

## 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 She argued the new policies were superior to "outdated" state laws, while meeting public demand for less regulation and satisfying physicians' expectations for quicker licensure.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.

## 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.<sup>1</sup>

### 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

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<sup>1</sup> Idaho Administrative Code, Rules for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery, IDAPA 22.01.01.052.04.

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 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.