an audio recording of a December 15, 2011 meeting, LC-X seeks an explanation from the Executive Director:

"I'm trying to educate myself in the process why the race is being run, and when I read about rules, I say, okay, what does this mean? What are we doing? Can we just ignore [rules]? . . . "

When justifying her approach to developing policies to replace rules she believed to be outdated, the Executive Director advised LC-X on December 15, 2011:

"Eventually we're going to have policies, and then someday, a little later, we'll have revised rules, and the rules will reflect what we're doing . . . so we'll get there . . . so that's how the policies work."

The Executive Director's planned approach is in fact the reverse order of how policies and laws should be developed, as required by A.R.S. § 41-1030. A.A.C. Title 1, Chapter 6 outlines rulemaking procedures. As she mentioned in the December 15, 2011 meeting, the Board needed to submit rules to GRRRC for approval. In that meeting, she reversed her previous assertion that the Governor's moratorium on rulemaking prohibited the Board from proposing revisions by stating, "I heard it straight from the Governor's office that the moratorium does not apply to us."

When we interviewed the Executive Director in October 2012, she explained that many state laws are "outdated" with respect to the actual policies and procedures employed by the licensing staff. As she stated on previous occasions, she told us once more the Board is in the process of "drafting new rules" and "proposing new legislation" to address the need to bring the laws "current" so they lined up with the Board's actual practices. Meanwhile, she explained, she authorized staff to follow internal policies to work around laws she deemed obsolete.

A.A.C. R1-6-111(A)(5), requires an agency to, “. . . concisely analyze and provide the following information in the Five-Year review report in the following order for each rule:

1. General and specific statutes authorizing the rule;
2. Objective of the rule;
3. Effectiveness of the rule in achieving the objective;
4. Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency;
5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;** [Emphasis added.]

The Executive Director told us she believed that the authors of A.A.C. R1-6-111(A)(5):

“. . . specifically anticipated that there would be some rules that, whether through technological change or otherwise, could become so unworkable or antiquated that further or strict enforcement of them would be inappropriate and that they should then be identified within the five-year review report for appropriate amendment or striking.”

In other words, she asserted this rule provided the AMB wholesale discretion to circumvent or violate rules. We maintain this is too broad an interpretation of the rule and would have the effect of allowing arbitrary nullification of rules and the rulemaking laws. We agree, there may be exceptions to the enforceability of some rules, for examples in instances when:

- the Legislature sweeps an appropriation/fund and a rule relates to that fund,
- case law changed an agency's authority to enforce a rule
- the Legislature passes a bill which modifies a statute so that it is untenable for the agency to enforce the corresponding rules.

It is implausible that rulemakers designed A.A.C. R1-6-111 to give the AMB authority to stop enforcing licensing rules or adopt internal policies without full public participation. If agencies had the authority the Executive Director asserted the AMB should have, much of Title 41's Regulatory Bill of Rights and GRRC rules in A.A.C. Title 1, Chapter 6 would be moot. Moreover, “a textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored. . . an interpretation that validates outweighs one that invalidates.”⁶⁹

In spite of Executive Director's assertions that A.A.C. R1-6-111(A)(5) gave the Board authority to determine which rules were ineffective, she also told us on numerous occasions the agency was in the “process of rulemaking” to bring their licensing practices in-line with state laws. At the time of this report, the agency did not have an open docket with respect to licensing rules specified in the allegations raised herein. Additionally, we asked the Executive Director several follow-up questions in an e-mail message dated May 30, 2013, including a request that she

⁶⁹ Scalia and Garner, *Reading Law - The Interpretation of Legal Texts*, p. 63 and 66. West Publishing, June 19, 2012.

“provide copies of all AMB requests for statute or rule/administrative code changes pertaining to licensure of physicians submitted to members of the Legislature or GRRC within the past 5 years.” The Executive Director addressed our other questions, but left this one unanswered. We have not found evidence the AMB attempted to change the laws she purported were outdated or unenforceable.

No single agency, executive director or state employee has independent authority to create policies that negate laws. If they consider laws outdated, unworkable or inefficient, they must seek changes through legal means.

The Ombudsman-Citizens' Aide Report of Investigation #1200132, issued July 2012, substantiated the allegation the AMB did not follow state law pertaining to employment verification in medical licensure.⁷⁰ Despite our recommendation to return to the practice of requiring employment verification as specified in A.A.C. R4-16-201(D)(5), the Executive Director and AMB Board declined, relying on internal policies instead. Three times, the Ombudsman Office issued formal cautions to the AMB saying the AMB cannot legally opt out of following state laws. The Ombudsman Office distributed our report July 18, 2012, to the Health and Human Services Committee members of the Arizona Legislature, and communicated this significant refusal.

Complainants in this investigation also met with the Chair of the Arizona Senate Health and Human Services Committee. They told us the senate chair voiced concerns with the findings of case # 1200132 and with the new allegations that prompted this subsequent report. After communicating with the senator, the Executive Director notified us that effective August 28, 2012, the agency reinstated the employment verification step in licensing.

On February 1, 2013, the Executive Director conceded she should have responded differently to the findings of Ombudsman Report #1200132.⁷¹ She said she might have considered accepting the recommendation to change verification procedures, but maintained her position because she thought the Chair of the Arizona Senate Health and Human Services Committee would be comfortable with the Board's response to our report. She was “surprised” at the reaction the Board received from the Legislature. She continued to defend the Board's original position saying, “I still don't believe hospital verifications protect the public.”

No single agency, executive director or state employee has independent authority to create policies that negate laws. If they consider laws outdated, unworkable or inefficient, they must seek changes through legal means. It is imprudent to assume one is above the law or can define what is in the public's best interest without buy-in from the Arizona Legislature,

⁷⁰ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

⁷¹ *ibid.*

Governor or public. Agency boards and executives are required to uphold state laws and ensure the agency is achieving its targets in ways that further agencies' missions.

We substantiate the allegation that the AMB violated A.R.S. §§ 41-1001, 41-1001.01 and 41-1030(B), by adopting internal policies that led to the agency making licensing decisions not authorized in state laws. We found the AMB frequently, and improperly, implemented changes using policies to override state laws. If abiding by provisions in laws placed an extreme burden on the agency, and the Board was unwilling to wait for lawmakers or formal rulemaking processes to make or amend the laws, the agency could have explored pursuing an emergency rule-making course of action as outlined in A.R.S. § 41-1026. Furthermore, the Governor's moratorium on rulemaking existed to encourage agency streamlining of processes and allowed for exceptions in rulemaking "that affect the critical public health and safety functions of the agency, address the budget deficit. . . or are deregulatory."⁷²

ISSUE 17: The AMB has a board member whose time in office exceeds the statutory term limits of 5-10 years, prescribed by A.R.S. § 32-1402(C).

FINDING 17: INDETERMINATE

In regard to the allegation the AMB has a Board member whose time in office exceeds the statutory term limits of 5-10 years, prescribed by A.R.S. § 32-1402(C), we found the Ombudsman-Citizens' Aide Office lacks jurisdiction to make a determination.

DISCUSSION

LC-X alleged one of the Arizona Medical Board members exceeded his term limit beyond the Board's authority as per A.R.S. § 32-1402(C). The statute includes the following relative language:

"The term of office of a member of the board is five years, commencing on July 1 and terminating on July 1 of the fifth year. Each member is eligible for reappointment for not more than one additional term. However, the term of office for a member of the board appointed to fill a vacancy occasioned other than by expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each member of the board shall continue to hold office until the appointment and qualification of that member's successor"

A.R.S. § 32-1402(A) says the authority to appoint Board members rests with the Governor. Confirmation of members is then the purview of the Arizona Senate. Thus, there is no administrative action of the Arizona Medical Board for the Ombudsman Office to review. Pursuant to A.R.S. § 41-1372(1), the statutes governing the Ombudsman-Citizens' Aide Office

⁷² Sciarrotta, Jr., Joseph, William Hulen, and Scott Cooley. "Rulemaking and Your Clients' Interests." *Arizona Attorney* 47.10 (2011): 34-40. Print.

do not apply to any elected official. Therefore, we are not able to investigate this allegation and the result is indeterminate.

ISSUE 18: The AMB's Deputy Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443 by disregarding Arizona Medical Board licensing laws.

FINDING 18: SUBSTANTIATED

We substantiate the allegation the Deputy Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443 when she disregarded licensing laws, directed staff to violate state laws, refused to seek legal counsel about legal obligations and did not correct and redirect staff when she knew they were violating state laws.

DISCUSSION

Effective September 2012, A.A.C. R2-5A-501(A)(1), states that a state employee shall at all times, "Comply with federal and state laws and rules, and agency policies and directives." Additionally, A.R.S. § 38-443 states,

"A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission."

Further, A.A.C. R2-16-101(4) defines employee "misconduct" as ". . . any act or omission by an employee that constitutes a material or substantial breach of the employee's duties or obligations or that adversely affects a material or substantial interest of the employer."

The job description of the Deputy Director requires the individual to possess knowledge of federal and state licensing laws pertaining to the AMB.

As confirmed throughout this report, complainants alleged the Deputy Director did the following:

- Disregarded state laws as follows:
 - Was aware the Arizona Medical Board (AMB) licensed physicians who did not provide

Investigating Employee Misconduct

When complainants allege misconduct of specific employees, extra rules apply to Ombudsman investigations. First, the individuals must each receive notices that they are being investigated. We also send the agency notification the employees are under investigation.

Then, if the investigation yields a preliminary report with "an adverse opinion or recommendations" we are required to provide a confidential consultation with the employees. The employee is allowed 15 business days to respond. If the employee requests an extension, the Ombudsman must grant it. The employee's response is included in the confidential preliminary report sent to the agency.

If the final report also includes "adverse" findings, the employee gets another chance to respond and has an additional 15 working days.

Source: A.A.C. R2-16-306

documentation of citizenship or alien status as required by A.R.S § 41-1080 and A.A.C. R4-16-201(C)(1).

- Was aware of, but did not correct, flawed AMB application forms pertaining to proof of immigration status for licensure. The forms cite two incorrect laws, Federal law, 8 U.S.C. § 1641 and State law, A.R.S. §1-501, instead of the two correct citations - A.R.S. § 41-1080 and A.A.C. R4-16-201(C)(1).
- Disregarded subordinates who pointed out the Licensing Division was not following A.A.C. R4-16-201(C)(1), which requires applicants to submit *certified* copies of birth certificates or passports. Instead, she directed them to disregard the law and request photocopies instead.
- Knew the AMB did not consistently assess documentation supporting *locum tenens* license applications between October 2011 and February 2013 to determine whether physicians met the requirements of A.R.S. § 32-1429(A)(3). Under the statute, the AMB must examine applicants to ascertain whether their licenses are current and unrestricted. The AMB processes, revised September 2011, favored speed over accuracy. As a result, AMB did not properly handle the case of a doctor with numerous professional licensure problems who got through the initial medical board process due to these *locum tenens* loopholes.
- Directed staff to stop reviewing primary sources of medical college certification for international medical graduate (IMG) applicants, as required by A.A.C. R4-16-201(D)(1)(a). Instead, she directed staff use the Educational Commission for Foreign Medical Graduates (ECFMG) certification as a substitute which is not authorized in law.
- Oversaw an expedited process for approving licenses, which did not comply with A.A.C. R4-16-201(D)(1)(b). The law requires the use of primary sources when verifying postgraduate training.
- Directed licensing staff to stop verifying each applicant's licensure from every state in which the applicant had ever held a medical license, as prescribed by A.A.C. R4-16-201(D)(4).
- Directed staff to stop asking applicants renewing licenses to include a report of "disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. . ." as an attachment to their renewal form, in violation of A.R.S. § 32-1430.
- Authorized the issuance of licenses to physicians applying for licensure by endorsement who took exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing, but let their state of origin license expire, when current laws do not exist to allow such licensure. The law requires that such applicants either hold current certification from the American Board of Medical Specialty (AMBS) or take and pass the Special Purposes Examination (SPEX). In so doing, she violated A.A.C. R4-16-204(F).
- Directed the Licensing Division to not require physicians to submit their photos with license applications, as mandated by A.A.C. R4-16-201(B)(21).

- Authorized the Licensing Division to not require notarized signatures on applications, as prescribed in A.A.C. R4-16-201(B)(22).
- Directed staff to issue renewals to physicians, previously licensed by endorsement, who allowed their Arizona licenses to expire and did not hold an active license in another state, in violation of the Board's legal authority per A.R.S. § 32-1430(D).
- Authorized staff to issue the aforementioned renewals, advising them that an agency policy, LIC-018, transcended the limitations of A.R.S. § 32-1430. This policy treats the licensee as if they held an inactive license, so it is substantive in nature. It does not comply with A.R.S. § 41-1030 and is improper because a policy cannot override a law.
- Knew the Licensing Division did not document physicians' Continuing Medical Education (CME) credits, required by A.R.S. § 32-1434 (A) & (B).
- Knew her licensing staff did not check whether licensed physicians complied with A.R.S. § 32-1434 or A.A.C. R4-16-102 (A) or (D).
- Directed AMB staff to neither verify nor document CME credits, so the agency did not have sufficient evidence to enforce A.R.S. § 32-1434(C).
- Knew the agency violated A.A.C R4-16-102(D) by not mailing renewal forms to physicians, which asked them to attest they satisfied CME requirements.
- Was aware the Licensing Division did not follow state law with respect to license renewal timeframes outlined in A.A.C. R4-16-207(B)(1)(a).
- Knew the Licensing Division failed to consistently require physicians to submit supporting documentation necessary to explain deficiencies ("yes" answers to questions on renewal applications).
- Knew the staff failed to consistently review problematic applications, yet allowed them to approve such renewal applications as administratively complete before staff actually reviewed them for completeness.
- Was aware the licensing staff did not comply with overall time frames outlined in A.A.C. R4-16-206(A) and (B) in sending deficiency notices to physicians who did not comply with registration and renewal requirements set forth in A.A.C. R4-16-301. As a result, some physicians in Arizona dispensed controlled substances beyond their legal authority to do so.
- Authorized the licensing staff to keep physicians with deficient, administratively incomplete renewal applications in "active" status and in so doing, permitted them to dispense medication when those dispensing privileges should have been suspended.
- Permitted the Licensing Division to approve applicants with incomplete postgraduate training, by combining multiple, shorter duration internship, residency or clinical fellowships to meet the 12-month requirement. Physicians are required by A.R.S. § 32-1422(A)(2) to have internship, residency or clinical fellowships of at least 12 months duration.
- Directed licensing staff to not review the full scope of a physician's postgraduate training, as required by A.R.S. § 32-1422(A)(2). As a result, the public profiles of physicians on the AMB website are imprecise, leaving the public ill-informed of

potential issues involving a physician's postgraduate training, as required by A.R.S. § 32-1403.01(A)(6).

- Authorized the Licensing Division staff to stop asking doctors for proof of board certification as required by A.A.C. R4-16-201(B)(18).
- Directed staff to stop verifying, validating and/or updating correct information pertaining to physicians' ABMS certification on their public profiles. In so doing, the Deputy Director authorized staff to violate A.R.S. § 32-1403.01(C).
- Does not know which applicants were approved in error, given the aforementioned issues.

- Directed subordinates to disregard state laws:

On October 1, 2011, the Deputy Director directed staff to disregard state laws requiring paper documentation of licensing verifications. Her e-mail message said,

"So finish up what you can today and the new process starts Monday. I know it's nerve racking, but at some point we have to just go for it and I'm not having the new people do grunt work or learn a process we are about to abandon. I know timeframes may go down for a while and people will complain about change!"

Furthermore, in a meeting on December 1, 2011, LC-X pointed out to the Deputy Director concerns she had over, "... approving someone who we don't have legal [immigration] status for." The Deputy responded, "I offered to do that approval myself." LC-X replied, "Ok, but . . . but we're trying to follow statute, which clearly states not to [approve an applicant without certified passport verification]."

- Did not correct staff who violated state laws:

In a September 30, 2011 e-mail message, a Licensing Manager directed staff to make procedural changes that violated state laws. The Licensing Manager copied the Deputy Director in the e-mail, but the Deputy Director did not disagree or alert any staff about conflicts in state laws.

...certainly the rules aren't consistent with what we are doing. . . . I don't see any reason why we need to start bringing them back now...

AMB Deputy Director

In a recording of a staff meeting held on December 1, 2011, LC-X said she wanted to make sure the licensing staff operated within the law. The Licensing Manager added,

"As a new licensing manager, I want to follow the law. That's why we're here, to look at what the law says about these things."

The Deputy Director acknowledged,

“Our rules are really, really outdated . . . certainly the rules aren’t consistent with what we are doing. . . . There are things in the rules for example, requesting photographs, we stopped doing years ago, and I don’t see any reason why we need to start bringing them back now, I mean just because you and I and whoever it is . . . going through it . . . I mean we stopped the photograph business when we stopped administering exams, I don’t really want to go that far back and follow that rule to that extent”

LC-X then stated, “This is where it gets [she pauses] . . . I mean, we need to decide whether we’re following rules or not.”

The Deputy replied,

“We can make a list where we let [the Executive Director] decide. She’s the one who’s got to make these kinds of decisions So, photographs . . . right now, we haven’t gotten them for years, so we will just continue not getting them until [Executive Director] decides, is kind of what my thought is.”

Two complainants said that when challenged, the Deputy Director repeatedly responded, “Rules don’t matter.” In other words, she advised the licensing department that Arizona Administrative Rules were not state laws and therefore, did not apply. Staff understood that rules are law in Arizona and the Deputy Director did not agree.

- Admitted ignorance of state laws yet dismissed subordinates’ requests to review the legality of directives she gave to them or to allow them to refer the questions to legal counsel. For example, in an audio recording of a meeting held December 1, 2011, the Deputy Director told LC-X,

“I’m sorry but to think that, in my position . . . I know the ins and outs of issues of ‘pro bonos’ and locum tenens it would be ridiculous.”

She told LC-X it was “unreasonable” for staff to expect her to know “all these details and what all this [licensing regulation] means.” In fact, as mentioned previously, the Deputy Director position required her to know applicable licensing laws.

The Deputy Director admitted she did not know about the legality of the expedited licensing policies she enacted, yet when staff questioned them, she refused to seek advice from the agency’s lawyers.

She claimed ignorance as to whether the processes in place followed state laws. When LC-X explained that, as a subordinate, she would like to involve the agency’s Assistant Attorney General, the Deputy said that would be an inappropriate use of the lawyer’s

time. She added, "I would think every form we had has been looked at from a legal point of view." The Deputy Director rejected this suggestion, suggesting it would be burdensome to the agency's Assistant Attorney General to be bothered with such menial details. She quipped, "Our lawyers aren't going to spend time looking over all of our forms." The Assistant Attorney General confirmed the Deputy Director was strict about chains of command and did not allow subordinates to seek legal advice directly.

LC-X repeated her concerns that the AMB was not following licensing laws and added, "I would feel better if another set of eyes would look at it from a legal point."

The Deputy defended the continued practices that violated rules by stating, as mentioned earlier, that the rules are outdated and therefore staff should not follow them.

She added that because of a moratorium on rulemaking, the agency could not update its rules. Later in that same meeting, LC-X specifically asked if staff needed to follow current rules until updated through the rulemaking process, and the Deputy Director responded,

"No, because no one can change them . . . um, we cannot follow them, but we could actually present the rules package to GRRC."

The Deputy Director was strict about chains of command and did not allow subordinates to seek legal advice directly.

In accordance with A.A.C. R2-16-306(B), we consulted with the Deputy Director on April 26, 2013 and again on August 2, 2013 about our conclusions. We did not receive a response from her, as allowed in A.A.C. R2-16-306 (B)(2). We substantiate the allegation the Deputy

Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443 when she disregarded licensing laws, directed staff to violate state laws, refused to seek legal counsel about legal obligations and did not correct and redirect staff when she knew they were violating state laws.

ISSUE 19: The AMB's Executive Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443 in her response to the Ombudsman Final Report of Investigation #1200132. She was informed A.A.C. R4-16-201(D)(5) existed and was a properly enacted rule, yet she authorized staff to disregard the law for several months after the report.

FINDING 19: SUBSTANTIATED

In regard to the allegation the AMB Executive Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443, we substantiate the Executive Director was informed a rule was proper law, yet authorized staff to ignore the rule for months.

DISCUSSION

As discussed earlier in this report, the Ombudsman's report number 1200132⁷³ substantiated an allegation that the AMB violated state laws when it stopped verifying employment histories of physicians on letterhead.⁷⁴ The Ombudsman Office officially notified the Executive Director of the problem on May 17, 2012. We subsequently notified her on June 8, 2012 and July 18, 2012. In her July 5, 2012 response to Ombudsman report #1200132, she wrote,

"The Board respectfully disagrees with your recommendation to return to the practice of using employment verifications as specified in A.A.C. R4-16-201.D(5). As the rule is obsolete and represents an unnecessary regulatory burden, **the Board stopped requiring employment verifications because it was the right thing for Arizona, its physicians, its patients and its healthcare settings.**"⁷⁵ [Emphasis added.]

The Executive Director's official response from the Board regarding the report later affirmed that while she knew the action violated state laws, and the Board's own lawyer advised against it, she upheld the action because she believed it was superior to outdated practices defined in state laws.

On July 31, 2013, the Executive Director wrote,

"Throughout my tenure, no staff member ever expressed concern to me about the manner in which we were complying with statute and rule."

Again, on September 3, 2013, she wrote,

". . . although I sometimes had discussions with employees about our policies, at no time did any employee express concern to me that we were not explicitly complying with the rules. . . Finally, and to be clear, **none** of the other individuals referenced in your report has ever expressed concern to me regarding the Board's licensing process or compliance with the rules."

She also suggested in that document (see "Employee Responses" section) that former Licensing Manager, LM-B,

⁷³ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

⁷⁴ A.A.C. R4-16-201(D)(5) requires applicants to have submitted "directly to the board . . . Verification of all hospital affiliations and employment for the past five years. This must be submitted by the verifying entity on its official letterhead."

⁷⁵ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

“ . . . supported and recommended certain efficiencies that were arguably not in strict adherence with the rules as written. For example, as we prepared our response to Ombudsman Case #1200132,⁷⁶ LM-B recommended that we **not** return to the practice of verifying hospital and employment through primary sources because the streamlined process was effective and adequately protected the public He did not raise any issues regarding our compliance with rules during his exit interview or in any subsequent conversations with me.”

LM-B told us he frequently expressed his reservations about the expedited processes to the Deputy Director and Executive Director. After we began the investigation mentioned above, he not only went to his supervisors again for confirmation that they had authority to continue ignoring the rule, but the Board's Assistant Attorney General told us he also came directly to her. The A.A.G. had told us during the previous investigation that she advised the executives they lacked the authority to stop primary source verification of employment histories.

LC-X alleged that on numerous occasions in the fall of 2011, she followed up with supervisors on the legality of bypassing the employment verification rule. We listened to audio recordings supporting this assertion. For example, on December 15, 2011, LC-X met with the Executive Director to discuss her concerns about the new licensing procedures. She reiterated she feared the licensing staff violated rules, including the employment verification rule. The Executive Director replied:

“I know there's a lot of rule noncompliance, but I'm not worried about it, I'm not worried about it. Now, the minute one of you tells me why it's detrimental to us doing our job of weeding out bad doctors, then we've got to talk about it”

On December 20, 2011, LC-X's supervisor, Licensing Manager LM-B, explained to staff:

“ . . . do not request employment verification. Now, even [the Executive Director] is on board with this, even though, in the rules they clearly says that that's what we're supposed to do. . . Okay, from [the Executive Director], she has told me, there's no way. She doesn't want to do [employment verifications], and the rationale was because it was done away with a long time ago”

The next day, he reiterated the Executive Director's position:

“Who will be negatively impacted by us not doing employment or hospital affiliation verifications over the last 5 yrs? I don't know I'm not at the knowledge level at this point to come up with anybody She said that's the guideline she uses, that's worked for her in the past, and she said, '[LM-B], if you're worried about anything . . . it will come back on me. This is my decision' and . . . I told her I'm not comfortable.”

⁷⁶ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

During the period of those conversations, on December 15, 2011, the Executive Director told LC-X that she knew the agency violated rules. Moreover, she said,

“I know we’re not complying with rule but I’m not worried about it, because the rules were written in a pre-web era, and I’m really not worried about it, because if we’re violating rules, and anyone comes to us and says, ‘Hey, why aren’t you complying with the rules?’ I’m prepared to tell the Governor, the Legislature, the media, the medical association why . . .”

Moreover, in that same conversation, she explained to LC-X that the Governor’s moratorium on rulemaking did not apply to the Board, so there was no impediment to modifying the rule through legal means. Yet, 18 months later, by June 2013, the Board had no open docket proposing changes to the rule requiring employment verification.

On September 4, 2012, the Executive Director sent us the following message reversing her previous decision to circumvent the employment verification law,

“I wanted to let you know that after further review, effective August 28, the Board has resumed requiring hospital and employment verifications as required by rule and recommended by the Ombudsman's Office. We will continue this practice through the rulemaking process, and will only stop requiring verifications if the rule is changed. We expect to have new rules completed by June 2013.”

On May 28, 2013 she said she did not tell staff “. . . to disregard this or any other law, however, the status and interpretation of the relevant law during this timeframe was uncertain. . .”

She went on to state that after we released our July 2012 investigative report on an earlier case,⁷⁷ no one from legislative or executive branches of Arizona government complained. She interpreted that to mean the agency was free to ignore the law. That changed, she said, when the Board learned about “the possible objections of one state senator,” after which time the AMB reinstated the law-abiding verification practice.

The Executive Director continued to assert the Board had authority to circumvent the rule, which clearly requires primary source verification of “all hospital affiliations and employment for the past five years . . . submitted by the verifying entity on its official letterhead.” The Executive Director not only maintained the verification was unnecessary, but also intimated that the Board succumbed to one senator’s pressure to adhere to the law as interpreted by the Ombudsman’s office.

Despite her denial and earlier predictions of revised rules, as we mentioned earlier, as of June 2013, there was no open docket proposing a change in the rule requiring employment verification of medical license applications. We validate the AMB’s resolution of the complaint and eventual compliance with the state law. Nevertheless, she decidedly authorized staff to

⁷⁷ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

follow procedures that violated the state law, as substantiated in our report, for several weeks after its publication (July 2012). Thus, we substantiate the allegation that the Executive Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443, which require state employees to comply with state laws.

ISSUE 20: The Executive Director chose to ignore Arizona Medical Board licensing laws, directed staff to disregard these laws, refused Attorney General advice on legal obligations and did not correct or redirect staff on occasions when she knew they were violating laws. This is a violation of A.A.C. R2-5A-501 (A)(1) and A.R.S. § 38-443.

FINDING 20: SUBSTANTIATED

Regarding the allegation the AMB Executive Director selectively disregarded licensing laws, directed staff to violate laws and refused counsel about legal obligations when she knew of instances where they were violating laws, we substantiate the complaint. By failing to uphold the laws of the state and perform her duties as defined in law, the Executive Director ran afoul of additional laws, A.R.S. § 38-443 and A.A.C. R2-5A-501(A)(1). Consequently, this means she violated the terms of the State's Loyalty Oath attestation that she would "support" the laws of Arizona. [A.R.S. § 38-231.]

DISCUSSION

A.R.S. § 38-443 requires state employees to follow laws required of their positions:

"A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission."

A.A.C R2-5A-501(A)(1), requires state employees to "at all times. . . Comply with federal and state laws and rules, and agency policies and directives. . ." Then A.R.S. § 38-231 requires every employee of the State of Arizona, as a condition of employment, to sign and subscribe to an oath stating they will "support the Constitution of the United States and the Constitution and laws of the State of Arizona." The Executive Director, by not following the law, violated her oath of office.

Moreover, the official job description for the Executive Director not only holds the position "ultimately responsible" for all Board operations, but it also requires knowledge of state and federal laws regarding medical licensure of Arizona doctors.

This report lists numerous instances where the Executive Director directed staff to follow processes that did not comply with state laws, although she did not have the legal authority to do so. As demonstrated throughout this report, we found she:

- Was aware the Arizona Medical Board (AMB) licensed physicians who did not provide documentation of citizenship or alien status as required by A.R.S. § 41-1080 and A.A.C. R4-16-201(C)(1).
- Was aware of, but did not correct flawed AMB application forms pertaining to proof of immigration status for licensure. The forms cite two incorrect laws, Federal law, 8 U.S.C. § 1641 and State law, A.R.S. § 1-501, instead of the two correct citations, A.R.S. § 41-1080 and A.A.C. R4-16-201(C)(1).
- Knew the AMB did not consistently assess documentation supporting *locum tenens* license applications between October 2011 and February 2013 to determine whether physicians met the requirements of A.R.S. § 32-1429(A)(3). Under the statute, the AMB must examine applicants to ascertain whether their licenses are current and unrestricted. The AMB processes, revised September 2011, favored speed over accuracy. As a result, AMB did not properly handle cases involving two doctors with numerous professional licensure problems who got through the initial medical board process due to these *locum tenens* loopholes.
- Directed staff to stop reviewing primary sources of medical college certification for international medical graduate (IMG) applicants, as required by A.A.C. R4-16-201(D)(1)(a). Instead, she directed staff use the Educational Commission for Foreign Medical Graduates (ECFMG) certification as a substitute, which is not authorized in law.
- Oversaw an expedited process for approving licenses, which did not comply with A.A.C. R4-16-201(D)(1)(b). The law requires the use primary source verification of postgraduate training.
- Directed licensing staff to stop verifying each applicant's licensure from every state in which the applicant had ever held a medical license, as outlined in A.A.C. R4-16-201(D)(4).
- Supported the practice when staff stopped asking applicants renewing active licenses to include a report of "disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. . ." as an attachment to their renewal form, in violation of A.R.S. § 32-1430.
- Recommended the Board adopt an internal policy to review and accept applicants based on ten years' work and employment history, instead of adhering to A.A.C. R4-16-204(F). She told the Board she had authority to do this in lieu of rulemaking procedures required by law to correct the rule. The rule applies to physicians applying for licensure by endorsement who took exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing, but let their state of origin license expire. It requires that such applicants either hold current certification from the American Board of Medical Specialty (AMBS) or take and pass the Special Purposes Examination (SPEX).

- Authorized the issuance of licenses to applicants described above, when current laws do not exist to allow such licensure. In so doing, she violated A.A.C. R4-16-204(F).
- Knew the Licensing Division did not require physicians to submit their photos with license applications, as mandated by A.A.C. R4-16-201(B)(21). She did not redirect staff and instead supported this ongoing law violation until March 2013.
- Authorized the Licensing Division to not require notarized signatures on applications, as prescribed in A.A.C. R4-16-201(B)(22).
- Authorized the Licensing Division to issue renewals to physicians, previously licensed by endorsement, who had allowed their Arizona licenses to expire and who did not hold an active license in another state, in violation of A.R.S. § 32-1430(D), instead of going through the legislative or rule-making processes.
- Recommended the Board create an agency policy, LIC-018, cited in minutes of a February 2, 2012 Board meeting. This policy treats the licensee as if they held an inactive license, so it is substantive in nature. It does not comply with A.R.S. § 41-1030 and is improper because a policy cannot override a law.
- Knew the Licensing Division did not document physicians' Continuing Medical Education (CME) credits, as required by A.R.S. § 32-1434 (A) & (B).
- Knew her licensing staff did not check whether licensed physicians complied with A.R.S. § 32-1434 or A.A.C. R4-16-102 (A) or (D).
- Supported the licensing staff's decision to neither verify nor document CME credits, so the agency did not have sufficient evidence to enforce A.R.S. § 32-1434(C).
- Knew the agency violated A.A.C R4-16-102(D) by not mailing renewal forms to physicians, which asked the physicians to attest they had satisfied CME requirements.
- Was aware the Licensing Division did not follow state law with respect to license renewal timeframes outlined in A.A.C. R4-16-207(B)(1)(a).
- Knew the Licensing Division failed to require physicians to submit supporting documentation necessary to explain deficiencies ("yes" answers to questions on renewal applications).
- Knew the staff failed to consistently review problematic applications, yet allowed them to approve such renewal applications as administratively complete before reviewing them for completeness.
- Authorized the licensing staff to keep physicians with deficient, administratively incomplete renewal applications in "active" status and in so doing, permitted them to dispense medication beyond their legal authority.

- Permitted the Licensing Division to approve applicants with incomplete postgraduate training, by combining multiple, shorter duration internship, residency or clinical fellowships to meet the 12-month requirement. A.R.S. § 32-1422(A)(2) requires physicians to have internship, residency or clinical fellowships of at least 12 months duration.
- Directed licensing staff to not review the full scope of a physician's postgraduate training, as required by A.R.S. § 32-1422(A)(2). As a result, the public profiles of physicians on the AMB website are imprecise, leaving the public ill-informed of potential issues involving a physician's postgraduate training, as required by A.R.S. § 32-1403.01(A)(6).
- Authorized the Licensing Division staff to stop asking doctors for verification of board certification as required by A.A.C. R4-16-201(B)(18).
- Created policies and/or directed staff to follow policies that circumvented licensing laws, a violation of A.R.S. §§ 41-1001, 41-1001.01 and 41-1030(B).
- Does not know which applicants the agency approved in error, given the aforementioned issues.

The AMB Executive Director violated over 25 state laws.

The Executive Director disputed that she did not comply with licensing laws. She told us on May 28, 2013, "All statutes have been complied with to the best of the Board's ability." She claimed she worked with staff to efficiently issue

licenses "within the confines of the law." This assertion is untrue, as we previously demonstrated in earlier sections and as mentioned in bullets above, she violated no fewer than 28 state laws: 12 rules and 16 statutes.

In a meeting with LC-X on December 15, 2011, the Executive Director explained her "regulatory philosophy" was to relax rules for the most part, and occasionally a statute, if she deemed, ". . . it really serves no regulatory function that protects the public and if no person I can perceive that would argue with it."

On September 3, 2013, the Executive Director denied LC-X questioned law violations,

". . . although I sometimes had discussions with employees about our policies, at no time did any employee express concern to me that we were not explicitly complying with the rules. One employee/complainant (LC-X) had a discussion with me in December 2011 (which I subsequently learned to my surprise she had secretly audiotaped), in which she asked me to explain our process at the time. As the tape confirms, not only did she not express concerns in this (or any other) conversation with me, and in fact actually expressed **agreement** with my philosophy at the time."

We listened to those recorded meetings. While it is true LC-X used the word “agreement” after the Executive Director explained her views, it was in another context. Rather, LC-X concurred with the Executive Director’s previous suggestion that it was unlikely that a problematic passport would pose an imminent threat to public health. LC-X, just prior to that exchange, asked the Executive Director, “So you think we should be more lax?” The Executive Director responded, “Yes. LC-X then pushed the matter, stating that in another agency, she was not allowed to “turn a blind eye.” The Executive Director expounded on her approach to the laws,

“It’s a philosophical thing we’ll all have to struggle with. But hopefully, it will more rest [with LC-X and Licensing Manager LM-B], because those case-by-cases will come every day.”

In other instances, the Executive Director authorized AMB staff to disregard the Arizona Administrative Code. It appeared she misunderstood rules are also part of Arizona law and cannot be selectively enforced or ignored. As discussed previously in this report, the Executive Director asserted agencies may dispense with

I tend to be pretty relaxed...Eh, we don't need to do that, just because the rule says so.

AMB Executive Director

enforcement of rules if the agency management and Board decide a rule is flawed, ineffective, burdensome, harsh, or otherwise unnecessary.

Many of her statements reveal this mindset. For example, the Executive Director said her approach to rules in the Arizona Administrative Code is:

“I know we’re not complying with rule but I’m not worried about it, because the rules were written in a pre-web era, and I’m really not worried about it, because if we’re violating rules, and anyone comes to us and says, ‘Hey, why aren’t you complying with the rules?’ I’m prepared to tell the Governor, the Legislature, the media, the medical association why.” [From December 15, 2011 meeting]

And,

“The Board respectfully disagrees with your recommendation to return to the practice of using employment verifications as specified in A.A.C. R4-16-201.D(5). As the rule is obsolete and represents an unnecessary regulatory burden, the Board stopped requiring employment verifications . . . ” [July 5, 2011 response to Ombudsman report 1200132]⁷⁸

Moreover, in the December 15, 2011 meeting, she explains to LC-X with respect to rules,

⁷⁸ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

"I tend to be pretty relaxed. . . Eh, we don't need to do that, just because the rule says so."

The Executive Director attempted to distance herself from any knowledge of law violations when she wrote on September 3, 2013,

". . . I categorically reject, and will vigorously defend, any allegation that I knowingly broke any law in the exercise of my discretion as ED."

Such autonomous decision-making about rules and statutes is contrary to the government processes in the United States and Arizona, which support a representative democracy, public involvement and the rule of law.

We know the Executive Director disregarded legal advice relating to Ombudsman report #1200132. The Executive Director waived attorney-client privilege and allowed the Board's Assistant Attorney General to inform us that she advised the Executive Director that the agency violated rules when it discontinued employment verification practices. The A.A.G. confirmed with us again on September 6, 2013 that was the case. The Executive Director's response to that report on July 5, 2012, confirmed she ignored their attorney's legal advice:

"Although our Assistant Attorney General acknowledges that no authority exists to accept an application without employment verification, per se, we cannot in good faith take a regulatory step backwards by requiring useless information and causing a pointless delay for physician applicants, particularly when the verification offers no increase to public safety." [Emphasis added.]

In ISSUE 10, we discuss where she also ignored the advice of the agency's attorney, as reflected in minutes from a February 2, 2012 Board meeting. The Board's Assistant Attorney General advised the Board they needed a statute to resolve a dilemma that existed for some doctors with expired licenses. Instead, the Executive Director asked the Board to circumvent lawmaking processes and adopt an internal policy to reinstate applicants with expired licenses.

In a meeting on December 15, 2011, LC-X reiterated to the Executive Director her fears about ignoring licensing laws and suggested seeking advice from the Board's Assistant Attorney General. The Executive Director repeatedly told LC-X she was not worried because, "Some of them we've been ignoring a long time." LC-X allegedly went directly to the Board's Assistant Attorney General for advice and her supervisors reprimanded her for breaking chains of command. The A.A.G. could not recall such a conversation, but did confirm the strict chain-of-command policies under the former Deputy Director.

The Executive Director avowed on numerous occasions that she had the public's interest in mind when revamping licensing processes. We understand she believes her rationale for streamlining of processes justified the negation of law. We acknowledge the Executive Director's ideals with respect to serving the public's best interest, as stated in her July 5, 2012 response letter,

“. . . to reduce the regulatory burden on health care providers and small businesses, and to modernize the licensing process for the benefit of qualified physicians.”⁷⁹

She also justified her decision to do so in that response letter by stating:

“The Board respectfully disagrees with your recommendation to return to the practice of using employment verifications as specified in A.A.C. R4-16-201.D(5). As the rule is obsolete and represents an unnecessary regulatory burden, **the Board stopped requiring employment verifications because it was the right thing for Arizona, its physicians, its patients and its healthcare settings.**”⁸⁰ [Emphasis added.]

Later, she told us pressure from one state legislator to conform to law led her to reverse her position and she required the licensing department to return to the practice of verifying employment of physicians. Within a month of LC-X coming to our office with allegations outlined in this report, the Executive Director sent us the following message,

“This is to notify you that effective Tuesday, August 28, the Board has resumed the practice of requiring hospital and employment verifications, as recommended by the Ombudsman’s Office. We will continue to do so throughout the formal rulemaking process, and if the rule is changed we will discontinue the process when the rules go into effect. We anticipate a rule change by approximately June 2013.”

We substantiate the allegation and find the director violated A.A.C. R2-5A-501 (A)(1) and A.R.S. § 38-443 because she selectively disregarded licensing laws, directed staff to violate laws, and refused counsel about legal obligations when she knew of instances where they were violating laws. Furthermore, in doing so, she violated her oath of office, as defined in A.R.S. § 38-231.

⁷⁹ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

⁸⁰ Arizona Ombudsman-Citizens' Aide. *Final Report of Investigation, Arizona Medical Board*. Rep. no. 1200132. July 18, 2012. Print.

Recommendations

ISSUE 1 RECOMMENDATIONS

With respect to proof of citizenship and immigration status of physicians, we recommend:

- 1A. The AMB revise its forms pertaining to proof of immigration status for licensure to reflect the correct citations - A.R.S. § 41-1080 and A.A.C. R4-16-201(C)(1). The AMB should remove references to two incorrect citations, Federal law, 8 U.S.C. § 1641 and State law, A.R.S. §1-501.
- 1B. The AMB needs to require physician applicants comply with A.A.C. R4-16-201(C)(1), which requires applicants to submit *certified* copies of birth certificates or passports.
- 1C. The AMB needs to revise its procedures and require applicants to submit proof of their lawful citizenship or immigration status in accordance with A.R.S. § 41-1080.

ISSUE 2 RECOMMENDATIONS

With respect to locum tenens registrations, we recommend:

- 2A.
 - a. The AMB consistently assess applications to determine whether physicians meet the requirements of A.R.S. §32-1429(A)(3) by ascertaining whether their licenses are current and unrestricted.
 - b. The Legislature consider replacing the Arizona Revised Statutes to provisions for *locum tenens* registrations with legislation similar to that of Idaho, for expedited licensure by endorsement process. This would not only help the state find qualified doctors to temporarily take the place of physicians on leave, but it would also help those physicians have full, permanent licenses so they can return to the state at any time to practice.
- 2B. The Legislature consider revising the Arizona Revised Statutes specifically to require each medical applicant requesting temporary work in Arizona to submit and pay for a criminal background check to ensure all physicians are clear of criminal charges in other jurisdictions, as A.R.S. §§32-1401(27) and 32-1422(4) require. Alternatively, instead of relying on the AMB licensing staff to verify eligibility, revised statutes could require such applicants to utilize the Federation Credentials Verification Service (FCVS).
- 2C. Where the AMB failed to question deficiencies and problems in the case of Dr. X, the agency needs to communicate issues to doctors and handle applications for licensure in accordance with all appropriate Arizona laws. The agency needs to ensure applicants comply with A.R.S. §§ 32-1401(27), 32-1422(4) and 32-1429(A)(3).

ISSUE 3 RECOMMENDATIONS

With regard to primary source verification of medical school for international medical graduates, we recommend:

- 3A. The AMB obtain applicants' primary source medical school certification as required in Arizona Administrative Code, R4-16-201(D)(1)(a).

- 3B. The AMB use the Educational Commission for Foreign Medical Graduates (ECFMG) certification in addition to primary source medical school certification.
- 3C. The AMB propose a rule change to the Governor's Regulatory Review Council (GRRC) to amend the Arizona Administrative Code, R4-16-201(D)(1)(a) to adopt language similar to Nevada's statutes relating to better thwart the presentation of false degree documents. We suggest the language for A.A.C. R4-16-201(D)(1)(a) be the following, or similar to:

"The proof of the degree of doctor of medicine or its equivalent submitted directly to the Board by the medical school that granted the degree. If proof of the degree is unavailable from the medical school that granted the degree, the Board may accept proof from any other source specified by the Board."

ISSUE 4 RECOMMENDATIONS

With regard to documentation of postgraduate training (PGT), we recommend:

The AMB maintain compliance with A.A.C. R4-16-201(D)(1)(b) and use primary source verification of postgraduate training.

The Legislature consider modifying Arizona Revised Statutes to specifically require all applicants for medical licensure utilize and pay for the Federation Credentials Verification Service (FCVS), thereby reducing the AMB's burden to verify primary source documents. When considering such legislation, as is the case with Utah's licensing agency, we further recommend statutes requiring the AMB staff to thoroughly review all FCVS-approved applications before granting a medical license in Arizona.

ISSUE 5 RECOMMENDATION

With respect to verification of licensure from every state in which a physician has ever practiced medicine, we recommend the AMB comply with A.A.C. R4-16-201(D)(4) and verify physicians' licenses from every state in which they ever practiced medicine.

ISSUE 6 RECOMMENDATIONS

With respect to physicians reporting prior disciplinary actions or other problems with their practice histories, we recommend:

- 6A. The AMB adhere to the current law, A.R.S. § 32-1430, and require physicians to attach a report to their renewals listing, "disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government."
- 6B. The Legislature consider amending Arizona Revised Statutes Title 32 to require physician applicants to submit and pay for criminal background checks to boost AMB's assurances applicants from other jurisdictions are cleared of the criminal aspects of "unprofessional conduct" as defined and stipulated in A.R.S. §§32-1401(27) and 32-1422(4).

ISSUE 7 RECOMMENDATIONS

With respect to physicians, applying for licensure by endorsement who took required exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing, we recommend:

7A. and 7B. The AMB seek an amendment to the Arizona Administrative Code through GRRC and modify A.A.C. R4-16-204(F) to:

- 7A. Enable the Board to grant licensure by endorsement to physicians who took exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing. It should add the option for the Board to base the decision on ten years' work and employment history instead of limiting it to just exam requirements, board certification or SPEX.
- 7B. Update the rule to correct the citation of an amended statute subsection.
- 7C.
 - a. Because laws currently do not exist to allow licensure of physicians by endorsement when the physicians passed exams specified in A.R.S. § 32-1426(A) more than ten years before the date of filing, the AMB should immediately stop granting licenses by policy to such applicants until the applicants comply with current laws relating to licensure requirements.
 - b. The Legislature consider modifying Arizona Revised Statutes to allow the AMB to grant expedited licenses by endorsement similar to Idaho's medical board.⁸¹

ISSUE 8 RECOMMENDATION

Regarding photos submitted with applications, we recommend the AMB maintain the practice of requiring physicians to submit photos, as mandated by A.A.C. R4-16-201(B)(21).

ISSUE 9 RECOMMENDATION

Regarding notarized signatures on applications for licensure, we recommend the AMB require notarization of applications as prescribed in A.A.C. R4-16-201(B)(22).

ISSUE 10 RECOMMENDATION

Regarding physicians previously licensed by endorsement, who allowed their Arizona licenses to expire and did not hold an active license in another state, we recommend:

- 10A. The Board cease the practice of issuing licenses to physicians who allowed their Arizona licenses to expire while not holding an active license in another state, so the AMB complies with A.R.S. § 32-1430(D).
- 10B. The Legislature consider amending A.R.S. § 32-1430(D) to legally authorize the Board to access a more effective means of handling the aforementioned physicians with such expired licenses. We recommend the amendment to the statute include language similar to that suggested by a Board member such as, "If a physician reentering practice demonstrates satisfactory evidence that the physician possesses the medical knowledge and is physically and mentally able to safely engage in the practice of medicine and that if they adhere to that and have kept current on their CME, the Board shall have the

⁸¹ Idaho Administrative Code, Rules for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery, IDAPA 22.01.01.052.04.

authority to make a determination to renew the license, based on the evidence presented by the applicant.”

ISSUE 11 RECOMMENDATIONS

Regarding the allegation the AMB failed to document continuing medical education (CME) credits as required by law, we recommend:

- 11A. The AMB document CMEs in accordance with A.R.S. § 32-1434(B) and A.A.C. R4-16-102(D). We also recommend the AMB seek an amendment to the Arizona Administrative Code through GRRC to modify A.A.C. R4-16-102 to establish the times and manner for which they will document physicians' CMEs so those phrases are clearly defined.
- 11B. The AMB check compliance with A.R.S. § 32-1434 and A.A.C. R4-16-102 by conducting random audits of at least five percent of licensed physicians documentation of CME credits.
- 11C. The AMB document CMEs as discussed in 11A and 11B, to acquire evidence, so the agency may enforce A.R.S. § 32-1434(C).

Regarding the mailing of renewal forms requiring doctors to document CME credits, we recommend:

- 11D. The AMB seek an amendment to the Arizona Administrative Code through GRRC to amend A.A.C. R4-16-102 (D) to replace the words “shall mail” with “shall provide,” to account for an online form or e-mail verification of compliance with CME requirements.

ISSUE 12 RECOMMENDATIONS

With respect to the activation of license renewals before administrative completeness, we recommend:

- 12A. The AMB requires physicians to submit supporting documentation to explain all deficiencies (“yes” answers to questions on renewal applications).
- 12B. The AMB should review and approve the material before declaring renewal applications administratively complete.

ISSUE 13 RECOMMENDATIONS

With respect to notices to and dispensing privileges for physicians with deficient registration and renewal requirements, we recommend:

- 13A. The AMB discontinues placing deficient renewal applicants on “active” status until each applicant is administratively complete.
- 13B. The AMB corrects correspondence and stops referring to “11 A.A.R. 2944.” They should refer to the proper rule, A.A.C. R4-16-301(B) for the citation.

13C. The AMB must timely notify physicians of their application deficiencies.

ISSUE 14 RECOMMENDATIONS

With respect to reviewing scope of postgraduate training and updating the information on physician profiles, we recommend:

- 14A. The AMB should ensure every applicant has a minimum of one successfully completed 12-month internship, residency or clinical fellowship, as required by A.R.S. §32-1422(A)(2). The AMB should not accept combinations of multiple, shorter duration postgraduate training experiences in lieu of the 12-month requirement. If the AMB disagrees with this law, they should ask the Legislature to amend the statute.
- 14B. The AMB needs to establish processes to ensure due diligence and examine the broader scope of a physician's postgraduate training, such as breaks in employment and training, transfers, or disciplinary issues.
- 14C. The AMB web site profiles should list whether the physician received postgraduate training from more than one institution, the name of each institution and the date of completion of the training. The AMB should post the information as completely as required by A.R.S. §32-1403.01(A)(6).

ISSUE 15 RECOMMENDATIONS

With respect to verification of ABMS Certification ("Board Certification"), we recommend:

- 15A. The AMB should adhere to Arizona Administrative Code R4-16-201(B)(18) and require physician applicants currently certified by the American Board of Medical Specialties to submit verification thereof, "on an application form provided by the Board."
- 15B. Given the finding that the AMB violated A.R.S. § 32-1403.01(C), we recommend the AMB either (a) verify, validate or and update ABMS certification of physicians' public profiles on the AMB website or (b) remove Board Certification status for all physician public profiles altogether, as it is not required by law.

ISSUE 16 RECOMMENDATIONS

- 16A. Concerning the finding the AMB employed policies to circumvent licensing laws, a violation of A.R.S. §§ 41-1000.01 and 41-1030(B), we recommend the agency follow existing licensing laws. Should the agency decide upon reflection that any of these laws (or others) are outdated, inefficient or otherwise in need of change, we recommend the AMB follow lawful practices to obtain rule or legislative changes.
- 16B.
 - a. Given findings in ISSUES 1-16, the AMB needs to ascertain which applicants the agency approved in error, and initiate processes to correct the errors.
 - b. The Legislature determine whether the AMB's internal review is sufficient or whether an Auditor General audit would be appropriate to review AMB medical license applications approved between October 2011 and April 2013 to ascertain whether applicants with currently active licenses were properly documented and licensed in accordance with state law.

ISSUE 17 RECOMMENDATION

Concerning the finding the AMB has a board member whose time in office exceeds the statutory term limits of 5-10 years, prescribed by A.R.S. § 32-1402(C), the Ombudsman-Citizens' Aide Office lacks jurisdiction to make a determination, so we do not make a recommendation.

ISSUE 18 RECOMMENDATION

With regard to finding the Deputy Director in violation of A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443, we confirmed the Deputy Director disregarded licensing laws, directed staff to violate state laws, refused to seek legal counsel about legal obligations and did not correct and redirect staff when she knew they were violating state laws. A.A.C. R2-16-405(B) says the Ombudsman Office "shall not recommend that a specific employee disciplinary action be imposed." Instead statutes A.R.S. §§ 41-1376 and 41-1379 say we should refer the matter to chief officers with jurisdiction. Therefore, we refer the matter to the Arizona Medical Board members and to the Attorney General to determine to determine an appropriate response or action.

ISSUE 19 RECOMMENDATION

In regard to the finding the AMB Executive Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443, we substantiate the Executive Director was informed a rule was proper law, yet authorized staff to ignore the rule for months. A.A.C. R2-16-405(B) says the Ombudsman Office "shall not recommend that a specific employee disciplinary action be imposed." Instead, statutes A.R.S. §§ 41-1376 and 41-1379 say we should refer the matter to chief officers with jurisdiction. Therefore, we refer the matter to the Arizona Medical Board Members and to the Attorney General to determine an appropriate response or action.

ISSUE 20 RECOMMENDATION

Regarding the finding the Executive Director violated A.A.C. R2-5A-501(A)(1) and A.R.S. § 38-443, we confirmed the Director violated state laws. She specifically disregarded medical licensing laws, directed staff to violate laws, refused legal counsel about legal obligations and did not correct and redirect staff on occasions when she knew they were violating laws. A.A.C. R2-16-405(B) says the Ombudsman Office "shall not recommend that a specific employee disciplinary action be imposed." Instead, statutes A.R.S. §§ 41-1376 and 41-1379 say we should refer the matter to chief officers with jurisdiction. Therefore, we refer the matter to the Arizona Medical Board Members and to the Attorney General to determine an appropriate response or action.

Agency Response



Arizona Medical Board

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October 8, 2013

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William Thrift, M.D.
Physician Member

Executive Director

Lisa S Wynn, B.S.

Dennis Wells
Arizona Ombudsman-Citizens' Aide
3737 N. 7th Street, Ste. 209
Phoenix, AZ 85014

RE: Response to the Ombudsman – Citizens' Aide Report regarding investigation of case number 1202725

Dear Mr. Wells:

The Arizona Medical Board is a regulatory agency ("Agency") of the State of Arizona. The Agency regulates the licensing of allopathic (MD) physicians in Arizona and the adjudication of complaints and concerns related thereto. The Agency is administrated by an Executive Director ("ED") and staff (ED and staff are collectively the "Administration"). The Administration's function is to support the Agency's regulatory efforts and support the Agency's board ("Board"), whose members are appointed by the Governor. The Board currently consists of eleven members, three of whom were recently appointed and confirmed during the 2013 Legislative Session.

The Arizona Ombudsman's Office ("Ombudsman") submitted to the Agency the Ombudsman's Final Draft Report for Case #1202725 ("Draft") dated September 23, 2013. The Final Draft identifies twenty issues, details the allegations against the ED and other management team members, sets out the findings and puts forth recommendations to address the findings. The Board wishes to respond or comment.

The Board respectfully submits this letter and its 'Issue-by-Issue' response in Exhibit 1 attached hereto (collectively the "Response") and requests this letter be included in the publicly released report. The Board accepts and concurs with the findings in the Ombudsman's Draft Final Report and clarifies one recommendation set forth in Exhibit 1. Additionally, the Board wishes specifically to acknowledge the Ombudsman's observation that the Agency's ED and other management team members did not adhere to certain statutes and rules (collectively, "the Law") during specific periods of time. The Board has made, and continues to make, it very clear to the ED and the Administration that unless and until a law, statute or rule is properly revised, eliminated or updated by legislation, the Law is to be enforced as written. For example, interpretation to allow for an expedited licensing review process is not appropriate.

The Board is committed to actively working to continue to remedy the issues identified. The Board is also deeply dismayed by the Ombudsman's findings because many of them run counter to prior explanations or interpretations given to the Board by the Administration. Above all, though, the Board wants to emphasize that it has always acted in good faith and never knowingly or intentionally fail to comply with the Law. Also, as a point of order, please recall that Ms. Lisa Wynn, the Agency's ED, continued to file a separate and distinct response from the Board, which is incorporated in the Final Report.

The Board recognizes that the Ombudsman has permitted Ms. Wynn various responses and opportunities for explanation.

The Board recognizes and appreciates the amount of time and examination taken by the Ombudsman in this case. The Board is taking the findings, comments and recommendation seriously. The Board has also specifically sought to encourage (and enforce) corrective action to many of the issues uncovered throughout the investigative process as brought to the Board's attention. In sum, the Administration has been instructed to conform the licensing process to Law.

Some of these corrective and/or mitigation actions are characterized in Exhibit 1. Further, it is now clear, while unfortunate, that there was and remained significant breakdown in communication between the ED, the Administration and the Board.

As the Ombudsman's inquiry progressed over the past eight to ten months, the Board learned of various areas examined and concrete concerns. In fact, the Board determined it prudent by February 2013 to step into more of a 'direct-management' role. As a result, the Board specifically informed the ED and, therefore, the Administration, that no policy '*interpretation*' was allowed or permitted by ED or other staff. Again, the Administration has been clearly instructed it must comply with all aspects of existing Law until those regulations are properly amended, repealed or found unlawful by the courts.

It should be noted that the ED has informed the Board that the Agency's Administration did not depart from a narrow reading of the Law unless there was a good faith basis for believing that the alternative regulatory policy would not present a threat to public health and safety. **Note, please recall that the Executive Director's Response, as incorporated in the Ombudsman Final Report, is a separate and distinct response by Ms. Lisa Wynn, Agency's ED, to the Draft.** That being said, the Board recognizes and remains committed that, going forward, the Agency's Administration must comply with all aspects of existing Law. Therefore, as this cover letter and Exhibit 1 demonstrate, the Board has taken steps to help ensure that all Laws will be properly implemented by the ED and the Administration.

Finally, the Board submits three matters below for consideration by the Ombudsman for its final revisions to the Report prior to finalization: (i) the mention of other states' laws; (ii) comparisons to other administrative agencies within Arizona; and (iii) evaluation of current staff.

(i) Other State Laws.

The Agency acknowledges that it can be helpful to reference other states' administrative procedures when developing best practices for a regulatory staff. However, many states differ significantly in their Laws. For example, the Report cites the Nevada Medical Board as requiring applicants to complete three years of "progressive" post-graduate training (PGT) in the same medical specialty. Under Arizona law, however, unless the applicant fails to demonstrate the physical and mental capability to safely engage in the practice of medicine, the Board, when issuing a license, has no authority to restrict the licensee's practice or dictate the scope of practice. Moreover, even though international graduates must complete thirty-six months of post graduate training, the statute specifically references an approved twenty-four month internship or residency program in addition to a twelve month program. This language accounts for the fact that there are some specialties, e.g., genetics, for which there are only two years of approved PGT offered. Therefore, it would be unattainable for an international medical graduate to complete the necessary PGT if all three years had to be in the same specialty.

(ii) Comparisons to other administrative agencies within Arizona.

Comparisons to other administrative agencies within Arizona may also be problematic. For example, the Report cites the Arizona Board of Osteopathic Examiners in Medicine and Surgery (AZDO)

regarding its interpretation of its examination requirements for licensure. Unlike the Agency, however, which has multiple statutes outlining the requirements for licensure, the AZDO Board has only one such statute (ARS section 32-1822). In fact, all of the examination requirements for osteopathic physicians are provided by this statute and the applicable rules. Therefore, it is difficult to conduct a fair comparison of the AZDO Board and the Agency's implementation of its licensing policies.

(iii) Evaluation of Current Staff.

Finally, as a result of the Board's recognition and correction of the deficiencies noted in the Report, the Board believes that it is in the best position to evaluate the responsibility of current individual staff members for the deficiencies noted in the Ombudsman's Report. The Board met with the Chief Counsel of the Attorney General's Office Employment Law Section for advice and regarding options available to the Board. As a result, the personnel issues of the ED have been addressed thus far by issuing her a Letter of Reprimand. Please note, as to staff not currently employed with the Agency, the Board has been advised it is unable to take any action.

As noted above, it is clear there was a severe breakdown in communication between the ED, the Administration and the Board. The Board has determined that a more active operation and working relationship between the ED, staff and the Board is imperative moving forward. The Board plans to work on implementing "best practices" based in part upon the final report issued by the Ombudsman.

The Board has already formed and commenced various standing and special committees to better meet the needs of the Agency. The Board is also in the process of establishing a few additional committees to better communicate and be proactive within Arizona and the direct community the Agency serves. These efforts include:

A. Staff Relations Committee. In December 2012, the Board formed the Staff Relations Committee – a Standing committee – to act as liaison for Agency staff to the Board. The Staff Relations Committee has an open door policy. Any staff member may directly contact the committee chair (or other committee members) with concerns or issues without reprimand by the Administration. The Staff Relations Committee holds 'office hours' for staff to meet with them on Board meeting days or as requested.

B. Joint Legislation and Rules Committee ("JLRC"). The Board recently created the Joint Legislation and Rules Committee- a standing committee. The JLRC's task is to actively assist the Administration to help ensure the design and implementation of statutes and rules. In fact, the Agency is currently in the process of some Rules revisions. This is the Board's key liaison committee to the Administration for legislative, rules and other legal affairs matters.

The Board is determined to learn from the Ombudsman's comprehensive report. It recognizes general administration oversight is a part of the Board's role. The Board's key endeavor will be to ensure Administration compliance with, and proper implementation of, best practices.

The Board recognizes the concerns for public welfare and the importance of ensuring the quality of the allopathic physicians (MDs) practicing medicine in Arizona. Moreover, the Board seeks to better oversee the Agency Administration and the licensing process. The Board also recognizes the importance to endeavor to update the Law applicable to the Agency to allow for adequate coverage of a web based medical community, telemedicine and general tele-commuting to successfully serve the evolving medical community and its physicians.

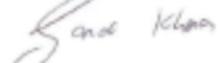
The members of the Board would like to specifically thank the Office of the Ombudsman-Citizens' Aide, the Attorney General's Office, the Office of the Governor, the Honorable Jan Brewer and the Legislature for their support and the confidence they have bestowed in the Agency and the Board

moving forward. We appreciate the professionalism and assistance by the Ombudsman's Office throughout this process.

If you have additional questions please contact me, Dr. Gordi Khera, Chairman of the Arizona Medical Board.

Respectfully Submitted on Behalf of the Members of the Arizona Medical Board.

Very Truly Yours,



Dr. Gordi Khera, Chairperson
Arizona Medical Board

Arizona Medical Board Members October 3, 2013

Gordi S. Khera, M.D., FACC Physician Member – Chair

| | |
|---|---|
| Jody Jenkins, M.D. Physician Member – Vic Chair | Ram R Krishna, M.D. Physician Member |
| Harold Magalnick, M.D. Physician Member – Secretary | Douglas D. Lee, M.D. Physician Member |
| Andrea Ibanez Public Member – Member-at Large | Richard T. Perry, M.D. Physician Member |
| Jodi A Bain, Esq. Public Member | Wanda J Salter, R.N Public Member |
| James Gillard, M.D. Physician Member | William J Thrift, M.D. Physician Member |

Exhibit 1

Response by the Board

(with staff participation)



Arizona Medical Board

9545 E. Doubletree Ranch Road, Scottsdale AZ 85258 • website: www.azmd.gov
Phone (480) 551-2700 • Toll Free (877) 255-2212 • Fax (480) 551-2705

Arizona Medical Board Response to Response to Arizona Ombudsman-Citizens' Aide, Case# 1202725

Governor

Janice Brewer

Members

Gordji Khara, M.D.
Chair
Physician Member

Jody Jenkins, M.D.
Vice Chair
Physician Member

Harold Magainick, MD
Secretary
Physician Member

Andrea Ibañez
Member At-Large
Public Member

Jodi Bain, Esq.
Public Member

James Gillard, M.D.
Physician Member

Ram R. Krishna, M.D.
Physician Member

Douglas Lee, M.D.
Physician Member

Richard Perry, MD
Physician Member

Wanda Satter, R.N.
Public Member/R.N.

William Thrift, M.D.
Physician Member

Executive Director

Lisa S Wynn, B.S.

Exhibit 1

Recommendation 1: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on August 30, 2013.

Recommendation 2: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented recommendations 2A.a. and 2C on July 5, 2013. The Board will work with the Legislature should the Legislature implement recommendations 2A.b. and 2B.

Recommendation 3: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented recommendations 3A and 3B on March 4, 2013. Recommendation 3C will be implemented through the rule making process.

Recommendation 4: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation to use primary source verification of postgraduate training on March 4, 2013. The Board will work with the Legislature should the Legislature determine to implement the latter part of the recommendation.

Recommendation 5: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on April 13, 2013.

Recommendation 6: The Board agrees with the findings of the Ombudsman-Citizens' Aide and will implement the recommendation 6A. The Board will work with the Legislature should the Legislature determine to implement recommendation 6B.

Recommendation 7A and 7B: The Board agrees with the findings of the Ombudsman-Citizens' Aide and will implement the recommendation through the rule making process.

Recommendation 7C.a: The Board has been advised by its Attorney General Representative that A.R.S. §32-1426(B) is permissive, not mandatory. It states, "The board may require an applicant...to take and pass a special purpose licensing examination...." (emphasis added). The use of "may" is permissive. For this reason, the Board disagrees with the finding of the Ombudsman that the statute is mandatory. However, the Board will implement the recommendation.

Recommendation 7C.b: The Board will work with the Legislature should the Legislature determine to implement the recommendation.

Recommendation 8: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on April 13, 2013.

Recommendation 9: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on April 13, 2013.

Recommendation 10A and 10B: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on June 28, 2013. The Board believes this recommendation 10B has been resolved by the enactment of HB2409.

Recommendation 11A and 11D: The Board agrees with the findings of the Ombudsman-Citizens' Aide and will implement the recommendation through the rule making process.

Recommendation 11B and 11C: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on August 30, 2013.

Recommendation 12A and 12B: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on July 8, 2013.

Recommendation 13A and 13C: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation during the 2013 Dispensing Renewal season.

Recommendation 13B: The Board agrees with the findings of the Ombudsman-Citizens' Aide and will implement the recommendation.

Recommendation 14A: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on July 18, 2013.

Recommendation 14B: The Board agrees with the findings of the Ombudsman-Citizens' Aide and will implement the recommendation.

Recommendation 14C: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation for post graduate training for new applications beginning July 18, 2013.

Recommendation 15A: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on April 12, 2013.

Recommendation 15B: The Board agrees with the findings of the Ombudsman-Citizens' Aide and implemented the recommendation on August 13, 2013.

Recommendation 16A: The Board agrees with the findings of the Ombudsman-Citizens' Aide and will implement the recommendation to abide by lawful practices to obtain rule or legislative changes.

Recommendation 16B.a: Board staff will perform an internal audit at the time of license renewal to determine if any applicants were approved in error between October 2011 and April 2013. Additionally, Board staff will ascertain whether applicants with currently active licenses issued between October 2011 and April 2013 were properly documented and licensed in accordance with state law. Should Board staff identify that a license may have been issued in error, the Executive Director shall be notified immediately and shall request that a review study be opened and expedited to determine whether the license had been wrongfully issued. If it is determined that a license has been issued inappropriately, immediate and appropriate action shall be taken with regard to the license.

Recommendation 16B.b: The Board will work with the Legislature and Auditor General should the Legislature determine that an audit should be conducted by the Auditor General to review AMB medical license applications approved between October 2011 and April 2013.

Issue 17: The Report did not make any recommendations as to Issue 17.

Recommendation 18: The Board has been advised by its Attorney General representative that it no longer has jurisdiction to take disciplinary action against the Deputy Director because she has resigned.

Recommendation 19: On October 2, 2013, the Board issued the Executive Director a Letter of Reprimand.

Recommendation 20: On October 2, 2013, the Board issued the Executive Director a Letter of Reprimand.

Employee Responses

The complainant alleged two employees, the Executive Director and Deputy Director, engaged in misconduct. In accordance with A.A.C. R2-16-306, we notified the employees and provided them with consultations. We submitted a draft of the final report to both employees on August 2, 2013, as required by the rule, and invited them to respond.

Executive Director's Response September 3, 2013

Thank you for the opportunity to respond to the findings and recommendations of your office. I agree with the Board that our most productive course of action is to accept your report and proceed accordingly. Therefore, based on your initial findings and recommendations, I have continued to work closely with the Board and staff to return to practices that are in strict compliance with statutes and administrative rules as written. And I hereby confirm my intent to comply literally and explicitly with all statutes and administrative rules as they are written.

Prior to receiving notice in October 2012 that this investigation had been opened, I believed in good faith that as the agency's Executive Director (ED), I was charged with interpreting the Administrative Codes and statutes that govern the operation of the Board in a manner that best met the needs of the public, including the sometimes competing needs to address the state's physician shortage* by efficiently processing licensing applications and the public's need to be protected from unqualified medical professionals. The Board's intent was to more effectively and efficiently license physicians, while still placing public protection as our first and foremost priority. In pursuit of these goals, even prior to my arrival as ED, the Board began changing its licensing processes through internal policy changes designed to eliminate or correct redundant or inefficient practices. For example, as the Board was beginning to develop an on-line renewal process, it necessarily stopped the practice of requiring that applications be notarized. This occurred long before anyone on staff can recall, and certainly over 12 years ago. There is no indication that at any time any unqualified physicians were licensed due to the Board's revised notarization practice or any other process changes.

Since becoming aware of this complaint and the concern of the Ombudsman's office, I have worked with licensing staff, under the direction of the Board and with the assistance of our Assistant Attorney General, to comply with all administrative licensing rules as they are currently written. In addition, as an added precaution, we have begun the process of auditing all licenses issued during the period in which we were not verifying employment or hospital privileges through primary sources** to ensure that the Board's previous policy did not result in any unqualified physicians being licensed. Public protection remains our primary objective. To date, we have not uncovered a single physician who was licensed under our previous

* Arizona ranks 33rd of the 50 states in physicians per capita. See *American Association of Medical Colleges State Physician Workforce Data Book* (Nov. 2011) at 9. With only 220.1 physicians per 100,000 citizens (and not accounting for Arizona's winter visitors, and undocumented population), Arizona falls below the national median of 244.2. *Id.* The State also ranks in the bottom 20% of primary care physicians per capita. *Id.* at 5.

** Roughly half of states who responded to an informal survey in March 2013 reported that they did not routinely verify employment history or hospital privileges through primary sources, but rather followed procedures comparable to the Board's during this timeframe.

processes who was not qualified to practice in Arizona or who would not have been licensed under the current, literal reading of the statutes and rules.

As for the discussion in your report regarding changes in personnel, there are two crucial points that you do not address. First, to the extent the report implies or infers any causal connection between the Board's interpretation of the rules prior to becoming aware of the Ombudsman's complaint and the termination or other departure of any employee, such implication or inference is categorically false. Indeed, at the Board's request, ADOA investigated allegations of retaliation from employee/complainant (LC-X) and found no evidence of wrongdoing.

Second, although I sometimes had discussions with employees about our policies, at no time did any employee express concern to me that we were not explicitly complying with the rules. One employee/complainant (LC-X) had a discussion with me in December 2011 (which I subsequently learned to my surprise she had secretly audiotaped), in which she asked me to explain our process at the time. As the tape confirms, not only did she not express concerns in this (or any other) conversation with me, and in fact actually expressed agreement with my philosophy at the time, but I expressly confirmed for her that no one had or would be terminated for speaking their mind. When I followed up with her in February 2012 to inquire how she perceived things and to remind her of my open door policy, she specifically told me that all was "fine" in our licensing office. Both of these conversations occurred during the time in which we were not verifying hospital and employment through primary sources. Significantly, this particular employee resigned voluntarily in March 2013; she was neither terminated nor disciplined at any time.

Another employee, (LM-B) worked as manager of the licensing office with me and more closely with my deputy regarding many of the changes to our processes. Although we had many discussions about our processes, and he occasionally raised questions about our interpretation of certain rules, he too supported and recommended certain efficiencies that were arguably not in strict adherence with the rules as written. For example, as we prepared our response to Ombudsman Case #1200132, LM-B recommended that we not return to the practice of verifying hospital and employment through primary sources because the streamlined process was effective and adequately protected the public. Significantly, to the extent he raised questions about our policies and procedures; he too was neither terminated nor disciplined. When he later voluntarily chose to move on, he indicated during his exit interview that he was leaving because of his passion for, and desire to return to, his previous profession. He did not raise any issues regarding our compliance with rules during his exit interview or in any subsequent conversations with me.

Finally, and to be clear, none of the other individuals referenced in your report has ever expressed concern to me regarding the Board's licensing process or compliance with the rules.

In summary, while I categorically reject, and will vigorously defend, any allegation that I knowingly broke any law in the exercise of my discretion as ED, I do recognize as a result of your report the importance of adherence to laws in strict conformity with their language even when we believe there are more efficient procedures that pose no risk to public safety. Please be assured of my personal commitments to: 1) comply explicitly with all statutes and rules; 2) work with the Board and its committees as we continue the necessary process of updating our licensing rules; 3) ensure the Board's continued compliance with all personnel rules; and 4) proceed with new efficiencies only when expressly authorized by existing or newly amended rules or statutes.

Despite my continued desire to operate the agency in an efficient manner that poses no unreasonable barriers to the licensing of qualified physicians, I cannot overstate both my intent to comply with the law as written and the Board's ongoing commitment to public protection above all else.

Deputy Director's Response

We provided the former Deputy Director a consultation, in accordance with A.A.C. R2-16-306 (C). The rule provides the employee allegedly involved in employee misconduct to respond to the final report within 15 business days. The Deputy Director did not respond.

Exhibits

EXHIBIT A – 2012 Medical Licensing Practices in select Western States and FCVS

| | Arizona Medical Board | Arizona Board of Osteopathic Examiners | California | Colorado | Idaho | Nevada | Utah | Federation of State Medical Boards |
|--|--|--|--|--|--|--|--|------------------------------------|
| Verify applicants' licenses from every state | No (from 9/2011-2/2013), but required by law | Primary source | Primary source | Primary source | Primary source | Primary source | FCVS – verified | Primary source |
| Require medical college certification for international graduates (IMGs) | No (from 9/2011-2/2013), but required by law | N/A - no D.O. schools outside the U.S. | Primary source - notarization required | Primary source | Primary source | Primary source - as available discussed in ISSUE 3 | FCVS – verified | Primary source |
| Post-graduate training documents | No (from 9/2011-2/2013), but required by law | Primary source | Primary source - notarization required | Primary source | Primary source | Primary source | FCVS – verified | Primary source |
| Require criminal background check | Not required | Not required | Yes | Yes | Yes | Yes - applicants pay for it | FCVS – verified | Yes |
| FCVS | Optional | Optional | Optional | Optional | Optional | Optional | Required | NA |
| Use NPDB data base | Used in lieu of primary source, violation of law | Used with primary source | Used with primary source | Used with primary source | Used with primary source | Used with primary source | Used to cross-reference FCVS submissions | Used with primary source |
| Require photo | No (from 9/2011-2/2013) – but required by law | Yes | Yes | No | Yes | Yes - notarized photo required | FCVS – verified | Yes |
| Require notarization of application | No (from 9/2011-2/2013) – but required by law | Yes | Yes | No | Yes | Yes | FCVS – verified | Yes |
| Require CME credit documentation | No (from 9/2011-2/2013) – but required by law | Yes | Yes | Attestation of completed CMEs required | Attestation of completed CMEs required & random audits conducted to request documented proof | Attestation of completed CMEs required & random audits conducted to request documented proof | Attestation of completed CMEs required & random audits conducted to request documented proof | N/A |
| Do they issue Locum tenens? | Yes - 180 days, renewable once | Yes - 90 days, renewable once | No | No - but temporary licenses for 120 days | No | Yes - 90 days, not renewable | No - but temporary licenses for 12 months | N/A |
| Applicants | 1,449 | 205 | 6600 | 710 | 776 | 500 | 1,200 | 33,000 |
| Licensing FTE | 2-4 | 2 | 40 | 4* | 2 | 7 | 4* | 95 |
| Avg. approval time (days) | 15 | 21 | 60 | 40 | 79 | 55 | 90 | 45 |

*Staff in Colorado's and Utah's licensing agencies process licenses for multiple medical professionals, including Chiropractic, MDs, DOs, Physician Assistants, Dentists, etc.

EXHIBIT B - Initial AMB License Application Used September 2011 - March 2013



ARIZONA MEDICAL BOARD MD INITIAL LICENSE APPLICATION

9545 E Double Tree Ranch Rd., Scottsdale, AZ 85258
Phone: 480-551-2700 Fax: 480-551-2707

To be completed and signed by applicant. All questions MUST be answered, even if only to indicate "None" or "N/A."

1. First Name: Middle Name: Last Name:
Other Names Used:

2. Social Security Number: No dashes 3. Date of Birth:

4. City of Birth: State of Birth: OR Country of Birth:

Social Security Number, Date of Birth and Place of Birth are Confidential Information - Not for Public Disclosure

ADDRESSES:

Practice Address: This is the practice/principal place of business. The address and phone number will appear in the Medical Directory and on the Board's web site. Every physician must have an address available to the public. If only one address is provided, even if it is your home address, it will be available to the public. If you want your home address to be listed on your web site profile, please so indicate. Otherwise, no address will be provided on the profile, but it will be provided to the public if requested.

Mailing Address: If no address is provided, all Board correspondence will be sent to the Practice Address.

Email: This address is optional. If you provide an email address, it will not be released to the public.

Home Address: You are required to provide a home address and telephone number. They will not be released to the public unless you fail to provide an Office Address.

5. Practice/Training Name:

Practice/Training Address: City: State: Zip:

Practice Phone: Practice Fax:

Mailing Address: City: State: Zip:

Email:

Home Address: City: State: Zip:

Home Phone: Mobile Phone:

6. PROOF OF CITIZENSHIP: Effective January 1, 2008, based on Federal and State laws, all applicants must provide evidence that the applicant is lawfully present in the United States. Federal law, 8 U.S.C. §1641 and State law, A.R.S. §1-301, require documentation of citizenship or alien status for licensure. If the documentation does not demonstrate that the applicant is a United States citizen, national, or a person described in specific categories, the applicant will not be eligible for licensure in Arizona.

- I am a U.S. Citizen or U.S. National. (If this box is checked, please submit with your application a copy of your Birth Certificate, U.S. Passport, or Naturalization Certificate.)*
- I am NOT a U.S. Citizen or U.S. National. (If this box is checked, please submit with your application a copy of your permanent resident card or Visa.)*

*See Statement of Citizenship form for complete list of accepted documents available on the website.

7. All states or provinces in which you applied for or have been granted a license or registration. If more than five, attach a separate listing. If a license is pending or was not issued, so state. If none, please indicate "Not Applicable."

| | | | | | | |
|----|--------------|----------------------|--------------|----------------------|-----------------|----------------------|
| a. | State Board: | <input type="text"/> | License No.: | <input type="text"/> | License Status: | <input type="text"/> |
| b. | State Board: | <input type="text"/> | License No.: | <input type="text"/> | License Status: | <input type="text"/> |
| c. | State Board: | <input type="text"/> | License No.: | <input type="text"/> | License Status: | <input type="text"/> |
| d. | State Board: | <input type="text"/> | License No.: | <input type="text"/> | License Status: | <input type="text"/> |
| e. | State Board: | <input type="text"/> | License No.: | <input type="text"/> | License Status: | <input type="text"/> |

8. Medical School Name:

Medical School Location: **Graduation Date:**

If you graduated from a medical school located outside the United States of America or Canada, please list below:

ECFMG No.: **Certificate Date:**

9. List chronologically, all internship, residency and fellowship training in the U.S. or Canada (completed or not), or assistant professorship (or higher) at any programs attended, showing institution, address, type of program and dates. Attach a separate listing if needed.

| | | | | | | |
|----|------------------|----------------------|----------------------|----------------------------|--------------------------|----------------------|
| a. | Institution: | <input type="text"/> | City: | <input type="text"/> | State: | <input type="text"/> |
| | Type of Program: | <input type="text"/> | Dates of Attendance: | From: <input type="text"/> | To: <input type="text"/> | |
| b. | Institution: | <input type="text"/> | City: | <input type="text"/> | State: | <input type="text"/> |
| | Type of Program: | <input type="text"/> | Dates of Attendance: | From: <input type="text"/> | To: <input type="text"/> | |
| c. | Institution: | <input type="text"/> | City: | <input type="text"/> | State: | <input type="text"/> |
| | Type of Program: | <input type="text"/> | Dates of Attendance: | From: <input type="text"/> | To: <input type="text"/> | |
| d. | Institution: | <input type="text"/> | City: | <input type="text"/> | State: | <input type="text"/> |
| | Type of Program: | <input type="text"/> | Dates of Attendance: | From: <input type="text"/> | To: <input type="text"/> | |

First Name: **Last Name:**

10. License Exam. Please indicate all exams taken, the date(s) taken (month/day/year) and which state, if applicable:

- United States Medical Licensing Exam (USMLE): Step 3 Date: State:
- State Written Examination: Date: State: *The Commonwealth of Puerto Rico is not accepted.*
- National Board of Medical Examiners Examination (NBME): Certification Date:
- Federation of State Medical Boards Licensing Examination (FLEX): Date:
- Licentiate of the Medical Council of Canada (LMCC): Date:
- Special Purpose Examination (SPEX): Date: State:

11. Indicate your area of interest and whether you are certified by the American Board of Medical Specialties (ABMS):

| Area of Interest | ABMS Certified? | Practicing? | Expiration Date (Or indicate if lifetime certified) |
|----------------------|--|--|--|
| <input type="text"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| <input type="text"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| <input type="text"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | |

12. Have you been in medical practice continuously for the past 10 years (or since graduation from medical school)? (If you mark "No," please submit a narrative explaining any lapses in practice (i.e. preparing for USMLE, sabbatical, etc.)

- Yes No

Explanation:

First Name: Last Name:

QUESTIONNAIRE

1. Have you had any application for any professional license refused or denied by any licensing authority? Yes No
2. Have you been refused or denied the privilege of taking an examination required for any professional licensure? Yes No
3. Have you been dropped, suspended, placed on probation, expelled, fined, resigned or been requested to resign from any medical school or post secondary educational program in which you were enrolled? Yes No
4. Has any training program taken action against you including probation, restriction, suspension, revocation, modification, accepted resignation, asked you to leave temporarily or permanently? Yes No
5. Have you voluntarily surrendered any healthcare license? Yes No
6. Have you had any healthcare license revoked? Yes No
7. Have you been the subject of disciplinary action or are you currently under investigation with regard to your healthcare license (other than by the Arizona Medical Board), have you been sanctioned by any healthcare licensing authority, healthcare association, license healthcare facility or healthcare staff of such facility? Yes No
8. Have your privileges been restricted, terminated, voluntarily or involuntarily resigned or withdrawn by any healthcare licensing authority, healthcare association, licensed healthcare facility or healthcare staff of such facility? Yes No
9. Has disciplinary action been taken against you by any licensing agency with regard to any professional license? "Disciplinary Action" includes, but is not limited to restriction, termination, voluntary or involuntary resignation or withdrawn. Yes No
10. Are there any pending complaints, investigations, or disciplinary actions against you with any healthcare licensing authority, healthcare association, licensed healthcare facility or healthcare staff of such facility? Yes No
11. Have you had a registration issued by a controlled substance authority (State or Federal) revoked, suspended, limited, restricted, modified, denied, or have you surrendered or given up in lieu of action? Yes No
12. Have you been charged with or convicted, pardoned or had a record expunged or vacated of a felony, or misdemeanor involving moral turpitude? (See explanation below) A "yes" answer is required even if you entered a diversion program. Yes No
13. Have you been charged with or convicted (including a nolo contendere plea or guilty plea) of a violation of any federal or state drug law(s) or rule(s) whether or not the sentence was imposed or suspended? Yes No
14. In the last ten (10) years, has a judgment or settlement been entered against you as a defendant in a medical malpractice suit? *Please do not report pending malpractice suits or settlements paid not related to a civil action* Yes No
15. Have you been court martialled or discharged other than honorably from the armed service? Yes No
16. Have you been terminated from a healthcare position with a city, county, or state government or the Federal government? Yes No
17. Have you ever been convicted of insurance fraud or received sanctions, including restrictions, suspension or removal from practice, imposed by any agency of the Federal government? Yes No

NOTE: In the event that the response to any of the questions above is "Yes," you must file with the application a detailed report concerning the above matters, including any charge, date of such charge, the complete name and address of all bodies of jurisdiction, the result of any hearings, and the disposition of such matters. In addition, you must submit photocopies of any corresponding documents, such as complaints or board actions.

Moral Turpitude includes but is not limited to the following: Armed Robbery, Assault with a Deadly Weapon, Attempted Insurance Fraud, Fabricating and Presenting False Public Claims, False Reporting to Law Enforcement Agency, Fabrication of Records of the Court, Forgery, Fraud, Hit & Run, Illegal Sale and Trafficking in Controlled Substances, Indecent Exposure, Kidnapping, Larceny, Mann Act (Federal Commercialization of Women Statute), Misleading Sale of Securities in Connection with transfer of Real Property, Perjury, Possession of Heroin for Sale/Unlawful Sale or Dispensing Narcotic Drugs, Rape, Shoplifting and Soliciting Prostitution.

First Name: Last Name:

CONFIDENTIAL QUESTIONNAIRE

1. Within the last five years, have you been diagnosed, treated or admitted to a hospital or other facility for the treatment of bi-polar disorder, schizophrenia, paranoia or any psychotic disorder? Yes No

2. Are you now being treated or have you in the last five years been treated for a drug or alcohol addiction or participated in a rehabilitation program? *If in a confidential program in another state see explanation below. Yes No

3. Do you currently have any disease or condition that interferes with your ability to competently and safely perform the essential functions of your profession, include any disease or condition generally regarded as chronic by the medical community, i.e. (1) behavioral health illness or condition; (2) alcohol or other substance abuse; and/or (3) physical disease or condition, that may presently interfere with your ability to competently and safely perform the essential functions involved in your usual practice? Yes No

Ability to practice medicine is to be construed to include all of the following:

1. The cognitive capacity to make appropriate clinical diagnoses and exercise reason medical judgments and to learn and keep abreast of medical developments;
2. The ability to communicate those judgments and medical information to patients and other healthcare providers, with or without the use of aids or devices, such as a voice amplifier; and
3. The physical capability to perform medical tasks such as physical examination and surgical procedures, with or without the use of aids or devices, such as corrective lenses or hearing aids.

NOTE: In the event that the response to any of the questions above is "Yes," you must file with the application a detailed written narrative statement concerning the above matter(s), including the name of healthcare providers and treatment centers where you were treated, along with the discharge summary of your treatment and progress. If you are currently participating or have participated in the past 5 years, pursuant to a confidential agreement or order in a program for the treatment and rehabilitation of doctors of medicine impaired by alcohol, drug abuse or for other issues, please submit a copy of the agreement/order along with compliance reports from the state monitoring program.

Failure to properly answer these questions can result in Board disciplinary action, including revocation or denial of license.

First Name:

Last Name:

RELEASE OF RECORDS:

I authorize all hospitals, institutions or organizations, my references, personal physicians, employers (past, present and future), business and professional associates (past, present and future), and all government agencies (local, state, federal or foreign) to release to the Arizona Medical Board or its successors any information, files or records, including medical records, educational records, and records of psychiatric treatment and treatment for drug and/or alcohol abuse or dependency, requested by that Board in connection with this application; or any further or future investigation by that Board necessary to determine my medical competence, professional conduct or physical or mental ability to safely engage in the practice of medicine. I further authorize the Arizona Medical Board or its successors to release to the organizations, individuals or groups listed above any information which is material to the application or any subsequent license.

ATTESTATION:

I ATTEST THAT ALL INFORMATION SUBMITTED ON AND WITH THIS APPLICATION IS TRUE. I am the person herein named subscribing to this application; I have read the statutes and rules regarding licensure and have read the complete application, know the full content thereof, and declare that all of the information contained herein and evidence or other credentials submitted herewith are true and correct. I am the lawful holder of the degree of Doctor of Medicine as prescribed by this application, that the same was procured in the regular course of instruction and examination, and that it, together with all the credentials submitted, were procured without fraud or misrepresentation or any mistake of which I am aware. I further acknowledge that falsification or misrepresentation of any item or response on this application is adequate to deny the application or to hold a hearing to revoke the license, if issued.

NOTE: Arizona law requires an applicant who has been charged with a felony or a misdemeanor involving conduct that may affect patient safety after submitting the application to notify the Board within 10 days after the charge is filed. A.R.S. §32-3208. For a list of reportable misdemeanors, see the website under Physician Center - Reportable Misdemeanors. All felonies are reportable.

Check this box if you are using FCVS (Federation Credentials Verification Service)

In addition to your e-mail address provided on page one of this application please indicate if you would like to designate/ authorize ONE other individual beside yourself to receive status updates on your application:

Name Phone# E-mail

First Name: Last Name:

Signature: Date:

MALPRACTICE ADDENDUM

(Complete this form if you answered "Yes" to question #14 on the questionnaire)

The applicant must complete this form for each malpractice settlement or judgment in the last 10 years. Please make copies of this form and return with the required documents. Please report only the settlement of a civil action.

First Name:

Last Name:

1. Have you had more than one malpractice settlement/judgment in the past 10 years? Yes No

If "Yes," please continue with the remaining questions on this addendum.

If "No," please skip to bottom of page and sign and date the addendum. No further information needed at this time.

2. Please provide a detailed clinical narrative regarding each malpractice case. Include the name of the patient, age, sex, date of occurrence and location (include address). Do not omit the answers to these questions or make reference to attached documents for answers. This section must be completed with your own description that includes all the facts requested above. NOTE: HIPAA regulations do not prevent you from responding and providing the requested information.

3. In this case, I served as a(n): Intern Resident Primary Physician Other:

4. The case was filed against a(n): Individual Doctor Group Hospital

5. What was the amount and date of the judgment or settlement?

6. What was the amount of the judgment or settlement attributed to you?

7. Has this case been investigated or reviewed by any state medical board? Yes No

If you answered "Yes," please request a resolution letter from the state medical board be sent directly to us. You do not need to attach the documents listed below if the case has been investigated or reviewed by any state medical board.

You are required to attach the following for each malpractice case:

- Copy of plaintiff's complaint
- Copy of judgment or settlement agreement
- Copy of complete set of medical records, including x-rays or diagnostic films (the application will not be processed without the x-rays and diagnostic films.)
- I certify that the information I have provided is correct to the best of my knowledge.

Signature:

Date:

Your application is not administratively complete until all documents are received.

SUPPLEMENTAL FORM

Please list all hospital affiliations within the past five (5) years, including moonlighting and courtesy staff affiliations. Do not include postgraduate training or self employment. List all medical employment, i.e. medical clinic, physician placement group, emergency medical group, radiology group, etc.

Check here if you have not been employed or held hospital affiliations within the past 5 years

Check here if you have been self employed for the past 5 years

First Name: Last Name:

HOSPITAL/CLINIC AFFILIATION

a. Hospital/Clinic Name: From: To:
Address: City: State: Zip:
Position Held:

b. Hospital/Clinic Name: From: To:
Address: City: State: Zip:
Position Held:

c. Hospital/Clinic Name: From: To:
Address: City: State: Zip:
Position Held:

MEDICAL EMPLOYMENT

a. Employer Name: From: To:
Address: City: State: Zip:

b. Employer Name: From: To:
Address: City: State: Zip:

c. Employer Name: From: To:
Address: City: State: Zip:

EXHIBIT C - Initial License Application, revised by AMB March 2013



ARIZONA MEDICAL BOARD
MD INITIAL LICENSE APPLICATION

9545 E Double Tree Ranch Rd., Scottsdale, AZ 85258
www.azmd.gov; Email: licensingreport@azmd.gov

Attach a photograph of passport quality no larger than 2 1/2 x 3 inches. (The size of this box) The photograph must not be taken more than 60 days before the date of the application.

To be completed and signed by applicant. All questions MUST be answered, even if only to indicate "None" or "N/A."

1. First Name:
Middle Name:
Last Name:

Other Names Used:

2. Social Security Number: No dashes

3. Date of Birth:

4. City of Birth: State of Birth:

OR Country of Birth:

Social Security Number, Date of Birth and Place of Birth are Confidential Information - Not for Public Disclosure

ADDRESSES:

Practice Address: This is the practice/principal place of business. The address and phone number will appear in the Medical Directory and on the Board's web site. Every physician must have an address available to the public. If only one address is provided, even if it is your home address, it will be available to the public. If you want your home address to be listed on your web site profile, please so indicate. Otherwise, no address will be provided on the profile, but it will be provided to the public if requested.

Mailing Address: If no address is provided, all Board correspondence will be sent to the Practice Address.

Email: This address is optional. If you provide an email address, it will not be released to the public.

Home Address: You are required to provide a home address and telephone number. They will not be released to the public unless you fail to provide an Office Address.

5. Practice/Training Name:

Practice/Training Address: City: State: Zip:

Practice Phone: Practice Fax:

Mailing Address: City: State: Zip:

Email:

Home Address: City: State: Zip:

Home Phone: Mobile Phone:

6. PROOF OF CITIZENSHIP: Effective January 1, 2008, based on Federal and State laws, all applicants must provide evidence that the applicant is lawfully present in the United States. Federal law, 8 U.S.C. §1641 and State law, A.R.S. §1-501, require documentation of citizenship or alien status for licensure. If the documentation does not demonstrate that the applicant is a United States citizen, national, or a person described in specific categories, the applicant will not be eligible for licensure in Arizona.

- I am a U.S. Citizen or U.S. National. (If this box is checked, please submit with your application a certified copy of your Birth Certificate or U.S. Passport.)[#]
- I am NOT a U.S. Citizen or U.S. National. (If this box is checked, please submit with your application a copy of your permanent resident card or Visa.)[#]

[#]See Statement of Citizenship form for complete list of accepted documents available on the website.

7. All states or provinces in which you have applied for or have been granted a license or registration to practice medicine, including license number, date issued and current status of the license. If more than five, attach a separate listing. If a license is pending or was not issued, so state. If none, please indicate "Not Applicable."

- a. State Board: License No.: Date Issued: License Status:
- b. State Board: License No.: Date Issued: License Status:
- c. State Board: License No.: Date Issued: License Status:
- d. State Board: License No.: Date Issued: License Status:
- e. State Board: License No.: Date Issued: License Status:

- g. Medical School Name:
- Medical School Location: Graduation Date:

If you graduated from a medical school located outside the United States of America or Canada, please list below:

ECFMS No.: Certificate Date:

9. List chronologically, all internship, residency and fellowship training in the U.S. or Canada (completed or not), or assistant professorship (or higher) at any programs attended, showing institution, address, type of program and dates. Attach a separate listing if needed.

- a. Institution: City: State:
- Type of Program: Dates of Attendance: From: To:
- b. Institution: City: State:
- Type of Program: Dates of Attendance: From: To:
- c. Institution: City: State:
- Type of Program: Dates of Attendance: From: To:
- d. Institution: City: State:
- Type of Program: Dates of Attendance: From: To:

First Name: Last Name:

10. License Exam. Please indicate all exams taken, the date(s) taken (month/day/year) and which state, if applicable:

- United States Medical Licensing Exam (USMLE): Step 3 Date: State:
- State Written Examination: Date: State: *The Commonwealth of Puerto Rico is not accepted.*
- National Board of Medical Examiners Examination (NBME): Certification Date:
- Federation of State Medical Boards Licensing Examination (FLEX): Date:
- Licentiate of the Medical Council of Canada (LMCC): Date:
- Special Purpose Examination (SPEX): Date: State:

11. Indicate your area of interest and whether you are certified by the American Board of Medical Specialties (ABMS):

| Area of Interest | ABMS Certified? | Practicing? | Expiration Date (Or indicate if lifetime certified) |
|----------------------|--|--|--|
| <input type="text"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="text"/> |
| <input type="text"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="text"/> |
| <input type="text"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="text"/> |

Please Note: The Arizona Medical Board accepts Federation Credentials Verification Service (FCVS) documents that are received by the Board directly from the Federation of State Medical Boards (FSMB) as verification. Contact the Federation at <http://www.fsmb.org> if you need more information regarding this service.

- Check this box if you are using FCVS (Federation Credentials Verification Service)

First Name: Last Name:

QUESTIONNAIRE

- 1. Have you had any application for medical licensure denied or rejected by another state or province licensing board? Yes No

- 2. Have you had any disciplinary or rehabilitative action taken against you by another licensing board, including other health professions? Yes No

- 3. Have you had any disciplinary actions, restrictions or limitations taken against you while participating in any type of training program or by any health care provider? Yes No

- 4. Have you ever been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency? Yes No

- 5. Have you been under investigation by any medical board or peer review body? Yes No

- 6. Have you ever had a medical license disciplined resulting in a revocation, suspension, limitation, restriction, probation, voluntary surrender, cancellation during an investigation, or entered into a consent agreement or stipulation? Yes No

- 7. Have your had hospital privileges revoked, denied, suspended, or restricted? Yes No

- 8. Have you been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against you? If so, provide an explanation and a copy of the complaint and either the agreed terms of settlement or the judgment. The verification must contain the name and address of each defendant, the name and address of each plaintiff, the date and location of the occurrence which created the claim and a statement specifying the nature of the occurrence resulting in the medical malpractice action. Yes No

- 9. Have you been subjected to any regulatory disciplinary action, including censure, practice restriction, sanction, or removal from practice, imposed by an agency of the federal or state government? Yes No

- 10. Have you had the authority to describe, dispense or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency? Yes No

- 11. Have you been found guilty or entered into a plea of no contest to a felony, misdemeanor involving moral turpitude in any state? (See list of explanations on web site at www.azmd.gov/Misdemeanors/Misdem.aspx) Yes No

- 12. Do you engage in the illegal use of any controlled substance, habit-forming drug, or prescription medication? Yes No

NOTE: In the event that the response to any of the questions above is "Yes," you must file an explanation.
Failure to properly answer these questions can result in Board disciplinary action, including revocation or denial of license.

CONFIDENTIAL QUESTIONS

- 1. Have you had or do you have a medical condition that impairs or limits your ability to safely practice medicine including a diagnosis or treatment for any psychotic disorder or substance abuse disorder? Yes No

- 2. Have you consumed intoxicating beverages resulting in your ability being impaired or limited to exercise the judgment and skills of a medical professional? Yes No

NOTE: In the event that the response to any of the questions above is "Yes," you must file an explanation.
Failure to properly answer these questions can result in Board disciplinary action, including revocation or denial of license.

First Name: Last Name:

SUPPLEMENTAL FORM

Please list all hospital affiliations within the past five (5) years, including moonlighting and courtesy staff affiliations. Do not include postgraduate training or self employment. List all medical employment, i.e. medical clinic, physician placement group, emergency medical group, radiology group, etc.

Check here if you have not been employed or held hospital affiliations within the past 5 years

Check here if you have been self employed for the past 5 years

First Name: Last Name:

HOSPITAL/CLINIC AFFILIATION

- a. Hospital/Clinic Name: From: To:
Address: City: State: Zip:
Position Held:

- b. Hospital/Clinic Name: From: To:
Address: City: State: Zip:
Position Held:

- c. Hospital/Clinic Name: From: To:
Address: City: State: Zip:
Position Held:

MEDICAL EMPLOYMENT

- a. Employer Name: From: To:
Address: City: State: Zip:

- b. Employer Name: From: To:
Address: City: State: Zip:

- c. Employer Name: From: To:
Address: City: State: Zip:

Application Instructions

In addition to the appropriate completion of the applicable sections of this application, the applicant will submit the following:

1. Certified evidence of legal name change if name is different from that shown on documents submitted with the application.
2. A payment of \$500 for processing your application. Should your application be approved you will be charged a prorated licensing fee.

Application Checklist

The APPLICANT must forward the following enclosed forms to the appropriate entity for completion. (if applicable)
(Once completed by the entity, these forms are to be sent directly to the AMB.)

- Medical College Certification
- Postgraduate Training Certification
- Clinical Instructor Certification
- ECFMG Certification
- Federation of State Medical Boards Disciplinary Search
- American Medical Association Physician Profile
- Verification of American Board or Medical Specialty Certification, if applicable
- Examination Results
USMLE, FLEX, SPEX, NBME or any State exam
- Licensure of the Medical Council of Canada (LMCC)
- Verification of Licensure from every state in which you have ever held a medical license or registration
- Verification of all medical employment for the past five years. This must be submitted by the verifying entity on its official letterhead.
- Verification of Hospital Affiliations for the past five years. This must be submitted by the verifying entity on its official letterhead.

NOTE: Arizona law requires an applicant who has been charged with a felony or a misdemeanor involving conduct that may affect patient safety after submitting the application to notify the Board within 10 days after the charge is filed. A.R.S. §32-3208. For a list of reportable misdemeanors, see the website under Physician Center - Reportable Misdemeanors. All felonies are reportable.

In addition to your e-mail address provided on page one of this application please indicate if you would like to designate/authorize ONE other individual beside yourself to receive status updates on your application:

Name Phone# E-mail

First Name: Last Name:

ATTESTATION:

I attest that all of the information contained in the application and accompanying evidence or other credentials submitted are true. I attest the credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which I am aware, and that I am the lawful holder of the credentials. I authorize the release of any information from any source requested by the Board necessary for initial and continued licensure in this state.

Signature of Applicant: Date:

Notarization

Before me, _____ on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

Notary Public's Signature

(Personalized Seal)



ARIZONA MEDICAL BOARD Medical College Certification

I, _____, request that my medical college certification or official transcript be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



ARIZONA MEDICAL BOARD POSTGRADUATE TRAINING VERIFICATION FORM

AUTHORIZATION: The Arizona Medical Board requires all applicants for licensure to obtain verification of all postgraduate training programs attended. This form must be completed by the Program Director. This is authorization to release any information in your files of record, favorable or otherwise, DIRECTLY to the Arizona Medical Board. Authorization may be sent via mail or fax to 9345 E Doubletree Ranch Road, Scottsdale, AZ 85238 or licensingreport@azmd.gov.

First Name: Middle Name: Last Name:
Signature: Date:

Important - Program Participation: Report incomplete postgraduate years (PGY) separately from those that were successfully completed. If the postgraduate year is currently in progress, report the expected completion date in the "To" field. Report internships, residencies and fellowships separately.

PG Year: Department/Specialty:
 Internship
 Residency From: To: (mm/dd/yy)
 Fellowship Successfully Completed? Yes No In Progress

PG Year: Department/Specialty:
 Internship
 Residency From: To: (mm/dd/yy)
 Fellowship Successfully Completed? Yes No In Progress

PG Year: Department/Specialty:
 Internship
 Residency From: To: (mm/dd/yy)
 Fellowship Successfully Completed? Yes No In Progress



This program was approved for postgraduate training during that period by the Accreditation Council for Graduate Medical Education (ACGME), or the Royal College of Physicians and Surgeons of Canada: Yes No

Institution Name: Name/Title:
Address: City: State: Zip:
Phone: Fax: Signature:
Date: (mm/dd/yy)



ARIZONA MEDICAL BOARD CLINICAL INSTRUCTOR VERIFICATION FORM

AUTHORIZATION: The Arizona Medical Board requires all applicants for licensure to obtain verification of all hospitals where they have been employed as a clinical instructor. This form must be completed by the Program Director. This is authorization to release any information in your files of record, favorable or otherwise, DIRECTLY to the Arizona Medical Board. Authorization may be sent via mail or fax to 9343 E Doubletree Ranch Road, Scottsdale, AZ 85238 or licensingreport@azmd.gov.

First Name: Middle Name: Last Name:
Signature: Date:

This is to certify that the applicant listed above was a full time (rank, i.e. assistant professor)
in the (type of program) at (name of program)
Located in: City: State: In the field of:
From: To:

1. The said program was approved for postgraduate training during that period by the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada. Yes No
2. Have the applicant's hospital or teaching duties ever been restricted or limited? Yes No *(If YES, please provide a written explanation.*
3. Was the applicant granted full clinical privileges at your institution? Yes No *(If NO, please provide a written explanation.*
4. Was there any reason not to continue the applicant as an instructor? Yes No *(If YES, please provide a written explanation.*
5. Was the applicant's performance as an instructor consistently rated satisfactory and/or above? Yes No
(If NO, please provide a written explanation and a copy of the evaluation(s).

Written
Explanation(s):

Name/Title:
Address: City: State: Zip:
Phone: Fax: Signature:





ARIZONA MEDICAL BOARD ECFMG CERTIFICATION

REQUEST FOR STATUS REPORT FOR ECFMG CERTIFICATION

Certifications will be sent directly to the ARIZONA MEDICAL BOARD, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258, or email: licensingreport@azmd.gov.

To confirm ECFMG certification status for an international medical graduate, please contact:

ECFMG Certification Verification Service

PO Box 48083

Newark, NJ 07101-4883

or you can order your ECFMG certificate online at www.ecfm.org

I, _____, request that my ECFMG certification be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



ARIZONA MEDICAL BOARD FEDERATION OF STATE MEDICAL BOARDS REPORT

REQUEST FOR FEDERATION OF STATE MEDICAL BOARDS (FSMB) REPORT

Reports will be sent directly to the ARIZONA MEDICAL BOARD, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258,
or email: licensingreport@azmd.gov.

To request a copy of your FSMB report, please contact:

FSMB Offices
400 Fuller Weber Road, Suite 300
Euless, TX 76039

or you can order your FSMB Report online at www.fmb.org

I, _____, request that my FSMB report be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



ARIZONA MEDICAL BOARD AMERICAN MEDICAL ASSOCIATION PHYSICIAN PROFILE

REQUEST FOR AMERICAN MEDICAL ASSOCIATION (AMA) PHYSICIAN PROFILE
Profiles will be sent directly to the ARIZONA MEDICAL BOARD, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258,
or email: licensingreport@azmd.gov.

To request a copy of your AMA Profile, please contact:

American Medical Association
515 North State Street
Chicago, IL 60610

or you can order your AMA Profile online at www.ama-assn.org

I, _____, request that my AMA profile be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



**ARIZONA MEDICAL BOARD
AMERICAN BOARD OF MEDICAL SPECIALTIES CERTIFICATION**

REQUEST FOR AMERICAN BOARD OF MEDICAL SPECIALTIES (ABMS) CERTIFICATION

Verifications will be sent directly to the ARIZONA MEDICAL BOARD, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258,
or email: licensingreport@azmd.gov.

If you are board certified you must request a copy of your ABMS Certification.

American Board of
Medical Specialties
1007 Church Street, Suite 404
Evanston, Illinois 60201

or you can order your ABMS Certification online at www.abms.org

I, _____, request that my ABMS certification be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



ARIZONA MEDICAL BOARD EXAMINATION RESULTS

REQUEST FOR EXAMINATION RESULTS

I, _____, request that my examination results be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:

-
- USMLE** United States Medical Licensing
3750 Market Street
Philadelphia, PA 19104

www.usmle.org
- FLEX, SPEX** Federation of State Medical Boards
PO Box 619850
Dallas, TX 75261

www.fsmb.org
- NBME** National Board of Medical Examiners
3750 Market Street
Philadelphia, PA 19104

www.nbme.org
- State Exam** Contact the appropriate state board



**ARIZONA MEDICAL BOARD
LICENTIATE OF THE MEDICAL COUNCIL OF CANADA**

LICENTIATE OF THE MEDICAL COUNCIL OF CANADA (LMCC)

Verifications will be sent directly to the ARIZONA MEDICAL BOARD, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258,
or email: licensingreport@azmd.gov.

To request a copy of your LMCC verification, please contact:

Medical Council of Canada
P.O. Box 8234 Stn T
Ottawa, ON Canada K1G 3H7

or online at <http://www.mcc.ca/en/>

I, _____, request that my LMCC verification be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



**ARIZONA MEDICAL BOARD
STATE LICENSE VERIFICATION**

I, _____, request that my state license verification be submitted directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



ARIZONA MEDICAL BOARD
MEDICAL EMPLOYMENT VERIFICATION REQUEST

Note: Verification is required from the employer where the applicant has been employed during the five years preceding the application.

I, _____, request that verification of my medical employment be submitted on the letterhead of the verifying Employer directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:



ARIZONA MEDICAL BOARD HOSPITAL AFFILIATION VERIFICATION REQUEST

Note: Verification is required from the hospital where the applicant has held privileges, consultation or teaching appointments during the five years preceding the application.

I, _____, request that verification of my hospital affiliation be submitted on the letterhead of the verifying hospital directly to the Arizona Medical Board, 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258 or email: licensingreport@azmd.gov

Applicant Signature:

Date:

EXHIBIT D – AMB'S Statement of Citizenship and Alien Status.

Source: <http://www.azmd.gov/Files/License/AZStatementofCitizenshipForm.pdf>

ARIZONA STATEMENT OF CITIZENSHIP & ALIEN STATUS

LIST A

All applicants must answer questions on the application regarding citizenship. A copy of a document that shows evidence of your citizenship or alien status **MUST BE** submitted with your application for licensure or renewal. See List A or List B.

Evidence showing U.S. citizen or U.S. national status includes the following:

a. Primary Evidence:

- (1) A birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction);
- (2) United States passport;
- (3) Report of birth abroad of a U.S. citizen (FS-240) (issued by the Department of State to U.S. citizens);
- (4) Certificate of Birth (FS-545) (issued by a foreign service post) or Certification of Report of Birth (DS-1350), copies of which are available from the Department of State;
- (5) Form N-561, Certificate of Citizenship;
- (6) Form I-197, United States Citizen Identification Card (issued by the Service until April 7, 1983 to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings) (formerly Form I-179, last issued in February 1974);
- (7) Form I-873 (or prior versions), Northern Marianas Card (issued by the Service to a collectively naturalized U.S. citizen who was born in the Northern Mariana Islands before November 3, 1986);
- (8) Statement provided by a U.S. consular official certifying that the individual is a U.S. citizen (given to an individual born outside the United States who derives citizenship through a parent but does not have an FS-240, FS-545, or DS-1350); or
- (9) Form I-872 (or prior versions), American Indian Card with a classification code "KIC" and a statement on the back identifying the bearer as a U.S. citizen (issued by the Service to U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

b. Secondary Evidence

If the applicant cannot present one of the documents listed in (a) above, the following may be relied upon to establish U.S. citizenship or U.S. national status:

- (1) Religious record recorded in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction) within three 3 months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;
- (2) Evidence of civil service employment by the U.S. government before June 1, 1976;
- (3) Early school records (preferably from the first school) showing the date of admission to the school, the applicant's date and U.S. place of birth, and the name(s) and place(s) of birth of the applicant's parents(s);
- (4) Census record showing name, U.S. nationality or a U.S. place of birth, and applicant's date of birth or age;
- (5) Adoption finalization papers showing the applicant's name and place of birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction), or, when the adoption is not finalized and the state or other U.S. jurisdiction listed above will not release a birth certificate prior to final adoption, a statement from a State-or jurisdiction-approved adoption agency showing the applicant's name and place of birth in one of such jurisdictions, and stating that the source of the information is an original birth certificate;
- (6) Any other document that establishes a U.S. place of birth or otherwise indicates U.S. nationality (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, or the Northern Mariana Islands (on or after November 4, 1986, Northern Mariana Islands local time) (unless the applicant was born to foreign diplomats residing in such a jurisdiction);

c. Collective Naturalization

If the applicant cannot present one of the documents listed in (a) or (b) above, the following will establish U.S. citizenship for collectively naturalized individuals:

Puerto Rico:

- Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
- Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

U.S. Virgin Islands:

- Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927;
- The applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or
- Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932.

Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

- Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);
- Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
- Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen

d. Derivative Citizenship

If the applicant cannot present one of the documents listed in a or b above, the following may be used to make a determination of derivative U.S. citizenship:

Applicant born abroad to two U.S. citizen parents: Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the applicant's birth.

Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent: Evidence that one parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth.

Applicant born out of wedlock abroad to a U.S. citizen mother: - Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for a period of one year.

Applicant born in the Canal Zone or the Republic of Panama:

- A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth; or
- A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

In all other situations in which an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within one of the above categories, but is unable to present the listed documentation:

- If the applicant is in the U.S., the applicant should contact the local U.S. Citizenship and Immigration Service office for determination of U.S. citizenship;
- If the applicant is outside the U.S., the applicant should contact the State Department for a U.S. citizenship determination.

e. Adoption of Foreign-Born Child by U.S. Citizen

- If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S. citizenship;
- Because foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, the applicant should contact the local U.S. Citizenship and Immigration Service office for a determination of U.S. citizenship, if the applicant provides no evidence of U.S. citizenship.

f. U.S. Citizenship By Marriage

A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922. Provide evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922.

Note: If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.

LIST B: QUALIFIED ALIENS, NONIMMIGRANTS, AND ALIENS PAROLED INTO U.S. FOR LESS THAN ONE YEAR

The documents listed below that are registration documents are indicated with an asterisk ("*").

a. Qualified Aliens

Evidence of "Qualified Alien" status includes the following:

Alien Lawfully Admitted for Permanent Residence

- *Form I-551 (Alien Registration Receipt Card, commonly known as a "green card"); or
- Unexpired Temporary I-551 stamp in foreign passport or on *I Form I-94.

Asylee

- * Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA;
- *Form I-688B (Employment Authorization Card) annotated "274a.12(a)(5)";
- * Form I-766 (Employment Authorization Document) annotated "A5";
- Grant letter from the Asylum Office of the U.S. Citizenship and Immigration Service; or
- Order of an immigration judge granting asylum.

Refugee

- * Form I-94 annotated with stamp showing admission under § 207 of the INA;
- * Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
- * Form I-766 (Employment Authorization Document) annotated "A3"

Alien Paroled Into the U.S. for a Least One Year

- * Form I-94 with stamp showing admission for at least one year under section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement.)

Alien Whose Deportation or Removal Was Withheld

- * Form I-688B (Employment Authorization Card) annotated "274a.12(a)(10)";
- * Form I-766 (Employment Authorization Document) annotated "A10"; or
- Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under § 241(b)(3) of the INA.

Alien Granted Conditional Entry

- * Form I-94 with stamp showing admission under §203(a)(7) of the INA;
- * Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
- * Form I-766 (Employment Authorization Document) annotated "A3."

Cuban/Haitian Entrant

- * Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6;
- Unexpired temporary I-551 stamp in foreign passport or on * Form I-94 with the code CU6 or CU7; or
- Form I-94 with stamp showing parole as "Cuba/Haitian Entrant" under Section 212(d)(5) of the INA.

Alien Who Has Been Declared a Battered Alien or Alien Subjected to Extreme Cruelty

- U.S. Citizenship and Immigration Service petition and supporting documentation

b. Nonimmigrant

Evidence of "Nonimmigrant" status includes the following:

- * Form I-94 with stamp showing authorized admission as nonimmigrant

c. Alien Paroled into U.S. for Less than One Year

Evidence includes:

- * Form I-94 with stamp showing admission for less than one year under section 212(d)(5) of the INA

EXHIBIT E - Screenshot of AMB website, taken March 25, 2013

The screenshot shows the official website of the Arizona Medical Board. At the top, there is a navigation bar with links for Home, Complaint, Recent Actions, Meeting Schedule, and FAQ. Below this is a banner with the board's mission statement: "The Board's mission is to protect public health and safety." The main content area is titled "Arizona Medical Board License Application" and features a sub-link for "MD Application". Contact information for the board is provided, including the address (9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258) and phone/fax numbers. There are also hyperlinks for "ARS 41-1080 Licensing Eligibility; Authorized presence documentation" and "Citizenship and Alien Status Form". A left-hand navigation menu lists various services such as Doctor Search, File a Complaint, and Consumer Center. A search bar is located in the top right corner.

NOTE: On this page, the AMB cited A.R.S. § 41-1080 and provided a hyperlink to the statute, without further explanation. The link to the "MD Application" opened to a form that cited A.R.S. § 1-501, which is not the applicable law for proof of legal citizenship or immigration status.

EXHIBIT F – Arizona Boards That Cited Errant Immigration Requirements for Licensing

- Arizona State Board of Nursing
- Arizona State Board of Accountancy
- Arizona Board of Osteopathic Examiners in Medicine and Surgery
- Arizona Board of Dispensing Opticians
- Medical Radiologic Technology Board of Examiners
- Arizona State Board of Optometry
- State of Arizona Acupuncture Board of Examiners
- Arizona Board of Technical Registration
- Arizona Board of Psychologist Examiners
- Arizona Board of Podiatry Examiners
- Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers
- Arizona Board of Behavioral Health Examiners
- Arizona Board of Homeopathic and Integrated Medicine Examiners
- Arizona Board of Cosmetology
- Arizona Board of Occupational Therapy Examiners
- Arizona Board of Athletic Training
- Arizona State Veterinary Medical Examining Board
- Arizona Board of Appraisal

Note: On March 29, 2013, the Attorney General's Office confirmed with us they notified the Assistant Attorneys General responsible for agencies on the list to correct the citations. The AMB's website and application form maintained the incorrect citation as late as June 20, 2013. As of September 23, 2013 the AMB website cited the correct statute, but the initial application for physicians did not.

EXHIBIT G - Arizona Legislative Council Memo Regarding Immigration
Verification Requirements for State Agencies to Issue Licenses
ARIZONA LEGISLATIVE COUNCIL

MEMO

March 21, 2013

TO: Dennis Wells, Ombudsman/Citizens' Aide

FROM: Emily Arnold, Legal Intern
Ken Behringer, General Counsel

RE: Immigration Status Verification Requirements (R-51-26)

QUESTION

What statutes authorize or compel a professional licensing board to verify a licensee's citizenship/immigration status?

ANSWER

Arizona Revised Statutes (A.R.S.) § 41-1080 requires that a state agency obtain one of the listed forms of acceptable identification from an applicant for a license before issuing the license in order to verify citizenship or immigration status of the applicant. However, an applicant does not need to prove citizenship or immigration status if the applicant: (1) is a resident of another state; (2) holds an equivalent license in that other state and the equivalent license is of the same type being sought in this state; and (3) seeks the Arizona license to comply with this state's licensing laws and not to establish residency in this state. A.R.S. § 41-1080(B).

The statute provides that an agency includes any agency of this state that issues a license for the purposes of operating a business in this state or issues a license to an individual who provides a service to any person. A license is an agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state or to an individual who provides a service to any person where the license is necessary in performing that service. A.R.S. § 41-1080(F). The professional licensing boards are state boards that issue licenses that are necessary for the licensees to conduct or provide a service. Therefore, the requirements of A.R.S. § 41-1080 apply to professional licensing boards.

Two statutes might appear to apply to professional licensing boards, but a closer examination indicates that they do not apply. A.R.S. § 1-501 contains additional

requirements for proof of citizenship or immigration status. However, because A.R.S. § 1-501 applies only to applicants for federal public benefits that are administered by this state or a political subdivision of this state, it does not apply to the professional licensing boards. Professional licenses are not considered "federal public benefits" as they are not funded by the federal government.¹

Similar requirements for state or local public benefits are prescribed in A.R.S. § 1-502. This statute specifically excludes professional licenses from the definition of state or local public benefits, however, so it does not apply to professional licensing boards.

Please contact our office if you have any further questions relating to this issue.

¹ "Federal public benefit" means--

- A. any grant, contract, loan, professional license, or commercial license *provided by an agency of the United States or by appropriated funds of the United States*; and
- B. any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

§ U.S.C. § 1611.

**EXHIBIT H – March 4, 2013 AMB Memo Outlining Revised Policies
Update on Medical Board Efforts
Arizona Medical Board
March 4, 2013**

Case #2102863 – ARBoPA

1. The PA Practice Act was amended in 2010, the PA rules were amended in 2012. With these changes, there is less information that PAs and their supervising physicians are required to provide to the Board. Due to the language that still remains in A.R.S. 32-2532(J), the Board has amended its Frequently Asked Questions and now has a form that Supervising Physicians must submit if they elect to modify their physician assistant's ability to prescribe up to 30 days controlled substances as automatically permitted by rule. These modifications will be reflected on the PA website profile.

See attachment 1, PA Prescribing Questions, and attachment 2, Prescribing Modification Form

2. The Board had previously begun the substantive time frame process by initiating investigations before the application was administratively complete. This was in order to expedite the process and would not have resulted in failure to meet our timeframes, it actually allowed us to issue licenses more quickly. The Board has revised its licensing policy so that we do not initiate the investigation of any "yes" answers, which is a substantive review, until the application is administratively complete.

See attachment 3, Revised Licensing Policy 007

Case #1202725 – Arizona Medical Board

1. a. The Board asserts that it has remained in compliance of all requirements regarding citizenship verification for licensure.
 - b. i. The Board is verifying that each locum tenens applicant holds a current and unrestricted license, has not been revoked or suspended, and has no unresolved complaints or formal charges filed against the applicant with any licensing board.
 - ii. Since September 2011, the Board had accepted ECFMG certification in lieu of actual international medical school records because ECFMG certification requires completion of medical school. The Board requires copies of medical school records from international medical schools before considering the application administratively complete.

See attachment 3, Revised Licensing Policy 007

- iii. The Board requires proof of postgraduate training certification rather than referring to the AMA profile. The Application is not considered administratively complete without the postgraduate training certification. Regarding examination of the scope of the training, breaks, transfers or disciplinary issues, the Board's authority to base a licensing decision on one of these factors is questionable (assuming, of course,

that the applicant provides proof of eventual completion of the required postgraduate training); therefore, the Board does not ask for this information.

See attachment 3, Revised Licensing Policy 007

iv The Board is verifying all previous licenses held, both current and expired, in every state reported by the applicant.

See attachment 3, Revised Licensing Policy 007

v The Board is creating a process by which forms can be uploaded and attached to the on-line renewal in order to allow the applicant to forward the forms to the entities that are required to complete and submit them to the Board.

vi Because of changes in statute, the rules in question, A.A.C. R4-16.204(F)(1) and(2) refer to statute that appears to have been repealed. No changes are necessary in order for the board to comply.

- c. This issue was addressed by the Board at their February 2012 off-site meeting. HB2406, which is now in the Senate for consideration, will allow the Board to evaluate applicants with expired Arizona licenses according to the requirements for licensure by endorsement.

See attachment 4, HB2406

- d. Although the statute regarding audits of licensees' continuing medical education gives the Board authority to conduct audits by indicating the Board "may" do so, the Board has re-instituted the policy of auditing a random 5 percent of renewal applications for compliance with the CME requirements.
- e. i and ii The Board is requiring that all supporting documentation to "yes" answers is received on paper applications before the renewal application is considered administratively complete. IT is working to come into compliance for the on-line renewal application.

2. This reflects a best practice because at the time of renewal, it is not required by statute or rule that the Board verify current status of Board certification(s), since they are not a condition of licensure. The Board verifies board certifications as part of the initial licensing process. Because there was a three-week period in which initial board certification was not verified due to an error, the Board is auditing the applications issued during that period in order to ensure that all board certification is verified. Although it is a best practice rather than a requirement, the Board is also now verifying board certification at the time of renewal.
3. As we have discussed, the Board has no role in appointing, reappointing, or replacing board members.

EXHIBIT I – Laws 2004, Chapter 264, Section 5 Which Amended A.R.S. §32-1426

Sec. 5. Section 32-1426, Arizona Revised Statutes, is amended to read:

32-1426. Licensure by endorsement

A. An applicant who is licensed in another jurisdiction and who meets the applicable requirements prescribed in section 32-1422, 32-1423 or 32-1424, has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible to be licensed to engage in the practice of medicine in this state through endorsement under either any one of the following conditions:

1. The applicant is certified by the national board of medical examiners or its successor entity as having successfully passed all three parts of the ~~examination of the national board of medical examiners~~ United States medical licensing examination or its successor examination.

2. The applicant has successfully passed a written examination that the board determines is equivalent to the United States medical licensing examination and that is administered by any state, territory or district of the United States, a province of Canada or the medical council of Canada.

~~B. An applicant seeking licensure based on any jurisdiction's examination shall establish to the satisfaction of the board that the examination is substantially equivalent to the examination required by the board and that any of the following has been met:~~

~~4-~~ 3. The applicant successfully completed the three part written federation of state medical boards licensing examination administered by any jurisdiction before January 1, 1985 and obtained a weighted grade average of at least seventy-five on the complete examination. Successful completion of the examination shall be achieved in one sitting.

2- 4. The applicant successfully completed the two component federation licensing examination administered after December 1, 1984 and obtained a scaled score of at least seventy-five on each component within a five year period.

~~3-~~ 5. The applicant's score on the United States medical licensing examination was equal to the score required by this state for licensure by examination pursuant to section 32-1425 and the applicant passed the three steps of the examination within a seven year period.

~~4-~~ 6. The applicant successfully completed one of the following combinations of examinations within a seven year period, or a longer period established by the board in rules adopted pursuant to title 41, chapter 6:

(a) Parts one and two of the national board of medical examiners examination, administered either by the national board of medical examiners or the educational commission for foreign medical graduates, with a successful score determined by the national board of medical examiners and passed either step three of the United States medical licensing examination or component two of the federation licensing examination with a scaled score of at least seventy-five.

(b) The federation licensing examination component one examination and the United States medical licensing step three examination with scaled scores of at least seventy-five.

(c) Each of the following:

(i) Part one of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step one of the United States medical licensing examination with a scaled score of at least seventy-five.

(ii) Part two of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step two of the United States medical licensing examination with a scaled score of at least seventy-five.

(iii) Part three of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step three of the United States medical licensing examination with a scaled score of at least seventy-five or component two of the federation licensing examination with a scaled score of at least seventy-five.

~~C.~~ B. The board may require an applicant seeking licensure by endorsement based on successful passage of a written examination or combination of examinations, the most recent of which precedes by more than ten years the application for licensure by endorsement in this state, to take and pass a special purpose licensing examination to assist the board in determining the applicant's ability to safely engage in the practice of medicine. The board may also conduct a records review and physical and psychological assessments, if appropriate, and may review practice history to determine the applicant's ability to safely engage in the practice of medicine.

EXHIBIT J – AMB Licensing Staff, September 2011-September 2012

| Month | Year | Name* | Action | Date |
|--------------|-------------|--------------|-----------------------------------|-------------|
| September | 2011 | LC-A | Hired – Licensing Coordinator | 9/7/2011 |
| September | 2011 | LC-B | Hired – Licensing Coordinator | 9/19/2011 |
| September | 2011 | LC-AA | Terminated | 9/23/2011 |
| October | 2011 | LC-C | Transfer to Licensing Coordinator | 10/3/2011 |
| October | 2011 | LM-A | Terminated – Licensing Manager | 10/20/2011 |
| November | 2011 | LC-D | Terminated | 11/2/2011 |
| November | 2011 | LC-E | Terminated | 11/3/2011 |
| November | 2011 | LM-B | Transfer to Licensing Manager | 11/21/2011 |
| May | 2012 | LC-F | Intern – Licensing | 5/21/2012 |
| June | 2012 | LC-F | Hired – Licensing Coordinator | 6/4/2012 |
| June | 2012 | LM-B | Resignation – Licensing Manager | 6/29/2012 |
| July | 2012 | LC-C | Transfer from Licensing | 7/2/2012 |
| July | 2012 | LM-C | Transfer to Licensing Manager | 7/2/2012 |
| July | 2012 | LC-F | Terminated | 7/24/2012 |
| July | 2012 | LC-G | Transfer to Licensing Coordinator | 7/30/2012 |

Source: AMB Executive Director

*Modified names of staff members to protect privacy.

Terms and Abbreviations

| | |
|-------|---|
| AAC | Arizona Administrative Code. The official compilation of rules that govern state agencies, boards, and commissions. (www.azsos.gov) |
| ABMS | American Board of Medical Specialties. A not-for-profit organization which assists medical specialty boards in the development and use of standards in the ongoing evaluation and certification of physicians. A physician is "Board Certified" when endorsed by ABMS. (www.abms.org) |
| AMA | American Medical Association. A not-for-profit organization promoting the art and science of medicine and the betterment of public health. (www.ama-assn.org) |
| AMB | Arizona Medical Board. Official state agency that licenses Arizona allopathic physicians and investigates patient complaints against physicians. (www.azmd.gov) |
| ARS | Arizona Revised Statutes. The statutory laws for the State of Arizona (www.azleg.state.az.us) |
| AZDO | Arizona Board of Osteopathic Examiners. Official Arizona state agency that governs the practice of osteopathic medicine in Arizona. (www.azdo.gov) |
| CME | Continuing Medical Education (credits). Educational courses required post-graduation to maintain licensure. |
| DO | Doctor of Osteopathy. An osteopathic physician licensed to practice medicine, perform surgery, and prescribe medication. (www.osteopathic.org) |
| ECFME | Educational Commission for Foreign Medical Graduates. Certifies international medical graduates for entry into U.S. postgraduate training; evaluates and certifies health care professionals nationally and internationally. (www.ecfm.org) |
| FCVS | Federation Credentials Verification Service. A service run by the non-profit organization, FSMB that "establishes a permanent, lifetime repository of primary-source verified core credentials for physicians and physician assistants." ⁸² |
| FSMB | Federation of State Medical Boards. A nonprofit organization that, "promotes excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state |

⁸² "Federation Credentials Verification Service (FCVS)." *FSMB.org*. Federation of State Medical Boards. Web.

- medical and osteopathic boards in their protection of the public." (www.fsmb.org)
- GRRC Arizona Governor's Regulatory Review Council. A body within Arizona's executive branch which "monitors and ultimately decides whether most rulemaking proposals become official rules published in the Arizona Administrative Code."⁸³
- IMG.....An international medical graduate.
- Licensure by endorsement.....A process whereby a state issues an unrestricted license to practice medicine to an individual who holds a valid and unrestricted license in another jurisdiction. (www.fsmb.org)
- Locum tenens* The license given to a physician who is filling an office for a time or temporarily taking the place of another physician.
- LT.....See: *locum tenens*.
- MD.....An allopathic physician or medical doctor.
- NPDB National Practitioner Data Bank. An alert or flagging system intended to facilitate a comprehensive review of the professional credentials of health care practitioners (www.npdb-hipdb.hrsa.gov).
- PGT.....Refers to postgraduate training, which includes hospital internship, residency or clinical fellowship programs.
- RuleAn agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements. A.R.S. § 41-1001(18)
- Rulemaking The process for formulation and finalization of a rule. A.R.S. § 41-1001(19)
- Statute.....Law passed by Legislative branch of Arizona government.

⁸³ Sciarrotta, Jr., Joseph, William Hylan, and Scott Cooley. "Rulemaking and Your Clients' Interests." *Arizona Attorney* 47.10 (2011): 34-40. Print.