



## Arizona Medical Board

9545 E. Doubletree Ranch Road, Scottsdale AZ 85258 • website: [www.azmd.gov](http://www.azmd.gov)  
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October 8, 2013

### Governor

**Janice Brewer**

Dennis Wells  
Arizona Ombudsman-Citizens' Aide  
3737 N. 7<sup>th</sup> Street. Ste. 209  
Phoenix, AZ 85014

### Members

**Gordi Khera, M.D.**

Chair  
Physician Member

**Jody Jenkins, M.D.**

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**Harold Magalnick, MD**

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Public Member/R.N.

William Thrift, M.D.

Physician Member

### Executive Director

Lisa S Wynn, B.S.

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.

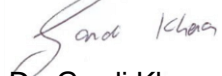
The members of the Board would like to specifically thank the Office of the Ombudsman-Citizens' Aide, the Attorney General's Office, the Office of the Governor, the Honorable Jan Brewer and the Legislature for their support and the confidence they have bestowed in the Agency and the Board

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)**



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### Arizona Medical Board Response to Response to Arizona Ombudsman-Citizens' Aide, Case# 1202725

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#### 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.