

ARIZONA STATE HOUSE OF REPRESENTATIVES
RESEARCH STAFF



TO: JOINT LEGISLATIVE AUDIT COMMITTEE

DATE: January 21, 2022

SUBJECT: Sunset Review of the Arizona
Acupuncture Board of Examiners

Ahjahna Graham
Committee on Health and
Human Services
Telephone: (602) 926-3583

Attached is the final report of the sunset review of the Arizona Acupuncture Board of Examiners which was conducted by the Senate Health and Human Services and House Health and Human Services Committees of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Douglas A. Ducey

President of the Senate
Senator Karen Fann

Speaker of the House of Representatives
Representative Russell Bowers

Senate Members
Senator Nancy Barto, Co-Chair
Senator Tyler Pace
Senator Rosanna Gabaldon
Senator Sally Ann Gonzales
Senator Wendy Rogers
Senator Thomas Shope
Senator Raquel Terán
Senator Kelly Townsend

House Members
Representative Joanne Osborne, Co-Chair
Representative Steve Kaiser
Representative Kelli Butler
Representative Joseph Chaplik
Representative Alma Hernandez
Representative Beverly Pingerelli
Representative Pamela Powers Hannley
Representative Amish Shah
Representative Justin Wilmeth

Arizona Acupuncture Board of Examiners
Arizona State Library, Archives & Public Records
House Republican Staff
House Democratic Staff
House Research Staff

Senate Resource Center
Senate Republican Staff
Senate Democratic Staff
Senate Research Staff
Office of the Auditor General

Sunset Review of the
Arizona Acupuncture Board of Examiners



Final Report

January 2022

SENATE MEMBERS

Senator Nancy Barto, Co-Chair
Senator Tyler Pace
Senator Rosanna Gabaldon
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Senator Thomas Shope
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HOUSE MEMBERS

Representative Joanne Osborne, Co-Chair
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Representative Pamela Powers Hannley
Representative Amish Shah
Representative Justin Wilmeth

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Report 2022

Background

Pursuant to [A.R.S. § 41-2953](#), the Joint Legislative Audit Committee assigned the sunset review of the Arizona Acupuncture Board of Examiners (Board) to the Senate Health and Human Services and House of Representatives Health and Human Services Committees of Reference for review.

Established in 1998, the Board was created to regulate the practice of acupuncture. The Board licenses acupuncturists and certifies auricular acupuncturists for detoxification or substance abuse programs, acupuncture training and preceptorship training programs, continuing education programs and visiting professors. It also investigates complaints and enforces the standards of practice for the acupuncture profession. Since the Board's creation its membership has consisted of nine members, including four licensed acupuncturists, three consumers and two licensed health professionals all appointed by the Governor for three-year terms ([A.R.S. §§ 32-3902](#), [32-3903](#), [32-3924](#), [32-3926](#) and [32-3951](#)).

[Laws 2021, Chapter 312](#) modified the Board's membership requirements as follows: 1) beginning January 17, 2022, one member who is certified or licensed to practice auricular acupuncture or acupuncture; 2) beginning January 18, 2022, two consumers who meet specified requirements and one member who meets prescribed licensure criteria; and 3) beginning January 20, 2022, three members who are licensed to practice acupuncture and have practiced in Arizona or any state for at least one year.

The Board terminates on July 1, 2022, unless legislation is enacted for its continuation ([A.R.S. § 41-3022.25](#)).

Summary of Committee Activity

The Senate Health and Human Services and House Health and Human Services Committees of Reference met on January 13, 2022, to evaluate the Board's response to the sunset factors and receive public testimony.

Committee Recommendation

The Senate Health and Human Services and House Health and Human Services Committees of Reference recommended that the Board be continued for eight years until July 1, 2030.

Appendix A:

January 13, 2022, Senate Health and Human Services and House Health and
Human Services Committees of Reference
Minutes and Reference Materials

ARIZONA STATE LEGISLATURE

INTERIM JOINT MEETING NOTICE OPEN TO THE PUBLIC

HOUSE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE AND SENATE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE

Date: Thursday, January 13, 2022
Time: 9:30 A.M. or Upon Adjournment of Floor
Place: HHR 1

Members of the public may access a livestream of the meeting here:
<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011007>

AGENDA

1. Call to Order
2. Roll Call
3. Sunset Review of the Arizona Acupuncture Board of Examiners
Presentation by the Arizona Acupuncture Board of Examiners
Public Testimony
Discussion and Recommendation
4. Sunset Review of the Arizona Board of Chiropractic Examiners
Presentation by the Arizona Board of Chiropractic Examiners
Public Testimony
Discussion and Recommendation
5. Sunset Review of the Arizona State Board of Dispensing Opticians
Presentation by the Arizona Office of the Auditor General
Response by the Arizona State Board of Dispensing Opticians
Public Testimony
Discussion and Recommendation
6. Sunset Review of the Arizona State Board of Nursing
Presentation by the Arizona Office of the Auditor General
Response by the Arizona State Board of Nursing
Public Testimony
Discussion and Recommendation

7. Sunset Review of the Arizona State Board of Pharmacy
Presentation by the Arizona Office of the Auditor General
Response by the Arizona State Board of Pharmacy
Public Testimony
Discussion and Recommendation
8. Adjourn

Members:

Senator Nancy Barto, Co-Chair
Senator Rosanna Gabaldon
Senator Sally Ann Gonzales
Senator Tyler Pace
Senator Wendy Rogers
Senator T.J. Shope
Senator Raquel Terán
Senator Kelly Townsend

Representative Joanne Osborne, Co-Chair
Representative Steve Kaiser
Representative Kelli Butler
Representative Joseph Chaplik
Representative Alma Hernandez
Representative Beverly Pingerelli
Representative Pamela Powers Hannley
Representative Amish Shah
Representative Justin Wilmeth

01/05/2022
01/06/2022

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People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032 or through Arizona Relay Service 7-1-1.

ARIZONA STATE LEGISLATURE

HOUSE HEALTH & HUMAN SERVICES COMMITTEE OF REFERENCE AND SENATE HEALTH AND HUMAN SERVICES COMMITTEE OF REFERENCE

Minutes of the Meeting

January 13, 2022

9:30 A.M., HHR1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011007>

Members Present:

Senator Barto, Co-Chair
Senator Gabaldon
Senator Gonzales
Senator Rogers
Senator Shope
Senator Terán
Senator Townsend

Representative Osborne, Co-Chair
Representative Steve Kaiser
Representative Butler
Representative Chaplik
Representative Hernandez
Representative Pingerelli
Representative Powers Hannley
Representative Wilmeth

Members Excused:

Senator Tyler Pace

Members Absent:

Representative Shah

Staff:

Michael Madden, Health and Human Services Committee Analyst
Maelinn Chow, Health and Human Services Assistant Analyst
Ahjahna Graham, House Research Analyst
Jeremy Bassham, House Research Assistant Analyst
Bethany Graham, House Research Intern

Co-Chair Osborne called the meeting to order at 10:00 a.m. and attendance was noted by the committee secretary.

SUNSET REVIEW OF THE ARIZONA ACUPUNCTURE BOARD OF EXAMINERS

Presentation by the Arizona Acupuncture Board of Examiners

David Geriminsky, Agency Director, AZ Acupuncture Board, explained the Board, the Board's response to the Audit General's Audit and answered questions posed by the Committee.

Public Testimony

Shannon Whiteaker, Asian Medicine Acupuncturists of Arizona, testified in favor on the continuation for the Arizona Acupuncture Board of Examiners.

Marilyn Allen, Vice-President, American Acupuncture Association, testified in favor on the continuation for the Arizona Acupuncture Board of Examiners.

Discussion and Recommendation

Representative Butler asked questions regarding the Board.

Ms. Allen answered questions posed by the Committee.

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona Acupuncture Board of Examiners be continued for 8 years until July 2, 2030. The motion CARRIED with a roll call vote of 15-0-2 (Attachment 1).

SUNSET REVIEW OF THE ARIZONA BOARD OF CHIROPRACTIC EXAMINERS

Presentation by the Arizona Board of Chiropractic Examiners

Dr. Babak M. Nayeri, Executive Director, AZ Board of Chiropractic Examiners, distributed and explained, a PowerPoint presentation, entitled "Sunset Review" (Attachment A) and gave an overview of the Board.

The Committee discussed and offered comments for the presentation mentioned above.

Public Testimony

Dr. Richard Gaurino, Chair, Board of Chiropractic Examiners, testified in favor on the continuation of the Arizona Board of Chiropractic Examiners.

Discussion and Recommendation

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona Board of Chiropractic Examiners be continued for 8 years until July 1, 2030.

Senator Gabaldon made a substitution motion that the Joint Health and Human Services COR recommends that the Arizona Board of Chiropractic Examiners be continued for 4 years until July 1, 2026.

Senator Gabaldon explained her motion.

Representative Butler seconded the motion.

Senator Barto offered comments on her opposition to the substitute motion.

Representative Osborne called for the vote on the substitute motion.

The substitute motion FAILED with a roll call vote of 6-9-2 (Attachment 2).

Representative Osborne called for the vote on the motion made by Senator Barto.

The motion CARRIED with a roll call vote of 10-5-2 (Attachment 3).

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF DISPENSING OPTICIANS

Presentation by the Arizona Office of the Auditor General

Dale Chapman, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona State Board of Dispensing Opticians" (Attachment B).

Response by the Arizona State Board of Dispensing Opticians

Megan Darian, Executive Director, State Board of Dispensing Opticians, gave an update regarding the Board's response to the Auditor General's Performance Audit and Sunset Review.

Public Testimony

No public testimony took place.

Discussion and Recommendation

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona State Board of Dispensing Opticians be continued for 8 years until July 1, 2030. The motion CARRIED with a roll call vote of 13-0-4 (Attachment 4).

RECESS

At 11:09 a.m. the Chairman recessed the meeting to the sound of the gavel.

RECONVENE

At 11:18 a.m. the Chairman called the meeting to order.

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF NURSING

Presentation by the Arizona Office of the Auditor General

Dale Chapman, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona State Board of Nursing" (Attachment C).

Response by the Arizona State Board of Nursing

Joey Ridenour, Executive Director, Arizona State Board of Nursing, distributed and explained a handout entitled "Summary of Audit Recommendation (Attachment D) and gave overview of the Board and the work the Board has done.

The Committee discussed and offered comments on the response from Ms. Ridenour.

Public Testimony

Kathryn Busby, Arizona Nurses Association, testified in favor on the continuation and voiced her concerns.

The Committee discussed and asked questions regarding Ms. Busby's testimony.

Carol Schaeffer, Nursing Advocate, testified regarding the poor treatment that has been received from the Nursing Board and testified against the continuation of the Board.

Alice Minch, representing herself, testified regarding the poor treatment that has been received from the Board.

Discussion and Recommendation

The Committee discussed and commented on Ms. Minch's testimony.

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona State Board of Nursing be continued for 8 years until July 1, 2030. The motion CARRIED with a roll call vote of 14-0-3 (Attachment 5).

Senators Gabaldon, Gonzales, Townsend, Representatives Butler, Powers Hannley, Senator Barto and Representative Osborne explained their vote.

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF PHARMACY

Presentation by the Arizona Office of the Auditor General

Tanner Weigel, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona State Board of Pharmacy" (Attachment E).

Response by the Arizona State Board of Pharmacy

The Committee discussed and offered comments on the presentation mentioned above.

Kamlesh Gandhi, Executive Director, Arizona State Board of Pharmacy, gave an overview of the Board and its purpose.

Mr. Gandhi answered questions posed by the Committee.

Public Testimony

Mark Boesen, representing himself, testified in support on the continuation of the Board but encouraged continued work with the stakeholders. Mr. Boesen answered questions posed by the Committee.

Discussion and Recommendation

The Committee discussed and commented on Mr. Boesen's testimony.

Representative Osborne requested a motion on the recommendation.

Senator Barto moved that the House Health and Human Services Committee of Reference and Senate Health and Human Services Committee of Reference recommends that the Arizona State Board of Pharmacy be continued for 8 years until July1, 2030.

Representative Butler made a substitute motion that the Joint Health and Human Services COR recommends that the Arizona State Board of Pharmacy be continued for 4 years until July1, 2026.

Senator Gonzales seconded the motion.

Senator Barto offered comments against the four year substitute motion.

Representative Powers Hannley offered comments in support of the four year substitute motion.

Representative Osborne called for the vote on the substitute motion.

The substitute motion CARRIED with a roll call vote of 9-6-2 (Attachment 6).

Senators Gabaldon and Rogers, Representatives Butler, Chaplik and Osborne explained their vote.

Attached is a list noting the individuals who registered their position on the agenda items (Attachment F).

Attached are forms noting the individuals who submitted a Speaker slip on the agenda items (Attachment G).

There being no further business, the meeting was adjourned at 1:48 p.m.

Respectfully submitted,

Brisa Roman
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)



Arizona House of Representatives
Phoenix, Arizona 85007

June 21, 2021

Executive Director David Geriminsky
State of Arizona Acupuncture Board of Examiners
1740 W Adams Street Suite 3005
Phoenix, Arizona 85007

Dear Executive Director Geriminsky:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by legislative committees of reference. On completion of the sunset review, the committees of reference recommend to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the State of Arizona Acupuncture Board of Examiners to committees of reference comprised of members of the House of Representatives Committee on Health and Human Services and the Senate Committee on Health and Human Services.

Pursuant to A.R.S. § 41-2954, the committee of reference is required to consider certain sunset factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your agency's response to the factors listed below:

1. The objective and purpose in establishing the agency and the extent to which the objective and purpose are met by private enterprises in other states.
2. The extent to which the agency has met its statutory objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency serves the entire state rather than specific interests.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the agency to timely investigate and resolve complaints within its jurisdiction.
7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
8. The extent to which agencies have addressed deficiencies in their enabling statutes that prevent them from fulfilling their statutory mandate.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in A.R.S. § 41-2954.
10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.
11. The extent to which the level of regulation exercised by the agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.
13. The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.

Additionally, please provide written responses to the following:

1. Identify the problem or the needs that the agency is intended to address.
2. State, to the extent practicable, in quantitative and qualitative terms, the objectives of the agency and its anticipated accomplishments.
3. Identify any other agencies having similar, conflicting or duplicative objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
4. Assess the consequences of eliminating the agency or of consolidating it with another agency.

Finally, Laws 2021, Chapter 176 requires the committees of reference to consider certain factors for each agency that administers an *occupational regulation*, which is defined as: 1) a statute, rule, practice, policy or other state law that allows an individual to use an occupational title or work in a lawful occupation; and 2) a government registration, government certification and occupational or professional license. An *occupational regulation* does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those state laws regulate an individual's personal qualification to perform a lawful occupation. If your agency falls under this category, please provide written responses to the following:

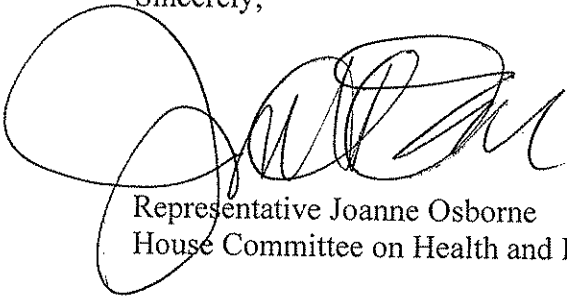
1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502, as amended, transferred and renumbered by Laws 2021, Chapter 176.
2. The extent to which the failure to regulate a profession or occupation will result in:
 - a. the loss of insurance.
 - b. an impact to the ability to practice in other states or as required by federal law.
 - c. an impact to the required licensure or registration with the federal government.
 - d. the loss of constitutionally afforded practices.

Your response should be received by September 1, so we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Emily Bonner
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at (602) 926-3181 or Emily Bonner, the House Health and Human Services Committee Research Analyst, at (602) 926-5725.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joanne Osborne', is written over a large, loopy scribble.

Representative Joanne Osborne
House Committee on Health and Human Services, Chair

cc: Senator Nancy Barto, Senate Committee on Health and Human Services, Chair
Cherie Stone, Senate Committee on Health and Human Services, Analyst

STATE OF ARIZONA ACUPUNCTURE BOARD OF EXAMINERS



2022

Sunset Review Agency Response

Representative Joanne Osborne: In response to your letter dated June 21, 2021 and in accordance with the sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, including the provisions of A.R.S § 41-2954, I offer the following response to the sunset consideration factors for the State of Arizona Acupuncture Board of Examiners (the "Board"):

State of Arizona Acupuncture Board of Examiners

SUNSET REVIEW AGENCY RESPONSE

1. THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE AGENCY AND THE EXTENT TO WHICH THE OBJECTIVE AND PURPOSE ARE MET BY PRIVATE ENTERPRISES IN OTHER STATES.

The legislature established the board in 1998 to regulate the practice of acupuncture. Its mission is to protect the health, safety, and welfare of the public by regulating and maintaining standards of practice in the field of acupuncture. The Board's responsibilities include:

- Issuing licenses and certificates to qualified applicants—The Board licenses acupuncturists and certifies auricular (ear) acupuncturists (see textbox). According to board records, as of August, 2021, the Board had 698 active licensed acupuncturists and 35 active certified auricular acupuncturists. According to board records, the Board approved 92 new acupuncture licenses and 16 new auricular certificates in calendar year 2020. All licensees and certificate holders are required to renew their license and/or certificate annually.
- Investigating and resolving complaints—The Board is required to investigate complaints against licensees and certificate holders and can take statutorily authorized nondisciplinary or disciplinary action, as needed, such as issuing a letter of concern or placing a licensee on probation. According to board records, the Board opened a total of six complaints against licensed acupuncturists between July 1, 2018 and June 30, 2021. The Board did not receive any complaints against auricular acupuncturists during this time frame. Of the complaints, four were dismissed, one resulted in nondisciplinary action, and one resulted in disciplinary action.

The Board is not aware of any state where private enterprise fills the role of regulating Acupuncturists or Auricular Acupuncturists.

2. THE EXTENT TO WHICH THE AGENCY HAS MET ITS STATUTORY OBJECTIVE AND PURPOSE AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The Legislature established the Board to regulate the profession of Acupuncture and to protect the public health safety and welfare. The Board has largely succeeded in meeting its statutory objectives and purpose. The Board reviews licenses for practice as Acupuncturists and Auricular Acupuncturists. The Board also reviews complaints.

The Board should review Continuing Education requirements in rule. The Board should research national trends in Continuing Education requirements, propose new rules, and develop and implement new policies and procedures for Auditing for compliance. While a review of Continuing Education Auditing

found that the Board was processing Continuing Education and reviewing for compliance as required by law, more could be done to simplify the process for licensees, increase options for approved CE, and reduce or eliminate unnecessary or burdensome regulation

The operations of the Board are extremely efficient, managed entirely by a staff of two: an Executive Director and a Licensing Coordinator. In 2018 the Board employed one Executive Director. In October of 2018 the Arizona Acupuncture Board of Examiners and the Arizona Board of Homeopathic Medicine Examiners entered into an interagency agreement effectively cooperating agency functions. The Boards Share one Executive Director and one Licensing Coordinator. This cooperation has increased service for members of both bodies of licensees. The Boards remain completely independent in decision making powers for their professions as only administrative functions are cooperated.

The Board faces struggles with technology. The Board is currently on a system with several other state agencies that does not meet its needs. System errors and inefficiencies cause delays in licensing applicants and in responding to request for service from licensees. The Board should evaluate then implement other opportunities for ecommerce which meets the specific needs of regulation, provides clear and accurate information to the public, eases the burden of regulation on licensees and is within its budgetary constraints.

3. THE EXTENT TO WHICH THE AGENCY SERVES THE ENTIRE STATE RATHER THAN SPECIFIC INTERESTS.

The Board serves the State by issuing licenses and registrations to individuals practicing Acupuncture throughout Arizona. In addition, the Board receives and investigates complaints and imposes nondisciplinary and disciplinary action on those who violate Board laws and rules. Further, the Board provides the public with information through its website regarding licensees and certificate holders, including disciplinary history. The website also informs the public that it may contact the board office to obtain information about dismissed complaints and nondisciplinary actions that the Board has taken against licensees and certificate holders.

4. THE EXTENT TO WHICH RULES ADOPTED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE.

The Board is governed by the rules contained within Title 04, Chapter 8 of the Arizona Administrative Code. The rules are consistent with the legislative mandate. In accordance with the legislative mandate to complete five-year reviews of its rules, the Board has recently completed its 5 year rule review and identified several areas where rules could be modified or eliminated to reduce regulatory burdens and/or simplify administration. This includes modifying rules to allow for more streamlined online applications and digital communication with licensees, streamlining the Continuing Education requirements and audit procedures, simplifying the Complaint process, and others.

As identified in the prior Audit, some of the information required by board rule as part of the licensure and certification process may not be needed to protect public health and safety.

Rule requires both initial license and certificate applicants to include a signed photograph of themselves with their applications.

The Board's rules require that acupuncture licensees who are selected for a continuing education audit provide to the Board a certificate or other evidence of attendance from the provider of each approved continuing education course. Rule requires the certificates to include specific elements, such as the licensee's license number, the name of the entity that approved the continuing education, and the time of day during which the continuing education course was held.

The Board is statutorily responsible for initiating complaint investigations against licensees and certificate holders and taking disciplinary actions to enforce its statutes. However, two of the Board's rules, Arizona Administrative Code (AAC) R4-8-602(A) and R4-8-601(C), limit the Board's ability to meet its statutory duty to investigate complaints and take disciplinary action. Specifically, these rules require the Board to dismiss complaints that do not include all of the information specified in rule, including the licensee's name, address, and telephone number, as well as the date the complainant last discussed the complaint with the licensee. Although some of this information is important, such as the licensee's name, the Board does not need every piece of information required by rule in order to proceed with a complaint investigation.

The Board began the rule making process to address these and other concerns with the intent to ease regulatory burdens on licensees and the public by seeking statutory and rule change. The Board chose to hold rule changes until further Statutory Changes were approved. However, the Covid-19 pandemic delayed statutory changes until the 2021 Legislative session. That legislation was approved and will go into effect in September 2021. Now that the legislation has passed, the Board plans to have a rules package submitted by December 2021.

The Board is aware that the reduction of burdensome regulations has been and is a priority for both the Legislative and Executive branches, and will continue to improve its rules accordingly.

5. THE EXTENT TO WHICH THE AGENCY HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE ADOPTING ITS RULES AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC.

The Board has proposed rule changes that remove some aspects of its complaint resolution process from rule, including the 90-day complaint filing limitation. The Board most recently filed its notice of proposed rulemaking with the Arizona Secretary of State's Office in September 2019. However, the Board reported that the rulemaking process was postponed because of the COVID-19 pandemic and the Board plans to make additional rule changes to address legislation from the 2021 legislative session that changed some licensing and Board composition requirements.

The Agency adheres to the Arizona Administrative Procedures Act, which includes the solicitation and acceptance of public comment during the rulemaking process and encourages input from the state Acupuncture Society and the public.

6. THE EXTENT TO WHICH THE AGENCY HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION.

The Board complies with its policy on complaint handling. The Board drafted and approved a policy detailing the investigation process. The policy requires reports to the Board on the status of pending complaints, assigning priority levels based on the threat to the public health safety and welfare, and setting time frames for each part of the complaint handling process.

According to board records, the Board opened a total of six complaints against licensed acupuncturists between July 1, 2018 and June 30, 2021. The Board did not receive any complaints against auricular acupuncturists during this time frame. Of the complaints, four were dismissed, one resulted in nondisciplinary action, and one resulted in License Revocation.

The Board utilizes its Executive Director as an investigator and may use volunteer Acupuncturist investigators as the case requires. Complaints are handled by the Board directly including Formal Hearings to consider Suspension or Revocation of license. The Board is represented by the Attorney General's office.

7. THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER THE ENABLING LEGISLATION.

The Attorney General is the Board's attorney according to A.R.S. §41-192(A)(1). Pursuant to this statute, the Attorney General is required to provide the legal services the Board requires, such as representing the Board at meetings, prosecuting disciplinary actions, handling appeals from board orders, defending against lawsuits, advising the Board on rulemaking, and filing petitions for injunctive relief. Further, according to A.R.S. §32-3953, the Board has the authority to have a county attorney file a petition to enjoin violations of the Board's statutes or rules, in addition to having the Attorney General make the filing.

A.R.S. §32-3954 classifies practicing Acupuncture without being licensed or exempted by the Board Statutes as a class 1 misdemeanor.

8. THE EXTENT TO WHICH AGENCIES HAVE ADDRESSED DEFICIENCIES IN THEIR ENABLING STATUTES THAT PREVENT THEM FROM FULFILLING THEIR STATUTORY MANDATE.

Since the Last sunset review the Board sought statutory change in 2021:

2021 fifty-fifth Legislature First Regular Session

Generally this bill modified the composition of the Board, removed the requirement that Auricular Acupuncturists operate only in Chemical Dependency Programs or CDPs and reduced burdens on our licensees while clarifying language.

The Board is constantly seeking to reduce burdens on licensees and applicants. For example, they are discussing introducing legislation to make changes to the fingerprinting process and create an inactive license status in order to reduce application timeframes and increase license portability.

9. THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE AGENCY TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN A.R.S. § 41-2954.

The Board is evaluating several statutory changes designed to better protect the public health, safety, and welfare. The Board is considering changing its initial licensing criminal history check from a one-time fingerprint-based criminal background check to requiring the maintenance of a fingerprint clearance card. This would allow for real time notification to the Board in the case a current licensee were to be charged with a crime.

The Board should seek legislation to create an inactive or retired license status to provide greater licensure portability.

The Board should seek legislation to clarify the relationship with the Board of Homeopathic and Integrated Medicine Examiners.

10. THE EXTENT TO WHICH THE TERMINATION OF THE AGENCY WOULD SIGNIFICANTLY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE.

Terminating the Board would affect the public's health, safety, and welfare if its regulatory responsibilities were not transferred to another entity. The Board is responsible for licensing acupuncturists and certifying auricular acupuncturists, investigating complaints against licensees and certificate holders and taking disciplinary or nondisciplinary action as necessary, and providing information to the public about licensees and certificate holders, including disciplinary history. These functions help protect the public from harm.

11. THE EXTENT TO WHICH THE LEVEL OF REGULATION EXERCISED BY THE AGENCY COMPARES TO OTHER STATES AND IS APPROPRIATE AND WHETHER LESS OR MORE STRINGENT LEVELS OF REGULATION WOULD BE APPROPRIATE.

After a review it was found that the level of regulation in Arizona is substantially similar to that found in other states.

According to the NCCAOM, as of 2021, 47 states and the District of Colombia, regulate the practice of acupuncture. Additionally, according to the National Acupuncture Detoxification Association (NADA), 23 states, including Arizona, regulated the practice of auricular acupuncture separately while 21 other states restrict Auricular Acupuncture to providers eligible to practice Acupuncture. The Board contacted several other state acupuncture boards and found that the Board provides a similar level of regulation as compared to these states. For example:

- Examination— Every state regulating Acupuncture, except California, requires that applicants have taken and passed the NCCAOM Exams prior to licensure. California uses its own state licensing exam, which contains similar standards as the NCCAOM exam.

- Background checks— Every state contacted performs a background check on initial acupuncture licensees. As indicated previously, Arizona is required to perform background checks on initial acupuncture licensees and Initial Auricular Acupuncture Certifications. None of the states contacted perform background checks on renewal applicants, although Indiana reported that it is permitted to do so by law.
- Continuing education— Arizona has substantially similar Continuing Education requirements to those found nationally. However, several other states simply require that the acupuncturist maintain an NCCAOM certification, which requires 60 hours of continuing education in a 4-year period which is equivalent to that required by Arizona.

Arizona Accepts any Continuing Education approved by the NCCAOM, another State Acupuncture Board, or by the Board itself. The Board is researching alternative methods of ensuring continued competency

12. THE EXTENT TO WHICH THE AGENCY HAS USED PRIVATE CONTRACTORS IN THE PERFORMANCE OF ITS DUTIES AS COMPARED TO OTHER STATES AND HOW MORE EFFECTIVE USE OF PRIVATE CONTRACTORS COULD BE ACCOMPLISHED.

The Board does not use private contractors to perform its mission-critical services. The Board was established to protect the public health, safety, and welfare and it accomplishes this by issuing licenses to qualified applicants, investigating complaints, and taking disciplinary action to enforce the Board's statutes and rules. The Board does not use private contractors for any of these functions.

The audit did not identify any additional areas where the Board should consider using private contractors

13. THE EXTENT TO WHICH THE AGENCY POTENTIALLY CREATES UNEXPECTED NEGATIVE CONSEQUENCES THAT MIGHT REQUIRE ADDITIONAL REVIEW BY THE COMMITTEE OF REFERENCE, INCLUDING INCREASING THE PRICE OF GOODS, AFFECTING THE AVAILABILITY OF SERVICES, LIMITING THE ABILITIES OF INDIVIDUALS AND BUSINESSES TO OPERATE EFFICIENTLY AND INCREASING THE COST OF GOVERNMENT.

The Board provides an essential function evaluating the qualifications of applicants for licensure and reviewing complaints against licensees. The Statutes and rules authorizing and regulating the Board and its licensees do not adversely affect patients, the public or licensees. A review of costs associated with regulation are found to be minimal such as the cost to the licensee of completing Continuing Education Courses or the cost of the initial licensing and renewal fees. These costs are mitigated by the public good provided by well-educated and current licensees who have been examined for fitness to practice.

Additional Questions

1. IDENTIFY THE PROBLEM OR THE NEEDS THAT THE AGENCY IS INTENDED TO ADDRESS

The scope of practice of Acupuncturists include puncturing the skin with thin, solid needles to produce positive therapeutic responses, auricular and detoxification therapy, herbal poultices, therapeutic exercise, acupressure, and manual, mechanical, magnetic, thermal, electrical, and electromagnetic stimulation of acupuncture points and energy pathways.

Negative outcomes which may result from untrained application of Acupuncture can include but is not limited to needle shock, loss of consciousness, nausea, collapsed lungs, septicemia, hepatitis C infection, etc. The Board has heard and taken action to protect the public from several complaints which caused harm to patients including unwanted touch, and kidnapping.

The Board regulates the practice of Acupuncture, and Auricular Acupuncture, licenses qualified applicants and is authorized to take enforcement actions and disciplinary measures against licensees. The Board consists of seven members appointed by the Governor to three-year terms.

Ten percent of the monies collected by the Board is deposited into the state General Fund and the remaining ninety percent is deposited into the Boards Fund, which is used for administration and enforcement purposes by the Board.

Acupuncture is a complex and alternative medicine which requires specialized training and experience to practice safely. The Board is necessary in order to provide a Board of peers to examine applicants and adjudicate complaints.

2. STATE, TO THE EXTENT PRACTICABLE, IN QUANTITATIVE AND QUALITATIVE TERMS, THE OBJECTIVES OF THE AGENCY AND ITS ANTICIPATED ACCOMPLISHMENTS

The Board has met its statutory objective and purpose by issuing Acupuncture licenses and Auricular Acupuncture Certifications, investigating and adjudicating complaints, and providing information to the public.

The Board licenses and regulates acupuncturists, certifies auricular acupuncturists for detoxification or substance abuse programs, acupuncture training programs, continuing education programs and visiting professors. The Board evaluates professional competency, investigates complaints, and enforces the standards of practice for the acupuncture profession. The Board regulates the educational, clinical and clean needle technique programs approved to teach the practice of acupuncture in this state.

The Board is successful in that it works to fair and appropriate standards for it provides a

3. IDENTIFY ANY OTHER AGENCIES HAVING SIMILAR, CONFLICTING OR DUPLICATIVE OBJECTIVES, AND AN EXPLANATION OF THE MANNER IN WHICH THE AGENCY AVOIDS DUPLICATION OR CONFLICT WITH OTHER SUCH AGENCIES.

There are no state agencies with similar, conflicting or duplicate objectives. There are state agencies which issue licenses. However, in all instances, they are fundamentally different from the Board in the license type and scope of their practitioners.

4. ASSESS THE CONSEQUENCES OF ELIMINATING THE AGENCY OR OF CONSOLIDATING IT WITH ANOTHER AGENCY.

Terminating the Board would affect the public's health, safety, and welfare. The Board is responsible for licensing acupuncturists and certifying auricular acupuncturists, investigating complaints against licensees and certificate holders and taking disciplinary or nondisciplinary action as necessary, and providing information to the public about licensees and certificate holders, including disciplinary history. These functions help protect the public from harm.

As previously noted, in 2018 the Board the Arizona Acupuncture Board of Examiners and the Arizona Board of Homeopathic Medicine Examiners entered into an interagency agreement effectively cooperating agency functions. The Boards Share one Executive Director and one Licensing Coordinator. This cooperation has increased service for members of both professions. The Boards remain completely independent in decision making powers for their professions as only administrative functions are cooperated.

Acupuncturists continue to support separate board—Board members, the Acupuncture Association, and patients, continue to support the Board's existence and argue that eliminating it would have detrimental effects. Regulation of Acupuncture ensures patients have access to alternative medicines from health care providers that have the proper education and background. Choosing to continue the Board is choosing to continue patient choice.

Yours in Service,

David Geriminsky
Executive Director