REPORT BY THE STATE AUDITOR

OF CALIFORNIA

THE MEDICAL BOARD NEEDS TO MAXIMIZE ITS RECOVERY OF COSTS

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California State Auditor
Bureau of State Audits

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Summary

Results In Brief

The Division of Medical Quality within the Medical Board of California (medical board) is responsible for enforcing the disciplinary and criminal provisions of the Medical Practice Act. To carry out its responsibility, the Division of Medical Quality uses its enforcement program to conduct activities such as processing complaints against physicians and surgeons, investigating the complaints to see if they warrant disciplinary action, and referring such cases to the Health Quality Enforcement Section (HQES) of the Attorney General's Office. The division also refers cases involving criminal complaints to the District Attorney's Office. The Office of Administrative Hearings (OAH) within the Department of General Services is responsible for adjudicating all administrative actions taken against physicians and surgeons and for proposing disciplinary decisions for consideration by the medical board.

Chapter 1267, Statutes of 1993, required the Bureau of State Audits to conduct an audit of the disciplinary system administered by the medical board and established to enforce the provisions of the Medical Practice Act. Our review focused on the enforcement and disciplinary activities that occurred during fiscal years 1992-93 and 1993-94. During our review we noted the following:

- During fiscal year 1993-94, the medical board spent more than $25 million on enforcement and disciplinary efforts. Of those costs, we determined that under current law, the medical board could have attempted to recover more than $6.3 million. Furthermore, if the medical board had sought to change the Business and Professions Code to allow it to recover costs incurred during administrative hearings, the medical board could have attempted to recover an additional $3.1 million. However, the medical board reported that it recovered only $94,053 of its costs for the same period.

- Before January 1, 1995, the HQES of the Attorney General's Office did not have a system to identify the types of activities the HQES performed for the medical board. In addition, the medical board does not have a process to ensure the invoices it pays are only for active medical board cases. As a result, the HQES cannot assure

the medical board that the charges it billed for HQES services were reasonable or necessary, and the medical board cannot ensure that it is only paying for services it receives.

- The OAH overcharged the medical board for court reporter services and also failed to reimburse the medical board for the costs of some transcripts. As a result, the OAH may owe the medical board a total of $283,000. In addition, the OAH owes the medical board an undetermined amount for the cost of transcripts and copies of transcripts ordered by third parties for appealed cases from January 1, 1991, through June 30, 1994.

Corrective Actions of the Medical Board, HQES, and OAH

The medical board has begun to track its investigative costs and some of the costs charged by its expert medical consultants to seek recovery of those costs. In addition, the HQES of the Attorney General's Office enhanced its Legal Time Reporting System in January 1995 to enable its attorneys and legal assistants to record their activities into 13 different categories. Finally, in July 1994, the OAH of the Department of General Services began charging third parties the correct rates for transcripts and copies of transcripts for appealed cases.

Recommendations

To maximize its recovery of costs, the Medical Board of California should take the following actions:

- Be more aggressive in recovering disciplinary costs through stipulated settlements and as part of the proposed disciplinary decisions rendered by administrative law judges;

- Include in its recovery of costs the costs for prosecuting cases, costs of administering psychiatric competency examinations by expert consultants, and a portion of the costs to administer the diversion program that represents the number of participants ordered to participate in the program as an alternative to other disciplinary action; and

- Seek a change in the Business and Professions Code to allow recovery of disciplinary costs incurred once the administrative hearing process begins.

To assure the medical board that the hours charged are reasonable and necessary, the Attorney General should require supervisors in each of the HQES offices to review the number of hours and types of tasks that attorneys and legal assistants are charging for their cases.

To ensure that the tasks for which it is billed are appropriate and necessary, the medical board should develop a process to review all invoices that it receives from the Attorney General's Office.

To avoid overcharging the medical board in the future and compensate it for past overcharges, the OAH should take the following actions:

- Change the method used to calculate the hours worked by court reporters from private firms so that computations are carried out to tenths of hours;

- Using the above methodology, recompute all hours worked by private court reporters since January 1993 and reimburse the medical board the amount of the overcharge;

- Reinitiate the practice of quarterly reimbursing the medical board the amounts collected for transcripts ordered by third parties;

- Review invoices received for transcripts ordered by third parties not involving appealed cases that were received from January 1, 1993, through January 31, 1995, and reimburse the medical board for the total amount collected on its behalf; and

- Review the invoices received from January 1, 1991, through June 30, 1994, for transcripts of appealed cases ordered by third parties and reimburse the medical board the amount the OAH failed to collect from third parties as required by law.

Agency Comments

With one exception, the Medical Board of California, the Attorney General's Office, and the Office of Administrative Hearings concur with the conclusions and recommendations contained in our report. The medical board disagreed with one of our recommendations.

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Introduction

The goal of the Medical Board of California (medical board) is to protect the public by ensuring the initial and continued competence of the health care professions and occupations under its jurisdiction. The medical board licenses physicians and surgeons and certain allied health professions, investigates complaints against its licensees, and disciplines those found guilty of violating the law or regulations. The medical board is comprised of two essentially autonomous divisions: the Division of Licensing and the Division of Medical Quality.

The Division of Licensing is responsible for issuing regular and probationary licenses and certificates under the medical board's jurisdiction, administering the medical board's continuing education program, and administering physician and surgeon examinations for some license applicants.

Through its enforcement program within the Division of Medical Quality, the medical board is responsible for promptly responding to complaints against licensees of the medical board and investigating those complaints within the medical board's jurisdiction. Furthermore, the Division of Medical Quality is responsible for disciplining licensees found guilty of violating the Medical Practice Act. The type of discipline the medical board administers depends on the nature of the violation. Examples of disciplinary action include restriction of medical duties, license suspension, license revocation, and probation. The most severe discipline that the medical board administers is license revocation.

Recent Legislation Affecting the Medical Board

Chapter 1267, Statutes of 1993, enacted on January 1, 1994, changed several aspects of the disciplinary process. For example, the legislation strengthened the medical board's ability to inspect and copy records relevant to investigations, with certain limitations, and provided for the imposition of a civil penalty of $1,000 per day if such records are not produced within 15 days of the request or the subpoena request date. In addition, the legislation gave the medical board the authority, after it has conducted an investigation, to issue a public letter of reprimand to physicians and surgeons for minor violations of the Medical Practice Act in lieu of filing or prosecuting a formal accusation. The chapter also simplified the process for obtaining an order for an interim suspension of a practitioner's license in situations where serious injury to the public would result before the matter was

heard during a regularly scheduled administrative hearing. Finally, to enhance the staffing of the Health Quality Enforcement Section (HQES) of the Attorney General's Office, the legislation provided a mechanism to increase the initial and biennial license fees paid by physicians and surgeons. As a result, these fees were increased from $500 to $600.

Enforcement Program

Through its enforcement program, the medical board administers all phases of the enforcement process for physicians and surgeons, from receiving the initial complaint to overseeing the surveillance of physicians and surgeons on probation. The enforcement program also handles and investigates complaints on a reimbursement basis for certain of the allied health boards and committees. Currently, the medical board employs 80 investigators in its 13 district field offices located throughout the State. During fiscal year 1993-94, the medical board incurred costs of $21 million to conduct enforcement activities.

Enforcement Process

The medical board receives many types of health-related complaints against its licensees from a variety of sources, including the public, other medical professionals, and various government agencies. Complaints also are generated internally by the medical board. In addition, the law requires hospitals, insurers, the courts, attorneys, and coroners to report information that may initiate an investigation. The enforcement process begins with a complaint or report to the medical board. Consumer services representatives and consumer assistant technicians review complaints to determine whether there is a probable violation of the Medical Practice Act. In addition, a medical consultant under contract with the medical board reviews complaints at the initial processing stage whenever a quality-of-care issue is involved. If a complaint seems to identify a probable violation of the Medical Practice Act and the violation is serious enough to require an investigation, the complaint is referred to an investigator in the appropriate field office.

The medical board usually resolves its investigations in one of three ways: it will close a case without merit, close a case with merit, or pursue discipline. The medical board may close a case without merit for several reasons. The complaint may prove to be untrue. Evidence may be lacking to support the allegation, or the complaint may be outside the medical board's jurisdiction.
The medical board also may close a case with merit without pursuing discipline. One reason for that decision is that the practitioner may

enter the medical board's diversion program, which has the goal of rehabilitating physicians impaired by alcohol abuse, drug abuse, mental illness, or physical disorders but have violated no other provisions of the Medical Practice Act. Alternatively, a practitioner may be required to take a competency examination, after which the case may be closed with merit. The medical board also may require a third-level review before closing a case with merit. For these cases, the medical board's medical consultant and investigator educate the practitioners about the errors identified in their care and treatment of a patient.

Finally, the medical board may close an investigation with merit without having taken any action against the subject. In such instances, the medical board determines that, although the practitioner departed from standard medical practice, the departure was not serious enough to warrant disciplinary action. However, for these cases, the medical board has the additional option to either cite and fine physicians for certain minor violations or issue public letters of reprimand rather than prosecute such cases.

The medical board retains cases that it closed without merit for one year and cases that it closed with merit for five years. To ensure that the medical board's decision to close these cases is appropriate, attorneys from the various Health Quality Enforcement Section (HQES) locations of the Attorney General's Office visit the medical board's field offices and review closed investigation cases. If an attorney determines that the medical board should not have closed a particular case, the decision can be reversed and the case can be reopened. In addition, a supervisor from the central complaints unit reviews those complaints closed with and without merit.

Disciplinary Process

When the medical board determines that a practitioner may have violated the Medical Practice Act and the violation warrants disciplinary action, it refers the case to the HQES of the Attorney General's Office to pursue discipline. The HQES files an accusation against the practitioner's license; however, not all accusations reach the stage of an administrative hearing. Instead, the licensee and the HQES may propose a stipulated agreement, called a settlement, to the medical board, which the Division of Medical Quality must then approve before final resolution of the case is reached.
Cases that go to hearing may be heard before an administrative law judge or the Division of Medical Quality, depending on whether the division wants to hear the case. At the completion of an administrative hearing, the administrative law judge will write a proposed decision

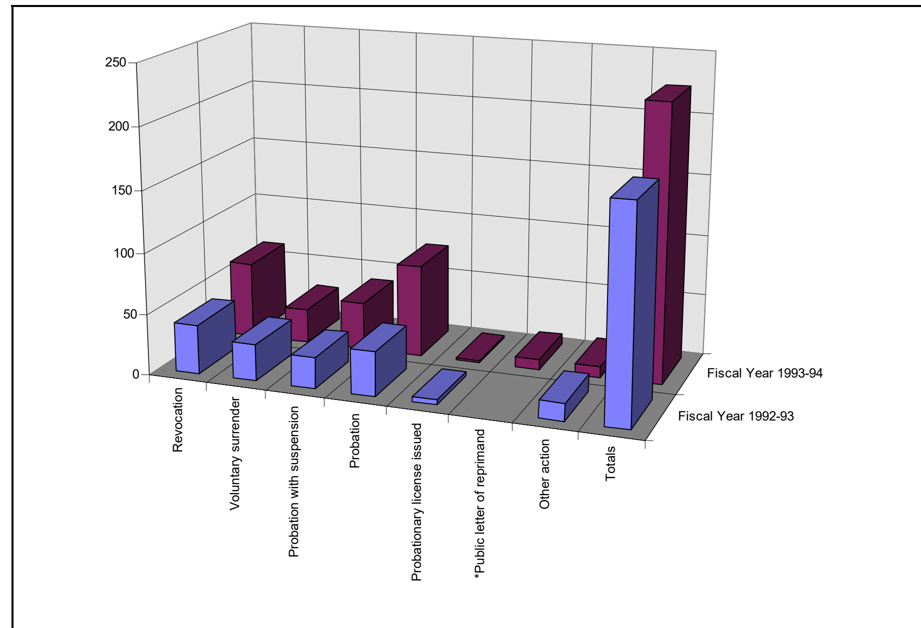
that the Division of Medical Quality adopts or alters. However, if the division does not act within 90 days of receiving the decision from the administrative law judge, the decision is adopted automatically. In contrast, there is no time frame for the adoption of stipulated settlements. A licensee dissatisfied with the final decision has the right to petition for reconsideration or to petition the court system.

Workload Indicators for the Enforcement and Disciplinary Process

According to the medical board's annual reports, the number of complaints that the board received about physicians and surgeons increased 17 percent, from 6,749 in fiscal year 1992-93 to 7,902 in fiscal year 1993-94. However, during the same period, the number of investigations opened for physicians and surgeons declined 7 percent, from 2,208 to 2,046. One reason why the number of investigations declined is that the central complaint unit within the medical board closed more complaints during fiscal year 1993-94. Specifically, this unit closed 3,878, or 57 percent of the complaints received in fiscal year 1992-93, whereas in fiscal year 1993-94, it closed 5,614, or 71 percent of the complaints received. Many of the complaints closed during these respective fiscal years originated in an earlier year. When this unit closes these complaints, they are not forwarded to a field office for investigation.

Although the number of investigations of physicians decreased from 2,208 to 2,046, the number of cases referred to the HQES for the filing of accusations rose from 433 in fiscal year 1992-93 to 601 in fiscal year 1993-94, an increase of nearly 39 percent. Furthermore, the number of disciplinary actions taken against physicians also increased in fiscal year 1993-94. As shown in Figure 1, disciplinary actions rose from 149 to 224, an increase of 50 percent, with the largest increase occurring in the number of physicians placed on probation.

Figure 1 **Disciplinary Actions Taken by the Medical Board for Fiscal Years 1992-93 and 1993-94**



* Legislation authorizing issuance of public letters of reprimand became effective January 1, 1994.

Source: Annual Reports of the Medical Board

The statewide total caseload per attorney for the HQES for cases against physicians and allied health professions increased from 29 per attorney in fiscal year 1992-93 to 30 per attorney for fiscal year 1993-94. To assess the workload per HQES attorney for those cases where an accusation has not been filed, commonly known as unfiled cases, we obtained quarterly caseload reports from the HQES covering November 1, 1993, through April 30, 1994. Using the amounts shown in these reports, we calculated the average caseload per attorney for both total cases and unfiled cases for each of the HQES locations for the six months the reports represent. As shown in Table 1, the average caseload per attorney for total cases varied from a low of 25.6 in the San Diego HQES to a high of 61.2 in the Sacramento HQES. Similarly, the average caseload per attorney for unfiled cases ranged from a low of 3.9 for the San Diego HQES to a high of 11.5 cases in the San Francisco HQES. These results indicate that unless caseloads

fluctuate by geographic location from one year to the next, the San Diego HQES appears to be overstaffed, whereas the San Francisco and Sacramento HQES locations appear to be understaffed.

Table 1 **Average Caseload of Attorneys at Each Health Quality Enforcement Section for November 1, 1993, Through April 30, 1994**

HQES Location	Total Cases	Unfiled Cases	Attorneys	Average Unfiled Caseload	Average Total Caseload
Los Angeles	466	85	13	6.5	35.8
Sacramento	306	46	5	9.2	61.2
San Diego	312	47	*12.2	3.9	25.6
San Francisco	413	127	11	11.5	37.5

* This location has two attorneys who work less than full time.

Source: Health Quality Enforcement Section's Quarterly Caseload Reports

Additionally, during the same six-month period, the HQES had an average of 305 unfiled cases. Of these 305 cases, 88 remained unfiled an average of three to six months, 101 remained unfiled an average of six months to one year, and 16 cases remained unfiled for more than one year. The residual 99 cases remained unfiled an average of less than three months.

In its budget change proposal for fiscal year 1994-95, the HQES justified a request for more staff by citing an average of 108 hours to prosecute an administrative case and an average of 46 additional hours required to provide other legal services related to administrative cases. These other services included appeals, client services, and administration, for an overall average of 154 hours per case.

We estimated the number of cases the HQES offices could have completed for the two fiscal years we reviewed by determining the total number of billable hours for HQES attorneys, plus the proportionate amount of time supervisors charged to administrative cases and other legal services each year. We divided this number by the average number of hours to complete a case. Based on our calculations, we estimate 462 cases could have been completed in fiscal year 1992-93 and 517 cases could have been completed in fiscal year 1993-94.

However, only 261 and 397 cases were completed during the two years, respectively. According to the senior assistant attorney general of the HQES, the differences between our completed case estimates for fiscal years 1992-93 and 1993-94 and the number of cases the HQES actually completed were caused by such procedural factors as increases in the time it takes the Office of Administrative Hearings (OAH) to schedule case hearing dates and the increasing complexity of the cases. We define a complete case as a case resolved through a stipulated settlement or a decision proposed by an administrative law judge and adopted by the medical board following a hearing.

Scope and Methodology

Chapter 1267, Statutes of 1993 (Senate Bill 916), required the Bureau of State Audits to conduct an audit of the disciplinary system administered by the Medical Board of California established to enforce the provisions of the Medical Practice Act. In conducting this audit, we reviewed all pertinent laws, regulations, and policies. We also interviewed staff members of the medical board, the HQES, and the OAH to determine each entity’s role and responsibility within the disciplinary system. As part of our legal review, we summarized the major changes made to the disciplinary system as a result of the passage of Senate Bill 916.

To determine the number of individuals investigated or disciplined by the medical board by category of investigation and enforcement action, we determined the reporting processes used by the medical board to track investigations and disciplinary actions, obtained the annual reports for fiscal years 1992-93 and 1993-94, and vouched the data supporting these reports. We used this information to create the tables in Appendix A and Appendix B.

To determine the amount spent on the disciplinary system, we reviewed the budget reports of the medical board for fiscal years 1992-93 and 1993-94, and we identified each item of expense relating to enforcement and discipline. We also interviewed the budget analyst to determine which shared and indirect costs benefited the disciplinary system. Based on this information, we prepared a two-year comparative table, which is presented in Appendix C.

To determine whether the amounts billed to the medical board by the HQES were accurate and appropriate, we selected a sample of 120 line items from the monthly invoices the HQES sent to the medical board to bill its services. Our sample was drawn from the invoices received during fiscal years 1992-93 and 1993-94. For each item sampled, we recomputed the amount billed by using the supporting documentation, and then we compared our computations with those included on the

invoice. In addition, we performed analytic procedures to project the maximum amounts that HQES staff could have billed to the medical board and compared the result with the amounts actually billed.

To determine if the amounts billed to the medical board by the OAH for its services were accurate and appropriate, we selected all invoices for two months, one from fiscal year 1992-93 and one from fiscal year 1993-94, and using supporting documentation, we recomputed the total costs for all invoices. We also used analytic procedures to determine if the amounts billed to the medical board for the two years were reasonable in proportion to the services billed to other agencies by the OAH.

To assess the efforts made by the medical board to recover the costs of investigating and disciplining physicians and surgeons found guilty of the charges filed against them, we identified all the cost elements of the system that are susceptible to cost recovery and obtained information regarding the amount of such costs actually recovered during fiscal years 1992-93 and 1993-94.

To determine if the hours charged to medical board cases by the HQES were reasonable, we attempted to use a case study approach to compare actual hours charged for a sample of completed cases with profile cases developed through interviews with the HQES supervisors. The profile case for each HQES location represented typical tasks associated with physician and surgeon cases and the amount of time associated with those tasks, as well as any lag time that occurs between tasks. We asked the supervisors to develop the profile case so that it would represent typical cases resolved from July 1, 1992, through June 30, 1994.

Finally, to determine if the medical board had implemented the recommendations contained in an audit that the Office of the Auditor General issued in April 1991, we interviewed staff of the medical board and reviewed documentation specific to those recommendations and found that all had been implemented.

Chapter 1

The Medical Board Is Not Maximizing Recovery of Its Costs of Disciplining Medical Doctors Convicted of Violations

Chapter Summary

Effective January 1, 1993, Section 125.3 of the Business and Professions Code gave the Medical Board of California (medical board) the authority to request administrative law judges to direct physicians and surgeons convicted of violating the Medical Practice Act to pay sums not to exceed the reasonable costs of the investigation and enforcement of their respective cases up to the dates of the hearings. In addition, nothing in this section of the code precludes the medical board from recovering costs incurred for investigation and enforcement of cases resolved through stipulated settlements.

Although the medical board has the authority to recover costs that it incurs as part of the enforcement and disciplinary process, it is not maximizing its efforts to recover such costs. For example, during fiscal year 1993-94, the medical board spent more than $25 million on enforcement and disciplinary efforts, including the costs of investigations, services provided by the Attorney General's Office, and administrative hearings. Of those costs, we determined that under current law the medical board could have attempted to recover more than $6.3 million. Furthermore, if the medical board had sought to change the Business and Professions Code to allow it to recover costs incurred during administrative hearings, the medical board could have attempted to recover an additional $3.1 million. However, the medical board reported that it recovered only $94,053 of its costs for the same period.

To the extent possible, physicians and surgeons found guilty of the charges brought against them, either through stipulated settlements or judgments reached through administrative hearings, should bear the costs of the enforcement and disciplinary actions associated with their cases. The medical board can use these funds to further enhance its enforcement activities. According to the chief of enforcement, the reason the medical board has not been more aggressive in trying to recover its disciplinary costs is that, up until recently, some board members were more concerned with protecting the public and less concerned that violators pay the cost of investigating and adjudicating their unlawful activities.

Although we agree that public safety should always be the most important goal in any disciplinary outcome, by not vigorously pursuing cost recovery, the medical board is limiting its ability to police the medical profession more effectively. The ability of the medical board is limited because the source of funding for enforcement and disciplinary activities has remained constant while the workload has increased. Specifically, because the enforcement and disciplinary activities funded by licensing fees have increased and the number of physicians and surgeons paying such fees has declined in each of the last three years, the only way the medical board could ensure that the funding kept pace with the increasing workload was to increase the licensing fees. As a result, in each of the last four years, the fee to obtain or renew a license has increased.

In response to complaints from the public and reports from health care facilities, the Division of Medical Quality within the medical board reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcing the disciplinary and criminal provisions of the Medical Practice Act. It also includes suspending, revoking, or limiting a medical license at the conclusion of disciplinary actions. To carry out its responsibilities, the Division of Medical Quality uses its enforcement program to conduct activities such as processing complaints against physicians and surgeons, investigating the complaints to see if they warrant disciplinary action, and referring such cases to the Health Quality Enforcement Section (HQES) of the Attorney General's Office and, for cases involving criminal complaints, to the District Attorney's Office. The HQES is responsible for filing accusations based on the charges included in the cases referred to it, preparing for administrative hearings of the cases, and negotiating the settlement or prosecution of cases on behalf of the medical board. The Office of Administrative Hearings (OAH) within the Department of General Services is responsible for adjudicating all administrative actions taken against physicians and surgeons and for proposing disciplinary decisions for consideration by the medical board. The medical board pays the costs of all the enforcement activities out of its contingency fund—a special revenue fund consisting primarily of the licensing fees paid by physicians and surgeons.

The Medical Board Is Not Aggressively Seeking Recovery of Its Disciplinary Costs

Beginning on January 1, 1994, the enforcement program started requiring its investigators to formally track the time they spent investigating complaints against physicians and surgeons by using an investigation activity report. Before January 1994, investigators tracked their time using daily journals; however, because investigators did not use a standardized format to track their time, the enforcement program did not consider the journals to be a reliable source from which to extract the number of investigative hours spent on a given case. As a result, serious efforts to recover disciplinary costs did not begin until the middle of fiscal year 1993-94.

Although the medical board has recently taken more action to recover its costs for conducting investigations, its efforts have been modest. For example, we estimate that the costs to conduct investigations referred to the HQES during fiscal year 1993-94 totaled approximately $2 million. According to the chief of enforcement for the medical board and the senior assistant attorney general of the HQES, approximately 90 percent of the cases referred to the HQES result in disciplinary action through either stipulated settlements or disciplinary decisions rendered by administrative law judges. Using this estimate, we determined that, of the $2 million in investigative costs associated with the 601 cases referred to the HQES during fiscal year 1993-94, nearly $1.8 million were susceptible to cost recovery. However, the medical board only recovered approximately $94,053 in investigative costs that year, or 5.28 percent. Furthermore, the costs recovered represent collections for only 16 of the 373 cases that the medical board resolved through disciplinary actions during fiscal years 1992-93 and 1993-94.

All the investigative costs that the medical board recovered during fiscal year 1993-94 resulted from eight stipulated settlements negotiated between the physician and surgeon and the medical board, two decisions proposed by administrative law judges and subsequently adopted by the medical board, five cases in which the costs were recovered through criminal proceedings, and one case in which the costs were recovered through a civil action. According to the chief of enforcement, in some cases, the physician or surgeon agreed to pay the entire amount of the investigative costs. However, in other cases, the chief said investigative costs associated with the cases were negotiated down to ensure that the most important public protection terms and conditions were included in the disciplinary orders. Moreover, in some cases, the medical board receives a lump sum payment; however, in most cases, the physician or surgeon pays the investigative costs through installments.

Although the medical board recently began seeking recovery of its investigative costs, we noted that it has not made any attempt to recover the costs of prosecuting the cases that it refers to the HQES as provided by law. During fiscal year 1992-93, the medical board paid the HQES nearly $5 million to prosecute cases on its behalf, and in fiscal year 1993-94, the medical board paid nearly $5.8 million to the HQES for its services. As stated earlier, the Business and Professions Code allows the medical board to recover costs of the investigation and enforcement of cases up to the date of an administrative hearing. Although some of the costs that the medical board pays to the HQES cover time that the attorneys spend prosecuting cases during administrative hearings, the proportion of time that attorneys typically spend in hearings is small in relation to the time they spend on prehearing activities. Therefore, most of the costs that the medical board pays to the HQES are recoverable. According to the chief of enforcement, the reason the medical board has not been more aggressive in recovering its disciplinary costs is that, until recently, some board members were more concerned with public protection and less concerned that violators pay the costs of investigating and adjudicating their unlawful activities.

Recovery Efforts Do Not Include All Costs

The medical board has not included certain costs of disciplining physicians and surgeons in its recovery efforts. Before October 1994, the medical board did not pursue recovery of the costs it incurred to have medical consultants review cases of alleged medical wrongdoing. Specifically, the medical board did not pursue recovery of the costs it incurred to obtain the expert opinions of medical consultants in cases where physicians and surgeons were ultimately found guilty of the charges filed against them. Furthermore, the medical board is not attempting to recover the costs that the medical consultants charge to conduct psychiatric competency examinations in connection with these cases. In addition, the medical board is not attempting to recover its costs for administering the diversion program from those physicians and surgeons either directed to enter the program as an alternative to the medical board's pursuing disciplinary actions against them or required to participate in the program as part of the conditions contained in their stipulated settlements. Finally, unlike other public entities, such as the Department of Conservation, the medical board has not sought to change the Business and Professions Code to allow it to recover the costs associated with administrative hearings that result in disciplinary decisions rendered by administrative law judges.

Expert Medical Consultant Costs

The Division of Medical Quality of the medical board often retains the services of expert medical consultants in its investigation of complaints against physicians and surgeons. The medical board retains experts from a variety of different medical specialties to identify whether deviations from the standard practice of medicine or acts of unprofessional conduct have occurred. The medical board also retains these consultants to serve as expert witnesses at any hearings that may arise as a result of their assessments.

These consultants receive medical records, investigative interviews with patients, interviews with subsequent treating physicians and other witnesses, and any statements of the physicians who are the subjects of the investigations. After receiving this information, the medical consultant must review all the documentation and render a professional assessment of the care provided by the physician to the patient involved in the investigation. In some cases, the medical consultants will provide testimony concerning their opinions in administrative hearings held either before an administrative law judge or before the Division of Medical Quality. On these occasions, the medical consultants act as expert witnesses and must meet with the deputy attorney general assigned to prosecute the case before the hearing, prepare for the hearing, and attend the hearing to testify if necessary. Additionally, for cases in which the physician's medical or mental competency is being investigated, medical consultants sometimes are retained to administer oral clinical examinations to determine medical competency and psychiatric examinations to determine mental competency.

The medical board compensates expert medical consultants at a rate of $75 per hour for evaluating case documentation and writing expert assessments of their findings. For consultations with the assigned deputy attorney general before accusations are filed, while disciplinary actions are pending, or while the consultants prepare for hearings, the medical board pays medical consultants $100 per hour. If expert testimony is required, medical consultants receive $100 per hour up to a maximum of $800 per day. In addition, if medical consultants administer competency examinations, the medical board pays them $100 an hour, up to a maximum of $400 for oral clinical examinations, and the amount they would normally bill in the course of their practice for psychiatric examinations. Finally, the medical board reimburses medical consultants for miscellaneous expenses, such as parking and mileage. During fiscal years 1992-93 and 1993-94, the medical board paid approximately $1.1 million and $1.2 million, respectively, for expert medical consultant services. Beginning in October 1994, the medical board requested investigators to include the costs of case reviews and assessments by medical consultants in connection with

cases that the investigators referred to the HQES, so these costs could be recovered through stipulated settlement or hearing.

Costs of the Diversion Program

The medical board established the diversion program to identify and rehabilitate physicians and surgeons experiencing impairment because of the abuse of drugs or alcohol or mental or physical illness affecting their competency. The program is intended to treat the participating physicians and surgeons so that they can return to their practices without endangering public health and safety. Physicians and surgeons either can enter the diversion program voluntarily or can be ordered to participate as a condition of a stipulated settlement. In addition, if during the course of an investigation against a physician or surgeon, the facts indicate that the subject of the investigation is abusing drugs or alcohol or is mentally or physically incompetent to practice medicine but has violated no other provisions of the Medical Practice Act, the medical board can direct the physician or surgeon to enter the diversion program. After an evaluation by a diversion evaluation committee, the physician signs a formal agreement to participate in the program. After the agreement is signed, any investigation or disciplinary action is suspended pending successful completion of the program. The program is considered a success when participants demonstrate to the diversion evaluation committee that they have remained clean and sober for two years and have changed their lifestyle and internalized values that will support sobriety for the rest of their lives. If participants violate the terms of the treatment program, the medical board reinstitutes the investigation or disciplinary action that was suspended. If the diversion evaluation committee believes that it is appropriate, physicians or surgeons can resume their practice while participating in the diversion program, and participation is kept confidential.

The medical board’s cost to administer the diversion program totaled nearly $723,000 for fiscal year 1992-93 and exceeded $739,000 for fiscal year 1993-94. However, the medical board has not made any efforts to recover these costs. According to diversion program records, as of June 25, 1992, 118 (46 percent) of the 256 participants were ordered to participate in the program as an alternative to other disciplinary action. Similarly, as of July 31, 1993, 82 (38 percent) of the 213 active participants in the diversion program were ordered to participate. The law does not prohibit the medical board from seeking recovery of the proportion of the diversion program’s administrative costs relating to those individuals ordered to participate in the program as an alternative to facing other disciplinary action. Using the

numbers of participants ordered into the program for the two years we reviewed, we determined that the medical board could have sought recovery of approximately $332,500 for fiscal year 1992-93 and $284,600 for fiscal year 1993-94.

Costs of Administrative Hearings

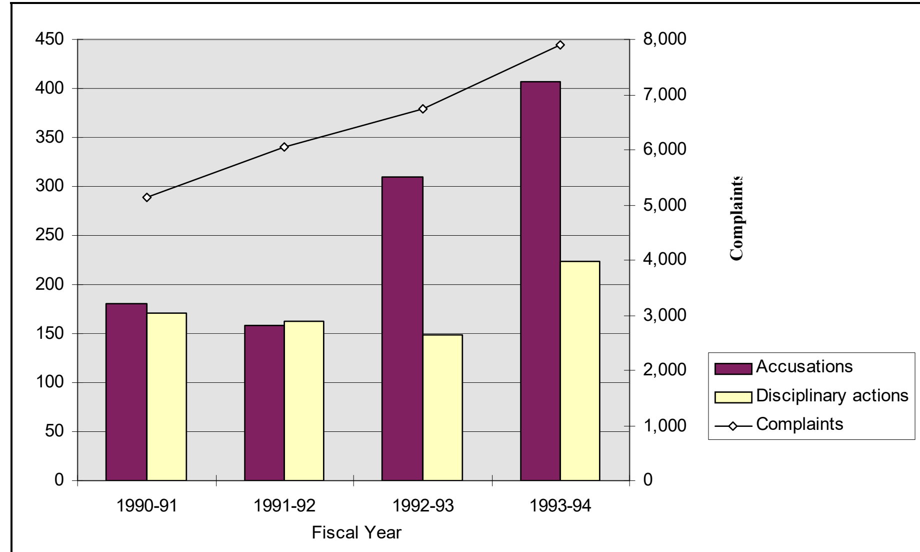
Current law precludes the medical board from seeking recovery of the disciplinary costs incurred after cases go to a hearing before an administrative law judge. Such costs include all attorney time spent litigating cases during administrative hearings, the cost of witness fees paid to expert medical consultants, and the time spent by administrative law judges and court reporters adjudicating the hearings. However, unlike the medical board, other public entities recoup these types of costs. For example, according to Section 14591.3 of the Public Resources Code, the Department of Conservation has the right, in any civil or administrative action in which it prevails, to assess against the respondent any costs and fees, including attorneys' and experts' fees, along with the cost of the hearing, that it incurred as a result of bringing the civil or administrative action. We determined that the medical board incurs significant costs for disciplinary activities that occur after an administrative hearing commences. For example, the medical board spent $743,000 for services that the OAH provided during fiscal year 1992-93 and more than $1.1 million for the same services during fiscal year 1993-94.

The Medical Board Could Have Recovered $9.4 Million

Although we agree that the health and safety of the public should be the primary concern of the medical board, we believe that the medical board, by not pursuing recovery of costs as authorized by law, is limiting its ability to effectively enforce the Medical Practice Act. For example, during our review of enforcement activities for fiscal year 1993-94, we identified more than $6.3 million that, under current law, the medical board could have attempted to recover. In addition, if the medical board successfully sought to change the law to recover the costs of administrative hearings, it could recover more funds. Specifically, for fiscal year 1993-94, the medical board could have attempted to recover approximately $2.1 million for costs related to legal services that the HQES provided during administrative hearings. Further, the medical board could have also attempted to recover more than $1 million for services provided by the OAH during those same hearings. However, we determined that during the same fiscal year, the medical board reported cost recoveries of only $94,053.

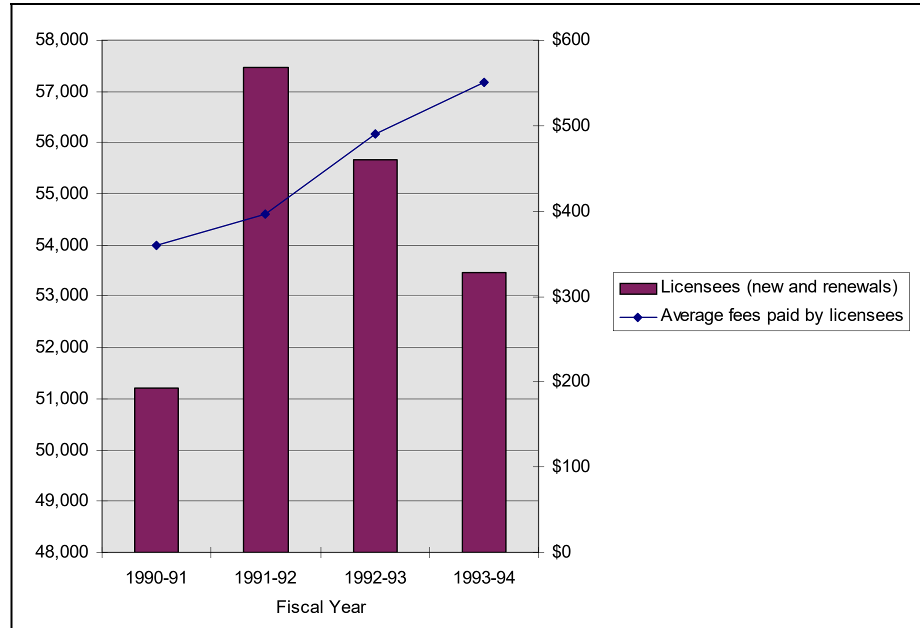
As shown in Figure 2.1, the number of complaints received and accusations filed has increased over the last four years. In addition, while disciplinary actions showed slight decreases over the first three years, there was a sharp 50 percent increase from fiscal year 1992-93 to fiscal year 1993-94. In contrast, Figure 2.2 shows that the number of physicians and surgeons paying new and renewal licensing fees has decreased in the last three years. Because of these trends, the medical board has had to increase the amount charged for licensing fees during each of the last three years.

Figure 2.1 **Complaints Received, Accusations Filed, and Disciplinary Actions Taken by the Medical Board Fiscal Year 1990-91 Through 1993-94**



Source: Annual Reports of the Medical Board

Figure 2.2 **Number of New and Renewal Licensees and Average Fees Paid by Licensees Fiscal Year 1990-91 Through 1993-94**



Source: Medical Board of California

If this trend continues, the gap between the amount of funds available to support the medical board's enforcement activities and the workload will increase; therefore, the ability of the medical board to properly enforce the Medical Practice Act will diminish. In light of these facts, the medical board has only two alternatives to properly carry out its mission to protect the public through the vigorous, objective enforcement of the Medical Practice Act: either keep increasing the fees paid by physicians and surgeons to keep pace with the increasing workload or become more aggressive in recovering all the costs associated with disciplining those physicians and surgeons found guilty of the charges filed against them.

Conclusion

The medical board has not been aggressive enough in its efforts to recover the costs it incurs as part of its enforcement and disciplinary process. Specifically, the medical board has not consistently sought recovery of costs from those physicians and surgeons found guilty of wrongdoing through stipulated settlements or through the administrative hearing process. In addition, the medical board has only recently begun trying to recover its costs for investigations and for some of the services of expert medical consultants. Furthermore, the

medical board has not attempted to recover the costs associated with the prosecution of cases that result in a successful disciplinary outcome or the administrative cost of the diversion program devoted to those participants ordered into the program as an alternative to other disciplinary action. Finally, unlike other public entities, the medical board has not sought to change the law that would allow it to recover the costs that accrue after the administrative hearing process begins.

Recommendations

To maximize its cost recovery efforts, the medical board should take the following actions:

- Be more aggressive in recovering disciplinary costs through stipulated settlements and as part of the proposed disciplinary decisions rendered by administrative law judges;
- Include in its cost recovery efforts the costs for prosecuting cases, the costs of administering psychiatric competency examinations by expert consultants, and a portion of the cost to administer the diversion program that represents the number of participants ordered to participate in the program as an alternative to other disciplinary action; and
- Seek a change in the Business and Professions Code to allow recovery of disciplinary costs incurred after the administrative hearing process begins.

Chapter 2 The Attorney General's Billing System Lacks Sufficient Detail To Analyze Charges to the Medical Board

Chapter Summary

Before January 1, 1995, the Health Quality Enforcement Section (HQES) of the Attorney General's Office did not have a system to identify the types of activities that the HQES performed for the Medical Board of California (medical board). Specifically, the invoices that the HQES submitted to the medical board for payment identified only the total number of hours attorneys and legal assistants charged during the month and other services the HQES provided. These services included periodic reviews of investigations closed by staff in the medical board field offices and consultations with investigators at the medical board field offices. In addition, the medical board does not have a process to ensure that the invoices it pays are only for active medical board cases. As a result, the HQES cannot assure the medical board that the charges it billed for HQES services were appropriate or necessary, and the medical board cannot ensure that it is only paying for services that it receives.

HQES System Weakness

One of the objectives of this audit is to assess the effectiveness and efficiency of the services provided by the HQES on behalf of the medical board. The Attorney General's Office has HQES offices in Los Angeles, Sacramento, San Diego, and San Francisco. Attorneys in each of the HQES offices provide a variety of services to the medical board that include preparing for and conducting prosecution proceedings against physicians and surgeons based on the investigation cases referred to them by the medical board. In support of those prosecutions, the attorneys also provide ongoing reviews of the investigative activities conducted by staff in the medical board's field offices. Finally, attorneys in each of the HQES offices periodically visit the 13 medical board district field offices that conduct investigations to confer with investigators and expert medical consultants. The attorneys also visit the field offices to review cases that the medical board has closed to ensure that the medical board's actions were appropriate.

Each month, the HQES bills the medical board for HQES services rendered on the medical board's behalf. However, before January 1, 1995, the HQES did not have a billing process that linked specific tasks to the amounts on its invoices. Rather, the monthly invoices it sent to

the medical board for payment were supported by lists showing the cases worked on by the staff in each HQES office and the total number of hours the attorneys and legal assistants worked on each case for the month and for the fiscal year to date.

To determine the amount to bill the medical board, the HQES multiplies hours recorded for a given month by an hourly rate for an attorney or legal assistant, whichever is applicable. During both fiscal years 1992-93 and 1993-94, the hourly rate for attorneys was $90 per hour; the hourly rate for legal assistants was $46.90 per hour. The HQES also billed the medical board for other services that were not case specific. These services included periodic visits to medical board field offices to review cases that investigators in the medical board field offices closed, consultations with investigators, and consultations with medical consultants. The HQES listed these charges on the monthly invoice under "client services," "medical board regional office," "medical board training," and "medical board complaints" categories, along with the monthly hours charged for each category.

Because the HQES did not have a task-based system to document the services it performed on behalf of the medical board, we could not assess the effectiveness or efficiency of the services. For example, HQES attorneys could charge eight hours a day for several months to cases without identifying any of the specific tasks that they performed. Without such information, it is impossible to determine if the hours the HQES attorneys charged were excessive, unnecessary, or both. As a result, the HQES cannot assure the medical board that its billings for services are appropriate or necessary.

Furthermore, the lack of such a system also inhibits the ability of the supervisors in each of the HQES offices to efficiently and effectively manage their respective office caseloads. Using the system that was in place during our review, supervisors in the HQES offices had information only on the number of cases they had assigned to the attorneys working for them; they had no information concerning the types of tasks the attorneys were performing on those cases. To determine the status of a specific assigned case, the supervisors had to confer with the attorney assigned to the case and ask for an update. Without the ability to assess the number of hours that attorneys are working on specific tasks, the HQES supervisors do not have the information necessary to ensure that all the hours the attorneys are charging are appropriate and productive. Further, the HQES offices cannot ensure that the amounts billed to the medical board are reasonable or necessary.

Our Case Study Approach Not Successful

We attempted to determine whether the number of hours that the HQES charged to medical board cases was reasonable using a case study approach. We developed profile cases for each of the four HQES offices and attempted to compare the hours estimated for each stage of the profile case to hours charged for a sample of actual cases. To develop the profile case, we interviewed supervisors from each HQES office, asking them to describe the tasks their respective legal staffs typically would perform for cases involving physicians and surgeons for July 1, 1992, through June 30, 1994. The resulting profile case covered the period from when the medical board referred the case to the HQES through either a stipulated settlement or the administrative hearing. After identifying the typical tasks, we asked each supervisor to estimate the time it took to complete each of the tasks and any lag time between one task and the next.

We selected a sample of 20 cases involving physicians and surgeons; each of the cases were processed during fiscal years 1992-93 and 1993-94. Ten of these cases were resolved through stipulated settlements that occurred before a hearing, and the remaining ten were resolved when the medical board adopted the proposed decision of an administrative law judge following a hearing. We then recorded all the hours that the HQES attorneys and legal assistants charged to each case in our sample. Depending on which HQES processed the case, we obtained key activity dates from each case file. We attempted to compare the pattern of when hours actually were charged for some cases in our sample with the respective profile case that we had developed for each HQES location. However, because of the wide ranges in the time estimates provided by the HQES supervisors for both the tasks and also the lag times between those tasks, the results of this approach did not yield useful information.

Total Hours Charged Matched Billings

Although our case study approach was not successful in evaluating the effectiveness or efficiency of the services that the HQES performed on behalf of the medical board, we were able to review a sample of invoices to ensure that the amounts that the HQES billed the medical board agreed with the supporting documentation. We selected a sample of monthly invoices that the medical board received from the HQES during fiscal years 1992-93 and 1993-94. Using these invoices, we selected a sample of 120 line items. The HQES bills the medical board for legal services and for miscellaneous services, such as transcript costs, consultation costs, and cost of airfare for expert witnesses.

The Legal Time Reporting System (LTRS) weekly time sheets provide the supporting documentation for the attorney and legal assistant fees charged to the medical board. For invoice line items representing legal services, we used the weekly time sheets to compute the monthly hours that the attorneys and legal assistants charged for each respective case. For each item in our sample, we recomputed the amount billed by multiplying the total attorney and legal assistant hours recorded on the time sheets by the respective hourly rate in effect during the year. For invoice line items representing miscellaneous services, the HQES first pays the vendor and then bills the medical board for the services. To determine if the HQES billed the medical board for the correct amount, we compared the amount billed to the medical board with the amount on the vendor's invoice.

Of the 120 items tested, we noted four errors that resulted in an aggregate overcharge to the medical board of $121. Each of the four errors resulted from mistakes made in adding up the daily hours recorded on four separate time sheets. All the charges for miscellaneous services that we reviewed agreed with the vendors' invoices and were appropriate according to the types of services performed by the HQES.

Beginning January 1, 1995, the HQES enhanced its LTRS to enable attorneys and legal assistants to record their activities in one of 13 different discrete categories. For example, attorneys can now record the time they spend on activities such as evaluating cases, conducting legal research, preparing an accusation, providing for discovery, preparing witnesses, preparing documents, conducting prehearing and settlement conferences, litigating during hearings, pursuing cost recovery, and conducting posthearing activities. Based on our understanding of the activities most commonly associated with prosecuting disciplinary cases that the medical board refers to the HQES, this enhancement should provide both the HQES supervisors and the medical board with the information necessary to make informed decisions regarding the productivity and the appropriateness of the services.

Medical Board System Weakness

Using its current system for paying invoices, the medical board does not have a process to ensure that the invoices it pays are only for active medical board cases. Each month, the medical board receives a report from the HQES that lists all the cases that the medical board referred to it during the previous month. As of January 1994, a staff person from the enforcement program began comparing this report to the cases shown on the medical board's computer system to verify that all the cases are medical board cases. However, the medical board does not

have a process to verify that the monthly invoices it receives from the HQES offices include only charges for services related to active medical board cases.

Conclusion

Before January 1, 1995, when it enhanced its legal time reporting system, the HQES did not have a system that would allow the supervisors in each of its four field offices to monitor the amount of time that attorneys and legal assistants spent on particular tasks relating to the medical board cases assigned to them. Further, the medical board currently does not have a system to ensure that the invoices it pays for HQES services are only for active medical board cases. As a result, the HQES supervisors are unable to determine whether the hours the legal staff charged to a particular case were necessary, and the medical board cannot ensure that it is only paying for services that it receives.

Recommendations

To assure the medical board that all billings for services are correct, the HQES supervisors should frequently review the number of hours and types of tasks the attorneys and legal assistants are charging for their cases and determine whether the hours charged are reasonable and necessary.

The medical board should develop a process to review all HQES invoices to verify that all services billed are for active medical board cases, and that all tasks billed are appropriate and necessary.

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Chapter 3 The Office of Administrative Hearings Overcharged the Medical Board for Some of the Services That It Provided

Chapter Summary

The Office of Administrative Hearings (OAH) charges the Medical Board of California (medical board) for the services that administrative law judges (ALJ) and court reporters provide to the medical board. Court reporter services include courtroom duties and transcripts of courtroom proceedings. In addition to the amounts it charges for ALJ and court reporter services, the OAH charges the medical board a filing fee for every case it schedules for a hearing. In total, the OAH billed the medical board $839,000 and $1,145,000, respectively, for fiscal years 1992-93 and 1993-94.

We reviewed a sample of the charges that the OAH billed to the medical board for fiscal years 1992-93 and 1993-94 and found that the OAH charged the correct amount for ALJ and the court reporter service provided by its own employees. In addition, the OAH charged the medical board the correct amount of fees to file cases. However, the OAH overcharged the medical board approximately $29,000 for the services provided by court reporters hired from private firms. We also found that since June 1993, the OAH has failed to reimburse the medical board approximately $254,000 for transcripts that were ordered and paid for by third parties.

Finally, we determined that the OAH did not charge third parties the proper amount for transcripts and copies of transcripts ordered for cases that had been appealed. Therefore, when the OAH reimbursed the medical board for the costs of these transcripts and copies, it reimbursed the medical board only the amount it collected from the third parties. In total, we estimate that the OAH may owe the medical board $283,000 in overcharges and reimbursements. In addition, the OAH also owes the medical board an undetermined amount for the cost of transcripts and copies of transcripts ordered by third parties for appealed cases from January 1, 1991, through June 30, 1994.

Overcharges for Private Court Reporter Services

To determine the amount that it should charge the medical board for court reporter services provided by private firms, the OAH takes the amount shown on the firm's invoice and converts this dollar value to hours worked. The OAH then combines these hours with those charged by its own court reporters and calculates the total amount to bill for court reporter services. For example, during fiscal year 1992-93, the OAH charged the medical board $57 per hour for court reporters; therefore, when it received an invoice from a private firm for court reporter services, it divided the total amount of the invoice by $57 to determine the total number of hours to charge. The OAH then added these hours to the hours charged by court reporters who are employees of the OAH to determine the total number of hours to bill the medical board for court reporter services.

To determine whether the OAH properly calculated the number of hours charged to the medical board for services provided by court reporters hired from private firms, we reviewed all 115 invoice charges from the billings that the medical board received for the months of March 1993 and May 1994. We found that the OAH overcharged the medical board for these services because of rounding errors in the calculations. For example, in 20 of the 115 invoice charges, we noted that the OAH rounded up the total by more than 0.5 hours. To determine the impact that the rounding errors may have on the amounts billed to the medical board, we calculated the total hours billed for the months of March 1993 and May 1994. Our calculations differed from the OAH's calculations by 21.9 hours and 18.7 hours for the two months and equates to overcharges of $1,248 for March and $1,085 for May. We estimate that from January 1, 1993, through January 31, 1995, the 25 months that the OAH has used this methodology to calculate the amount it bills the medical board for services provided by private court reporters, the OAH overcharged the medical board by more than $29,000. As of February 8, 1995, the OAH had not changed the methodology.

Reimbursements Due From Amounts Received From Third Parties

The OAH charges the medical board for all transcript services provided by its own employees or by private court reporter firms regardless of whether the medical board or a third party orders the transcript. However, the OAH also requires third parties other than the medical board to remit a deposit for the estimated cost of the transcript before the OAH places an order and to pay the difference, if any, when third parties receive the transcript. Because it also charged the medical board for these transcripts in the past, the OAH would, each quarter, reimburse the medical board for the amount that it charged third parties for transcripts. However, during our review, we noted that the OAH has not issued a quarterly reimbursement to the medical board since

June 1993, when it made a reimbursement for October, November, and December 1992.

We attempted to determine the amount of transcript charges that the OAH should reimburse the medical board for the period since the last reimbursement; however, the OAH maintains this information in the individual case files at four regional offices located throughout the State. As a result, we reviewed the invoices that private court reporter firms submitted to the OAH for two months—March 1993 and May 1994. Using these invoices, we calculated the amount that the OAH charged the medical board for transcripts. We determined that the average monthly cost of transcripts for these two months was approximately $17,000. To estimate the cost that the medical board paid for transcripts from January 1, 1993, through January 31, 1995, the period for which the OAH did not reimburse the medical board, we multiplied the average cost by 25 to arrive at the total estimated cost of $425,000.

However, the OAH may not be required to reimburse the entire amount of $425,000 to the medical board because a portion of the total may represent transcripts required for appealed cases, and current state law limits the amount the OAH can charge for transcripts required for appeals. In addition, some of these costs may be for transcripts that the medical board ordered for its own use. Because the OAH could not tell us what proportion of the costs are for appealed cases or for transcripts ordered by the medical board, we estimated the proportion using data from the first two quarters of fiscal year 1992-93. We used these data because they represent the most recent six months for which the OAH reimbursed the medical board for costs it paid for transcripts ordered by third parties. Specifically, we determined that from July through December 1992, the OAH charged the medical board $34,770 for transcripts and reimbursed the medical board $20,805 (59.84 percent) of the total charged. Using this percentage, we determined that for January 1, 1993, through January 31, 1995, the OAH may owe the medical board more than $254,000. In comparison, during fiscal year 1992-93, the OAH billed the medical board $839,000, and in fiscal year 1993-94, it billed the medical board $1,145,000.

Mischarges for Transcripts

Section 69950 of the Government Code limits the amount that the OAH can charge customers who request transcripts for cases that they are appealing. Specifically, the section states that beginning on January 1, 1991, the OAH should charge third parties 85 cents per 100 words for transcripts and an additional 15 cents per 100 words for any copies ordered at the same time. However, from January 1, 1991,

through June 30, 1994, the OAH was charging third parties the former rate of 70 cents per 100 words for transcripts and 10 cents per 100 words for any copies ordered at the same time. As stated earlier, the OAH charged the medical board the full amount that the private court reporting firms billed the OAH even though third parties paid the OAH a reduced rate for the transcripts. As a result, when the OAH reimbursed the medical board for the costs of these transcripts, it reimbursed the medical board only the amount it collected from the third parties.

However, if the OAH had charged the third parties the correct amount of 85 cents per 100 words for transcripts and an additional 15 cents per 100 words for any copies, it could have reimbursed the medical board at the higher rate. For example, a private court reporting firm may have charged the OAH $100 for preparing a transcript for a third party and the OAH may have billed this amount to the medical board. If the transcript totaled 10,000 words, the OAH would charge the third party only $70 (10,000/100 x 70 cents) when it should have charged $85. Similarly, if the third party ordered a copy at the same time it ordered the transcript, the OAH would charge the third party $10, when it should have charged $15. As a result, the OAH would reimburse the medical board only the $70 for the transcript and $10 for the copy that it charged the third party rather than the $85 for the transcript and $15 for the copy that it should have charged. We could not estimate the total amount that the OAH undercharged third parties because the records necessary to determine the amount are contained in individual case files that are located in the field offices. According to the director of the OAH, before July 1, 1994, the OAH was unaware of the change in the law increasing these rates.

Conclusion

During our review of the charges that the OAH billed to the medical board for services rendered, we determined that the OAH overcharged the medical board for services provided by court reporters and that the OAH failed to reimburse the medical board for the costs of some transcripts. As a result, the OAH may owe the medical board approximately $283,000. In addition, the OAH also owes the medical board an undetermined amount for the cost of transcripts and copies ordered by third parties for appealed cases from January 1, 1991, through June 30, 1994.

Recommendations

To avoid overcharging the medical board in the future and compensate it for past overcharges, the OAH should take the following actions:

- Change the method used to calculate the hours worked by court reporters from private firms so that computations are carried out to tenths of hours;
- Using the above methodology, recompute all hours worked by private court reporters since January 1993 and reimburse the medical board the amount of the overcharge;
- Reinitiate the practice of quarterly reimbursing the medical board the amounts collected for transcripts ordered by third parties;
- Review invoices received for transcripts ordered by third parties not involving appealed cases that were received from January 1, 1993, through January 31, 1995, and reimburse the medical board for the total amount collected on its behalf; and
- Review the invoices received from January 1, 1991, through June 30, 1994, for transcripts of appealed cases ordered by third parties and reimburse the medical board the amount the OAH failed to collect from third parties as required by law.

We conducted this review under the authority vested in the state auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope of this report.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

Date: March 1, 1995

Staff: Elaine Howle, CPA, Audit Principal
Doug Cordiner
Bill Anderson
Marianne Marler

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Appendix A

Number of Individuals Investigated by the Medical Board of California by Category Fiscal Years 1992-93 and 1993-94

	Contract	Fraud	Health and Safety	Non-Jurisdictional	Incompetence or Negligence	Other	Personal Conduct	Unprofessional Conduct	Unlicensed Unregistered	Total
<u>Fiscal Year 1992-93</u>										
Physicians and Surgeons:										
Carried forward from prior fiscal year	2	167	200	0	776	25	133	344	149	1,796
Received during current fiscal year	0	213	158	1	672	5	147	734	152	2,082
Total Investigations	**2**	**380**	**358**	**1**	**1,448**	**30**	**280**	**1,078**	**301**	**3,878**
Closed during current fiscal year	1	214	165	1	717	25	156	465	163	1,907
Remaining at end of current fiscal year	1	166	193	0	731	5	124	613	138	1,971
<u>Fiscal Year 1993-94</u>										
Physicians and Surgeons:										
Carried forward from prior fiscal year	1	159	191	0	729	5	124	612	137	1,958
Received during current										

fiscal year	0	157	143	1	699	0	163	727	157	2,047
Total Investigations	**1**	**316**	**334**	**1**	**1,428**	**5**	**287**	**1,339**	**294**	**4,005**
Closed during current fiscal year	0	160	166	0	719	2	164	852	186	2,249
Remaining at end of current fiscal year	1	156	168	1	709	3	123	487	108	1,756

Source: The Medical Board of California

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Appendix B

Summary of Disciplinary Actions Taken
by the Medical Board of California
Fiscal Years 1992-93 and 1993-94

Number and Type of Action Taken by Disciplinary Case Type	Revocation	Voluntary Surrender	Probation With Suspension	Probation	Probationary License Issued	Public Letter of Reprimand	Other Action	Total
<u>Fiscal Year 1992-93</u>								
Negligence	8	5	7	10	0	**	7	37
Inappropriate prescribing	5	2	2	0	0	**	0	9
Unlicensed practice	0	0	0	0	0	**	0	0
Sexual misconduct	7	5	1	1	0	**	0	14
Mental illness	1	2	0	0	0	**	1	4
Self-use of drugs or alcohol	3	1	3	4	3	**	1	15
Fraud	0	0	1	3	0	**	0	4
Conviction of a crime	1	2	6	4	0	**	0	13
Unprofessional conduct	4	2	1	7	1	**	1	16
Miscellaneous violations*	11	11	4	7	0	**	4	37
Total Actions by Discipline Type	**40**	**30**	**25**	**36**	**4**	**	**14**	**149**
<u>Fiscal Year 1993-94</u>								
Negligence	7	7	9	26	0	0	4	53
Inappropriate prescribing	5	3	12	15	0	0	1	36
Unlicensed practice	0	0	0	0	0	0	0	0
Sexual misconduct	4	3	5	1	0	0	0	13
Mental illness	0	0	0	2	0	0	0	2

Self-use of drugs or alcohol	3	5	3	1	2	0	0	14
Fraud	5	0	1	1	0	1	0	8
Conviction of a crime	4	1	5	7	0	1	0	18
Unprofessional conduct	1	2	1	7	0	0	1	12
Miscellaneous violations*	33	7	3	15	0	7	3	68
Total Actions by Discipline Type	**62**	**28**	**39**	**75**	**2**	**9**	**9**	**224**

* Most of the Miscellaneous Violations are reciprocal actions based upon discipline taken by another state.
** Public letter of reprimand effective January 1, 1994.

Source: The Medical Board of California

APPENDIX C

Medical Board of California
Expenditures for the Enforcement
and Disciplinary System
Fiscal Years 1992-93 and 1993-94

	Expenditures			Percent of Total Enforcement and Disciplinary Expenditures	
	Fiscal Year 1992-93	**Fiscal Year 1993-94**	**Percent Change**	**Fiscal Year 1992-93**	**Fiscal Year 1993-94**
Enforcement—other	$11,270,840	$12,557,238	11.41%	51.07%	49.40%
Enforcement—attorney general's office	4,978,518	5,840,681	17.32	22.56	22.98
Enforcement—office of administration hearings	743,511	1,144,537	53.94	3.37	4.50
Enforcement—consumer affairs	1,204,176	1,453,391	20.70	5.46	5.72
Allocated executive*	681,148	906,202	33.04	3.09	3.56
Allocated support services*	983,612	966,842	(1.70)	4.46	3.80
Allocated data processing*	784,750	1,006,316	28.23	3.55	3.96
Diversion program	722,805	739,431	2.30	3.27	2.91
Probation monitoring	342,344	670,997	96.00	1.55	2.64
Medical quality review committees**	356,660	134,647	(62.25)	1.62	0.53
Total	**$22,068,3**	**$25,420,2**		**100.00%**	**100.00%**

	64	**82**	**15.19%**

* We allocated expenditures to these categories based on the ratio of Enforcement/Disciplinary expenditures to total Medical Board expenditures for this program.

** Legislation that became effective January 1, 1994 abolished these committees.

Source: Budget Reports for the Medical Board of California.