

OFFICIAL STATE CABINET AGENCY RESPONSE TO THE PERFORMANCE AUDIT ON MEDICAL DISCIPLINE IN WASHINGTON – NOVEMBER 4, 2016

This coordinated management response to the State Auditor’s Office (SAO) performance audit report received on October 11, 2016, is provided by the Washington State Department of Health (DOH), the Medical Quality Assurance Commission (MQAC), the Board of Osteopathic Medicine and Surgery (BOMS), and the Office of Financial Management.

SAO PERFORMANCE AUDIT OBJECTIVES:

The purpose of SAO’s audit was to answer the following question:

- Do the investigative and related processes of MQAC and BOMS support the legislative intent of the Uniform Disciplinary Act (UDA) to ensure quality healthcare and protect the public through their disciplinary activities?
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SAO RECOGNITIONS:

1. The two medical disciplinary boards are protecting the public and meet the legislative intent of quality healthcare and public safety.
2. DOH’s Health Services Quality Assurance division has implemented a process to improve the letters it sends to complainants and respondents.
3. MQAC has made changes to ensure compliance staff follow board orders.

SAO FINDINGS:

1. BOMS investigates a lower percentage of complaints than MQAC. SAO found four cases where BOMS appeared to have jurisdiction but did not investigate complaints; MQAC opened similar complaints. This is not necessarily wrong, but is an inconsistency between the boards.
2. BOMS does not meet complaint assessment performance targets that are set in WAC as frequently as MQAC; BOMS does not (*independently*) control its budget and staffing; BOMS does not provide representation to the physician assistants it regulates.
3. The definition of “unprofessional conduct” in state law is missing some items laid out in the Federation of State Medical Boards’ (FSMB) model medical practice act. One notable suggestion by FSMB is that failure by a provider to protest an inappropriate managed-care denial. While both boards use their rule-making authority to expand their definition of “unprofessional conduct,” these rules are not reflected in the Uniform Disciplinary Act and so may not apply to other healthcare-related professions.
4. MQAC did not always notify complainants of the case outcome when discipline was warranted. Only 16 out of 22 complainants were informed of the case outcome when their complaint resulted in discipline.
5. The boards outreach to the public is limited to press releases, listservs, and performance reporting. Despite current DOH guidelines on how to implement the patient rights act, the boards do not require that providers tell patients how to complain to the boards, resulting in

patients being misdirected by providers or not notified at all. Current DOH guidelines only apply to selected facilities, so sole practitioners and small clinics are not required to post this information.

6. DOH's website is confusing and does not include translation tools.
7. DOH's Provider Credential Search provides limited information and has limited provider search functions.
8. Washington's standard of proof is higher than recommended by the FSMB, making it more difficult to prove a complaint is legitimate.
9. BOMS and MQAC staff do not use ILRS as intended, including inaccurate data entry and reliance on shadow systems.
10. Current performance management does not adequately evaluate the efficiency and effectiveness of the boards' disciplinary activities.

SAO Recommendation 1: We recommend the Legislature merge BOMS and MQAC into one board by adding three osteopathic physicians to the commission.

STATE RESPONSE: Merging MQAC and BOMS could significantly affect both licensees and patients. It is not a decision to be made without carefully analyzing and considering the effects. The audit was not designed to determine if merging the boards would improve patient safety, and the evidence presented does not support this recommendation.

One of the SAO's key pieces for supporting consolidation is an analysis showing that MQAC opened cases for investigation at a higher rate than BOMS. This analysis averaged the aggregated percentage of cases opened for investigation over several years. Disaggregation of that data, by year, shows that in the most recent period reviewed, BOMS opened cases at a higher rate than MQAC. No analysis was done to better understand what factors accounted for the variations in case rates.

We strongly disagree that cases should be opened at a certain rate. By law and practice, each case must be assessed on its own merits. To assert that MQAC and BOMS should open the same percentage of cases — similar to meeting a quota — is in direct opposition to this. It makes “meeting the numbers,” not patient safety, the focus.

SAO also cites four cases in which BOMS appeared to have jurisdiction, but did not investigate complaints, believing that MQAC would do so. Each case is assessed on its own merits by the commission or board members. To assume a different outcome based on auditor opinion — after the fact — is speculation.

Additionally, while the audit noted that 35 states and territories have composite boards, it did not acknowledge that the largest states in terms of population and licensee counts often regulate using separate boards. According to the 2014 Federation of State Medical Boards Census of Licensed Physicians, nearly 450,000, or 49 percent, of the nation's 900,000 physicians are regulated in states with separate boards. Further, the most recent state to consolidate boards was Hawaii nearly two decades ago; recent attempts in Vermont, Oklahoma and Arizona have been unsuccessful.

How medical regulation and discipline are structured clearly and directly affect public safety. There is no one-size-fits-all answer. The question of whether two boards or one is most effective has been raised before. Opinions differ on this subject even among MQAC, BOMS and DOH. However, we are united in our belief that, in the interest of public safety, the decision on whether the boards should remain separate or be merged should not be made based on this audit.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 2: We recommend the legislature ensure a minimum of 25 percent public members on the state medical boards, whether this is two separate entities or one merged board.

STATE RESPONSE: MQAC already meets this recommendation. BOMS agrees that additional public membership could be of benefit. In 2015 and 2016, the Legislature considered but did not pass House Bill 1275, which would add two physicians, one physician assistant, and one public member to BOMS. DOH and BOMS will again propose the bill for consideration by the 2017 Legislature.

Action Steps and Time Frame:

- DOH has submitted agency request legislation for the upcoming session for review and approval. *Completed.*
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SAO Recommendation 3: We recommend the Legislature modify the UDA so all health-care professionals must post information in a prominent location about where to file complaints.

STATE RESPONSE: MQAC and BOMS agree that public outreach and engagement are effective, and they routinely engage in such efforts. Efforts to improve our website, conduct outreach through social media, and engage patient advocacy groups are underway. This audit provides no evidence to support the idea that a rule such as the one recommended — which would affect all professions under the concept that similarly situated people are to be treated similarly — would be more effective at improving public safety. Stakeholder feedback designed to fully understand the potential impacts on the patient-practitioner relationship would be critical before contemplating such a change. The audit did not address these considerations.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 4: We recommend MQAC and BOMS work with the Legislature to determine whether the statutory definition of unprofessional conduct should better reflect the Federation of State Medical Boards guidelines. In doing so, consider the overall impact to healthcare-related professions if the UDA is changed.

STATE RESPONSE: The UDA now provides both MQAC and BOMS with ample flexibility to fulfill their mandates. MQAC and BOMS disagree with the changes suggested by SAO. As SAO notes, these changes would impact all 80-plus health professions currently subject to the UDA while

offering no analysis of how the Federation of State Medical Boards' guidelines would affect enforcement in these other professions.

One example cited by SAO relates to physicians protesting managed-care denials by insurers. Neither MQAC nor BOMS has jurisdiction over insurers. Further, whether a denial is inappropriate is more often a matter of opinion than of fact. Successful enforcement of this provision would require that more weight be given to the subjective opinion of a board member (commissioner) or a board panel than the guidelines used by a managed care company or health insurer. Indeed, these guidelines are typically the product of hundreds of hours of literature review and discussions with experts to determine evidence-based and best practices.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 5: We recommend MQAC and BOMS work with the Legislature to determine whether the UDA should allow the disciplinary authority to issue a Letter of Concern in situations where the boards cannot meet the standard of proof, but enough evidence exists to show informal reporting to the provider could improve public safety. In doing so, consider the overall impact to healthcare-related professions if the UDA is changed.

STATE RESPONSE: While we agree that having an alternative to discipline would be beneficial, the recommendation suggests the ability to impose a form of discipline without having met the burden of proof established by the Washington Supreme Court. We therefore disagree with the recommendation as presented. We fully support statutory solutions that are nondisciplinary and that improve quality outcomes, such as educational programs or outcome data that allow for early notification and intervention. We welcome discussions with stakeholders to that end.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 6: We recommend MQAC and BOMS work with DOH to improve the usability of their webpages, including addition of a translation tool to the website. In deciding what languages to translate to, consider Department of Justice guidelines for written translations.

STATE RESPONSE: We agree that we need to improve accessibility for non-English speakers. We are implementing best practices to increase access for customers with limited English proficiency. This includes adding information about the availability of language assistance (telephonic interpretation) in the top 15 languages spoken in our state. We also plan to create a Spanish-language homepage that will allow Spanish speakers to navigate our content.

We have assessed certain free or low-cost translation tools as an option. We decided not to include them because:

- The accuracy of translation can't be guaranteed.
- Non-English speakers are unfamiliar with how to use some of the tools.

- Non-English speakers come to our website using Google and other search engines, and content translated in certain tools will not appear in the search.
- Our agency has had experience with the negative consequences of poorly translated information. Imprecise translations can have health and safety implications.

Improving accessibility can come in many forms, and MQAC, BOMS and DOH are exploring and discussing various solutions to that end.

Action Steps and Time Frame:

- Post the availability of language assistance on the DOH website. *By October 21, 2016.*
- Establish a Spanish homepage on the DOH website. *By January 31, 2017.*

SAO Recommendation 7: We recommend MQAC and BOMS work with DOH to improve the Provider Credential Search, with consideration of legal restrictions, including the provider search function, to allow for broader provider searches. In doing so, ensure it includes information recommended by FSMB, such as location, specialty and board certification, summaries of violations and enforcement actions, as well as information that can be voluntarily added by providers such as insurance information and whether new patients are accepted.

STATE RESPONSE: MQAC and BOMS agree that improving the ease of use and information available in the Provider Credential Search is beneficial. The department’s Health Services Quality Assurance division is in the process of collecting requirements to replace the core system it uses for credentialing and enforcement activities, including the provider credential search function. The tentative timeline for implementing this new system is mid-2020. In the interim, the division is completing a rework of the provider credential search user interface to make it more user friendly.

It should be noted that the provider search function is a tool for efficient public disclosure for more than 80 professions. It was neither designed nor intended to be a one-stop shop for provider information. Moving to a platform that provides more information to the consumer, and is populated with more information voluntarily furnished by licensees, may be beneficial and is an effort that MQAC supports. It is a significant undertaking, however, and would need to be researched further, including assessing the effect on other professions.

Action Steps and Time Frame:

- Rework the provider credential user interface to improve usability. *By January 31, 2017.*
- Consider changes to improve the ease of use of the provider credential search as part of an overall system replacement project due to be in place by mid-2020. *By 2020.*

SAO Recommendation 8: We recommend MQAC and BOMS continue to improve correspondence by incorporating Plain Talk principles into their communications with complainants and respondents.

STATE RESPONSE: In 2013, MQAC, BOMS and DOH recognized that communications with complainants and respondents could be improved, and we implemented an initiative do so. We appreciate SAO’s acknowledgment of the improvements we have made over the past few years.

As a part of our improvement efforts, we routinely assess the quality and accuracy of our communications with complainants and respondents.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 9: We recommend MQAC and BOMS modify procedures to ensure complainants are sent letters at the end of all cases.

STATE RESPONSE: Both MQAC and BOMS already send letters to complainants at the end of cases. In the SAO’s review of more than four years of cases, it found six instances, out of about 8,600 cases reviewed, where we were unable to prove that a letter had been sent to a complainant.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 10: If the Legislature does not modify the UDA, we recommend MQAC and BOMS expand outreach to the public, specifically by using their rulemaking authority to require that all providers post information in a prominent location about where to file complaints.

STATE RESPONSE: MQAC and BOMS agree that public outreach and engagement are effective, and we frequently engage in such efforts. We do not agree the evidence we have been provided supports the idea that a rule such as the one recommended — which would affect all professions under the concept that similarly situated persons are to be treated similarly — would be more effective at improving public safety. Today, MQAC has a workgroup composed of its governor-appointed public members to assess visibility and outreach. Recommendations from that group are expected in the third quarter of fiscal year 2017.

Action Steps and Time Frame:

- Not applicable.
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SAO Recommendation 11: We recommend MQAC and BOMS regularly evaluate whether staff are following policies and procedures, including whether they are accurately entering data into the Integrated Licensing and Regulatory System.

STATE RESPONSE: MQAC and BOMS already evaluate on a regular basis whether staff members follow policies and procedures in accordance with internal controls and the collective bargaining agreement. The separation of business units serves to reinforce this effort. When noncompliance is revealed, the issues and associated staff members are engaged and, when necessary, dealt with according to policy.

MQAC, BOMS and DOH are aware of the issue with the Integrated Licensing and Regulatory System that requires staff members to manually override certain activity dates. This and other items will be evaluated when requirements are gathered for the replacement of the credentialing and enforcement system, scheduled for implementation in 2020.

Action Steps and Time Frame:

- Consider data input issues as part of an overall system replacement project due to be in place by 2020. *By 2020.*
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SAO Recommendation 12: We recommend MQAC and BOMS modify current performance measure activities to regularly evaluate the nature and volume of complaints, the adequacy and consistency of enforcement actions, as well as how well the boards are meeting their mission to protect the public.

STATE RESPONSE: MQAC, BOMS and DOH all have several performance metrics and highly trained staff members dedicated to performance management. Their roles include improving how we identify and use data to measure performance. Periodic review and deliberation on these measures are an important and regular part of their business. Because every complaint must be assessed on its own merits, we do not agree that the SAO's idea of consistency is a goal to strive for. We do welcome suggestions for metrics that will help drive and ensure desired outcomes.

Action Steps and Time Frame:

- Not applicable.
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