The leadership of the Washington Medical Commission (WMC) and Office of Financial Management (OFM) provide this response to TAP International, Inc.'s performance audit report received on April 12, 2023.

PERFORMANCE AUDIT OBJECTIVES

The Washington State Legislature (Legislature) requested the State Auditor's Office (SAO) conduct a performance audit of WMC's licensing and disciplinary processes. The SAO contracted with TAP International, Inc. in 2022 to address these performance audit objectives:

1. How long does the WMC require to process licenses for applicants?
2. How does WMC's disciplinary process compare to other states?
3. What factors, if any, contribute to any inefficiencies in the licensing and disciplinary processes?
4. What could the WMC do to improve its licensing and disciplinary processes?

Recommendations to the WMC in brief: TAP International made nine recommendations to support WMC's ongoing efforts to improve the licensing and disciplinary process.

Recommendations 1-3 asked WMC to work with the Legislature, when necessary, to update existing licensing and disciplinary process requirements.

1. Update the Revised Code of Washington (RCW) to modify the required Federal Bureau of Investigation's (FBI) background check for licensure as optional per WMC's discretion and allow for a check of the National Practitioner Data Bank (NPDB) or another valid database the WMC finds acceptable as an alternative.

STATE RESPONSE: FBI background checks are important to ensure patient safety and the integrity of the profession. However, we agree that not every applicant needs to complete this step every time they apply to a different state. For certain candidates, this step could be at the discretion of the WMC, based on the assessment of risk and not by requirement of the statute. However, it should be noted, this requirement exists in the Uniform Disciplinary Act, which impacts more than 84 other professions and a similar number of stakeholders. This requirement is also part of the Interstate Medical Licensure Compact legislation and cannot be changed for licenses obtained through the compact.

Action Steps and Time Frame

- Work with the commission's stakeholders to evaluate when background checks should be at the discretion of the WMC and how often they should be done. By *October 2023*

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2. Update regulations to: (a) Require confidential investigations until the WMC applies charges against the respondent, and (b) Allow the WMC to issue a confidential letter of concern for cases that do not meet the legal threshold for sanction but warrant a state response.

STATE RESPONSE: We partially agree with this recommendation. Both parts of the recommendations would require changes to two significant portions of Washington statute. The state of Washington values and promotes an open and transparent government. Allowing confidential investigations goes against the policy of open government and WMC's mission of protecting the public, which in turn, goes against the audit goal of improving disciplinary processes.

The state Public Records Act, current case law and public policy require WMC to provide all investigative records, regardless of the investigation stage, to the public upon request. Public safety, as determined by state law, gives citizens the right to know if a practitioner is under investigation, especially for sexual misconduct or severe standard of care issues so they can make informed decisions. The audit references unnamed stakeholders, some hospitals and large medical systems which have removed physicians and physician assistants (PAs) from practice due to WMC investigation and insurance liability. However, WMC has not been notified of this practice, even by licensees who have been sanctioned.

WMC agrees a confidential letter of concern in some cases would help a practitioner understand the issues found during investigations. This has been a longstanding request of the commissioners and WMC has explored this recommendation with the Attorney General's Office which has advised that this recommendation is not viable as it would impact due process rights if WMC made any standard of care findings in this letter. Additionally, this recommendation requires an amendment to the Uniform Disciplinary Act, which affects numerous stakeholders.

Action Steps and Time Frame: N/A

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3. Modify current law to shift the Commissioners' role from direct involvement in the complaint intake process to oversight and provide the WMC the authority to delegate decision-making on low priority complaints to the WMC staff; or, instead of modifying the Commissioners' role, expand the number of commission members to support timely completion of licensing and disciplinary processes.

STATE RESPONSE: We disagree with this recommendation. We believe changing the current complaint intake process to TAP's recommendation would increase process timelines rather than decrease them. The WMC complaint review process was shaped by two Washington Supreme Court rulings that require commission members to assess the whole complaint and apply a specific standard of evidence. As a result, complaints are reviewed every week by a team of three commissioners, two clinicians and one public member, who provide the patient's perspective and the clinical expertise to determine if a standard of care complaint is viable. WMC staff do not possess enough medical knowledge and training to determine if an investigation should be opened or closed.

The current process provides the fastest pathway to an investigation. Implementing TAP's recommendation would still require questionable complaints be reviewed by an expert or commissioner with medical training after staff review. We believe that would add more time to this process.

Action Steps and Time Frame: N/A

Recommendations 4-6 address improving performance monitoring and scalability of the licensing process.

4. Formally establish and monitor goals that measure timeliness for all applications by type.

STATE RESPONSE: We agree that monitoring goals and timeliness for applications is appropriate. The WMC has a process in place for this. Currently, WMC staff track and report on licensing data and performance measures weekly. WMC monitors pending applications, workload by employee, workload by application type (Medical, Physicians Assistant, Limited, Interstate Medical Licensing Compact, and reactivations), FBI fingerprint packet processing, and the number of closed applications. In studying the WMC procedure from receipt of a completed application to formal license, TAP found positive performance throughout the audit period.

The report does not reference an ideal timeframe for license issuance, when compared to other states in our region, specifically the WWAMI states (Wyoming, Alaska, Montana, and Idaho) and Oregon. However, the

posted timeline expectations range from 8-12 weeks or more. The WMC was well within the competitive window, and more expeditious than other states in the current year.

WMC research on weeks to license	2018	2019	2020	2021	2022
Washington	7	9.5	12	11	5
Oregon	8-16	16	16	16	8-12
California	8	8	20	8	8-12
Idaho	8-16	16	13	16	12-14

Some license types issued by the WMC are either so low in number (Limited-Institutional) or so new (MD-Clinical Experience) that it would not be effective or prudent to establish a formal timeline. The WMC will formally establish reasonable timeline expectations with the action steps below.

Action Steps and Time Frame

- Establish application timeline expectations for physician and physician assistant applications. *By September 30, 2023*.
- Establish application timeline expectations for Limited Physician and Clinical Experience applications. *By October 31, 2023*.
- Establish timeline expectations for exception applications referred to Panel L. B*y November 30, 2023*.

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5. Until the Health Care Enforcement and Licensing Management System (HELMS) becomes fully operational, consider using tools to automate the extraction of information from applications and their supplemental information. And, if needed, have the use of these tools reviewed by the new algorithmic accountability review board.

STATE RESPONSE: We disagree with this recommendation. At the present time, the WMC cannot justify spending additional licensee funds and staff time on tools that would be useful for less than a year or may not work with our current or future systems. Our limited resources will be needed to support activities related to implementing HELMS through the coming year.

Action Steps and Time Frame: N/A

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6. Until the new system, HELMS, is fully operational, provide an identifier code (belonging to the WMC staff requestor) to the licensing applicant, complainant, and respondent to be recorded on all correspondence submitted to the WMC, so customer service staff can forward the documents to the appropriate WMC staff person.

STATE RESPONSE: We disagree with this recommendation based on the current timeline of HELMS and resources available. Additionally, the use of pending license numbers and case numbers generated by the current system already serves this functionality to some extent. These identifiers are currently used in emails and letters to applicants and licensees.

Action Steps and Time Frame: N/A

Recommendations 7-9 address improving efficiency and effectiveness of the disciplinary process.

7. Establish and use an Ombudsman's office to facilitate communication with complainants/respondents and address non-standard of care related complaints not requiring investigative and legal expertise.

STATE RESPONSE: The WMC agrees with the intent of this recommendation but has already addressed the issue through several ongoing efforts. Complaints that involve obtaining medical records have a specific process and communication to the complainant for non-disciplinary resolution. This is complicated by the current legal environment where the ownership and access to medical records are in question depending on the employment status of the licensee.

When commissioners cannot decide on a complaint due to lack of information, the WMC has developed a new process to work directly with complainants. This process will formally launch in May 2023 and WMC will complete an evaluation in 12 months to see if this process generates more actionable information from complainants based on direst guidance from a WMC case manager. Additionally, under RCW 18.130.057 (5)(a), reconsideration is available to the complainant.

Finally, in scenarios where complainants escalate their concerns beyond investigative and legal staff or through the Governor's Office, WMC executive staff routinely act as an ombuds to respond to concerns directly, as is standard at the Department of Health and other state agencies.

Action Steps and Time Frame

- Evaluate the new process and determine: if the complainants provided the requested information and if their responses resulted in decisions to open an investigation. *By May 31, 2024*.

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8. Adopt other states' practices to reduce the burden on complainants to meet the regulatory threshold for further investigation of the case. Strategies to consider for valid complaints include:

    - Integrate the complaint and investigative processes by taking witness statements and immediately requesting medical records for independent medical experts' review; and,
    - Submit valid complaints, but with medical records, to the Commission for further review and disposition.

STATE RESPONSE: The WMC disagrees with this recommendation. The WMC is continuously looking to reduce timelines and incorporate best practices from other jurisdictions, as evidenced by our involvement in national and international regulatory best practices organizations. Additionally, the WMC has a full-time Lean employee who maps all work processes to see where we can eliminate waste, cut out redundancies and improve customer service.

Based on decades of complaint data, approximately 65% of filed complaints are closed and a commissioner finds an investigation is unwarranted. The majority of WMC's commissioners are clinicians. Allocating staff time to interview witnesses before a complaint is assessed by a clinical commissioner, when decades of data show 65% are closed, would represent a significant waste of resources.

The WMC also uses pro tem clinical commissioners to review complaints to determine the need for an investigation, thereby focusing our efforts to save time and money for cases that truly are violations. Obtaining medical records takes weeks at a minimum, which adds time and resources. Further, once we have obtained medical records, we are obligated to retain them for years, exposing WMC to legal risk should these records be disclosed inadvertently.

Action Steps and Time Frame: N/A

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9. Adopt other states' practices to expedite all types of cases. Strategies to consider include:

    a) Obtain the authority and develop processes to send cases of documented misconduct by another authority (such as reported from the NPDB) directly to the WMC for action.
    b) Dedicate teams of investigators and attorneys by case complexity across administrative, standard of care, moral turpitude, and other types of professional conduct cases who formally and actively participate in all phases of the planning and adjudication of the case.
    c) Formally establish benchmarks for completing certain disciplinary cases based on the nature of their risk, including closing lower-level priority cases more quickly

STATE RESPONSE: The WMC partially agrees with this recommendation.

Recommendation 9(a) would require a change to the law. Of note, WMC commissioners currently consider action based on National Practitioner Data Bank and Federation of State Medical Board reports weekly. This recommendation suggests skipping assessments and moving directly to case disposition based on out-of-state reports. This recommendation creates due process questions and appropriate licensee notification issues.

Recommendation 9(b) mirrors what WMC has already implemented with sexual misconduct cases. We require specialized training for all staff and commissioners working on such cases. We do question the appropriateness of investigator involvement in the adjudication process as their findings are precisely what is being litigated. The WMC remains open to the concept and will pilot more dedicated response teams as resources and the law allows.

Recommendation 9(c) is already implemented with case prioritization. Priority A cases are those regarding sexual misconduct and those of imminent danger to the public. These are the cases that must be completed the quickest. Most cases designated as Priority C are those regarding standard of care, but without imminent risk to the public. However, these cases can be complex, requiring hundreds of pages of medical records and multiple witness interviews and cannot be completed quickly without significant increases in resources.

Monthly, the WMC monitors all case timelines and examines the oldest cases to ensure any actions needed to expedite the process are utilized. Completing disciplinary cases "quickly" is a goal. However, quality is critical, and WMC must ensure both the respondent and the complainant get our best work. Quality is most important during litigation, judicial review, and the appeals process. It is exceptionally rare that the WMC is on the losing side of a judicial ruling when the quality of our investigative and case work is at issue. While the WMC may not be able to implement the recommendations as written, the WMC is always looking for ways to improve its processes and its services to the patients and the public, while still providing the practitioner with a fair and unbiased investigation and case review.

Action Steps and Time Frame

- WMC will pilot more dedicated response teams as resources and the law allows, per recommendations in 9(b). *By November 2024*
